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

[2025] SGHC 106

Criminal Case No 37 of 2024

Between

Public Prosecutor

… *Prosecution*

And

CFE

… *Defendant*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Statements — Voluntariness]
[Criminal Law — Offences — Sexual offences]

TABLE OF CONTENTS

Public Prosecutor
v
CFE

[2025] SGHC 106

General Division of the High Court — Criminal Case No 37 of 2024
Mavis Chionh Sze Chyi J
9–12, 16–17, 19, 23–26 July, 29 November 2024, 24 January 2025

6 June 2025

Mavis Chionh Sze Chyi J:

Introduction

1 The Accused in this case claimed trial to the following five charges (the "Five Charges") involving various sexual offences under the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"):[1]

> 1st charge
>
> That you, [CFE], sometime between 11.50pm on 5 January 2020 and 12.20am on 6 January 2020, in [address redacted], being a member of the employer's household of a domestic worker, namely, [the Complainant] (female/then 35 years old), did penetrate [the Complainant]'s vagina with your penis, without her consent, and you have thereby committed an offence under section 375(1)(a) of the [Penal Code], punishable under section 375(2) read with section 73(1) of the said Act.

[1] Arraigned charges dated 9 May 2024 at pp 1–3.

2nd charge

That you, [CFE], sometime between 11.50pm on 5 January 2020 and 12.20am on 6 January 2020, in [address redacted], being a member of the employer's household of a domestic worker, namely [the Complainant] (female/then 35 years old), did sexually penetrate, with at least one finger, the vagina of [the Complainant], without her consent, and you have thereby committed an offence under section 376(2)(a) of the [Penal Code], punishable under section 376(3) read with section 73(1) of the said Act.

3rd charge

That you, [CFE], sometime between 11.50pm on 5 January 2020 and 12.20am on 6 January 2020, in [address redacted], being a member of the employer's household of a domestic worker, namely, [the Complainant] (female/then 35 years old), did use criminal force on [the Complainant], to wit, sucking her right breast (skin-on-skin) and touching her vagina (skin-on-skin), intending to outrage her modesty, and you have thereby committed an offence punishable under section 354(1) of the [Penal Code], read with section 73(1) of the said Act.

4th charge

That you, [CFE], sometime between 11.50pm on 5 January 2020 and 12.15am on 6 January 2020, in [address redacted], being a member of the employer's household of a domestic worker, namely, [the Complainant] (female/then 35 years old), did penetrate, with your penis, the mouth of [the Complainant], without her consent, and you have thereby committed an offence under section 375(1A)(a) of the [Penal Code], punishable under section 375(2) read with section 73(1) of the said Act.

5th charge

That you, [CFE], sometime between 11.50pm on 5 January 2020 and 12.20am on 6 January 2020, in [address redacted], being a member of the employer's household of a domestic worker, namely, [the Complainant] (female/then 35 years old), did use criminal force on [the Complainant], to wit, by licking her vagina (skin-on-skin), intending to outrage her modesty, and you have thereby committed an offence punishable under section 354(1) of the [Penal Code], read with section 73(1) of the said Act.

2 In respect of all Five Charges, the alleged victim (the "Complainant") was a female domestic helper. The Complainant was employed by one of the Accused's daughters ("[D2]") at the time of the alleged offences. All the alleged offences occurred between 11.50pm on 5 January 2020 and 12.20am on 6 January 2020, in the living-room of the flat ("the Flat") where [D2] was then living with her husband, their two children, [D2]'s sister ("[D1]"), the Accused and the Complainant. At the material time, a closed-circuit television ("CCTV") camera was installed in the living-room; and as such, there was CCTV footage which captured a series of sexual acts carried out by the Accused on the Complainant during the periods specified in the Five Charges.

3 The Prosecution's case was that the CCTV footage from the living-room corroborated the Complainant's evidence about the sexual acts carried out by the Accused and about the fact that she had not consented to any of these sexual acts. The Prosecution contended that from the CCTV Footage, it was obvious that the Complainant was in a weak and unresponsive state at the material time and could not have given her consent to any of the sexual acts.

4 The Accused, on the other hand, claimed that he did not commit the sexual acts alleged in the Five Charges. Insofar as he admitted to carrying out certain sexual acts on the Complainant, the Accused claimed that this was done with the Complainant's consent.

5 I first set out the undisputed facts in this case.

The undisputed facts

The parties

6 The Accused is a 69-year-old male Singaporean. He divorced his former wife (referred to by the Complainant as "Ah Ma" during the trial) some 20 years ago but has referred to her as his "late wife" in his testimony during the trial. He has four children; and at the time of the alleged offences, he lived with two of his daughters – [D1] and [D2] – in the Flat which was owned by [D1]. At trial, the Accused's evidence was that he had been living in China and Hong Kong prior to the alleged offences, and that he would stay with [D1], [D2] and her family in the Flat on his trips back to Singapore.[2]

7 In his evidence-in-chief, the Accused described himself as a "researcher" in the field of health and health supplements.[3] He also gave evidence that he kept stocks of various health supplements, injections, and Traditional Chinese Medicine ("TCM") products at the Flat because he had previously been in the business of distributing such supplements.[4]

8 The Complainant is a Filipino national. She is currently 40 years old and was 35 years old at the time of the alleged offences.[5] She first came to Singapore to work as a domestic helper in 2016 and started working for [D2] in August 2018.[6] She has four children (aged 19, 16, 15, and 14) in the Philippines.[7] Some

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2 Transcript 23 July 2024 at p 50, lines 22–29.

3 Transcript 23 July 2024 at p 53, line 16.

4 Transcript 23 July 2024 at p 53, line 21 to p 54 line 5.

5 Agreed Bundle of Documents dated 28 June 2024 ("ABOD") at p 1, para 1.

6 ABOD at p 1, paras 2–3.

7 Transcript 9 July 2024 at p 20, lines 3–4.

of the children stay with her partner, while the others are taken care of by her mother.[8]

9 The Complainant is the youngest of three children. Her eldest sister, [S], has been working in Singapore as a domestic helper since 2007.[9] The Complainant and [S] are very close; and they talk on the telephone or via messaging applications almost every day – including on the day of the alleged offences.[10]

Background

10 The Complainant came to Singapore in 2016 to work as a domestic helper. She did so in order to support her family back home in the Philippines.[11] At that time, [S] had already been working as a domestic helper in Singapore for about nine years.[12]

11 When the Complainant was first employed by [D2] in August 2018,[13] she worked in [D2]'s flat in Dawson, tending to [D2], her husband, and their two sons.[14] About a year after the birth of [D2]'s second son, [D2] and her family moved into [D1]'s flat at Tampines (the "Flat") as it was a larger two-storey apartment.[15]

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8 Transcript 9 July 2024 at p 20, lines 4–5.

9 Transcript 11 July 2024 at p 25, lines 13–17.

10 Transcript 9 July 2024 at p 21, lines 11–16.

11 Transcript 9 July 2024 at p 20, lines 25–27.

12 Transcript 11 July 2024 at p 25, lines 13–14.

13 Transcript 9 July 2024 at p 20, lines 29–31.

14 Transcript 23 July 2024 at p 4, lines 21–24.

15 Transcript 23 July 2024 at p 5, lines 17–27.

12 In October 2019, due to her deteriorating health, Ah Ma (the mother of [D1] and [D2]) moved from Taiwan to Singapore, to stay in the Flat with her daughters. Ah Ma stayed in the Flat until her death on 26 November 2019,[16] sharing a room with the Complainant during this period.[17] Around the same time, the Accused (whom the Complainant referred to as "Kong Kong") also began staying in the Flat, sleeping on the second floor in the children's room.[18]

13 On 1 January 2020, [D1] and [D2] flew back to Taiwan with [D2]'s husband and children to settle the affairs of their deceased mother.[19] This left the Accused alone with the Complainant in the Flat from 1 to 8 January 2020. From 1 to 4 January 2020, nothing unusual happened between the Accused and the Complainant.[20] The Complainant described her interactions with the Accused during this period as being "normal": as far as she was concerned, he was "the father of [her] employer".[21]

The CCTV Cameras

14 There were two CCTV cameras installed on the first floor of the Flat:

(a) one in the living room (the "Living Room CCTV"); and

(b) one in the Complainant's bedroom (the "Bedroom CCTV").

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16 Transcript 9 July 2024 at p 22 line 29 to p 23 line 14.

17 Transcript 9 July 2024 at p 23, lines 4–19.

18 Transcript 9 July 2024 at p 23, lines 26–28 and p 24, lines 3–4.

19 Transcript 9 July 2024 at p 30, lines 11–13.

20 Transcript 9 July 2024 at p 30, line 31 to p 31, lines 1–6.

21 Transcript 9 July 2024 at p 30, line 31 to p 31, lines 1–6.

15 Both cameras had audio and video recording capabilities but would only start recording when they detected motion within their frame of view.[22] The recorded footage would then be uploaded to a cloud drive which [D2] had access to. For the purposes of the trial, the Prosecution tendered in evidence the footage retrieved from both cameras for the period 5 January to 6 January 2020.[23] Due to the motion-activated nature of the cameras, there are intermittent gaps in the footage.[24] Indisputably, however, the footage from the Living Room CCTV Camera did capture a number of sexual acts carried out by the Accused from the Complainant. I will refer to the sexual acts shown in the CCTV footage as the "Incident".

16 The relevant video clips from this footage were played in court. The Prosecution also produced two transcripts of the audio recordings from the CCTV footage – one for 5 January 2020 and another for 6 January 2020 – which were prepared by the investigation officer Ms Gan Mei Huey ("IO Gan").[25]

Events leading up to the Incident

17 The Incident took place on the night of Sunday, 5 January 2020. This was the Complainant's designated day off. As noted above (at [15]), the CCTV cameras captured a substantial portion of the day's events, notwithstanding intermittent gaps in the footage. The following account of the events leading up to the Incident is derived from the audio and video recordings obtained from the CCTV footage.

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22 Transcript 11 July 2024 at p 67, lines 1–7.

23 Exhibit P42.

24 Transcript 11 July 2024 at pp 67–68.

25 Exhibit P42T (5 Jan) and Exhibit P42T (6 Jan).

Morning of 5 January 2020

18 On 5 January 2020, the Complainant woke up at around 6.30am to shower and do some household chores before leaving for her day off. The Accused came downstairs at about 7.50am, at which point he spoke briefly to the Complainant about her menstrual cramps and passed her some medication, purportedly to help her manage her menstrual pain.[26] The Accused also suggested to the Complainant that she could try providing oral sex to her boyfriend in Singapore as a means of alleviating her menstrual discomfort.[27] The Complainant laughed in response to this remark without saying anything.[28] At trial, the Accused relied on this conversation (amongst other things) to support his claim that the Complainant had on various occasions shown interest in having "intimacy" with him.[29] Shortly after, the Complainant left the Flat and was out the entire day.[30]

The Complainant returning home and the Accused's instructions for her to prepare fruits

19 The Complainant returned to the Flat at about 7.30pm[31] and greeted the Accused[32] before going to take a shower.[33] At this time, the Accused was still

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26 Exhibit P42T (5 Jan) at s/n 33 to 67.

27 Exhibit P42T (5 Jan) at s/n 63.

28 Exhibit P42T (5 Jan) at s/n 64.

29 Transcript 23 July 2024 at p 16, lines 25–32.

30 Exhibit P42T (5 Jan) at s/n 68–72.

31 Transcript 9 July 2024 at p 31, lines 7–10; ABOD at p 2, para 7; Exhibit P42T (5 Jan) at s/n 75.

32 Transcript 9 July 2024 at p 31, lines 13–17.

33 Transcript 9 July 2024 at p 31, lines 19–20.

dressed in a white tee shirt and khaki pants.[34] About 15 minutes later, the Accused was seen in the living room still in his khaki pants but no longer wearing his tee shirt.[35] He then went upstairs while the Complainant was having her dinner at the dining table,[36] but was seen coming downstairs again at about 8.14pm.[37] By this point in time, the Accused appeared to have removed his khaki pants as well and was wearing only a pair of white boxers.[38] He remained wearing only his white boxers until the eventual sexual acts.

20 At about 8.15pm, the Accused gave the Complainant instructions to prepare some fruits for them both to eat.[39] At 8.20pm, the Accused switched on the TV and picked out a few snacks from a shelf in the living-room, which he told the Complainant they should eat with the fruits.

The Accused's invitation to the Complainant to watch TV with him

21 At around 8.28pm, the Accused sat down on the floor of the living room to watch TV. He got up after a few minutes and went into the Complainant's room to ask her for q-tips. It was at this point that he told the Complainant to "come out and sit and watch TV", "if [she] want[ed]".[40] The Complainant then came out of her room to the living-room where she and the Accused sat on the floor watching a horror movie on TV.[41]

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34 P42 - Living Room, "050120_193600" at timestamp 19:36:07.

35 P42 - Living Room, "050120_194454" at timestamp 19:44:59.

36 P42 - Living Room, "050120_194847" at timestamp 19:49:06.

37 P42 - Living Room, "050120_201413" at timestamp 20:14:15.

38 P42 - Living Room, "050120_201413" at timestamp 20:14:16.

39 Exhibit P42T (5 Jan) at s/n 139.

40 Exhibit P42T (5 Jan) at s/n 244.

41 Exhibit P42T (5 Jan) at s/n 248–263.

The Accused's offer of wine to the Complainant

22 At 11.10pm, the Accused was seen getting up from the living room floor and walking to the kitchen.[42] There was a gap of approximately 4 minutes in the CCTV footage after 11.10pm.[43] When the CCTV recording resumed at about 11.14pm,[44] the Accused was seen coming back to the living room with a bottle of red wine and two glasses.[45] He passed one of the glasses to the Complainant and said "come" – inviting her to drink with him.[46] When the Complainant accepted the glass,[47] the Accused poured wine for her and also for himself, while remarking to her that "this is grape juice… this is actually holy water according to the Christians".[48] The Complainant replied that she had previously drunk some wine given to her by [D2].[49] The Accused and the Complainant then continued to watch TV as they drank the wine and ate some snacks.[50] As I will elaborate below, the Accused claimed that at the time she accepted his offer of wine, the Complainant knew she was not allowed to drink alcohol in the house and had nonetheless given him the false impression that it was alright for her to drink with him.

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42 P42 - Living Room, "050120_231013" at timestamp 23:10:16.

43 P42 - Living Room, "050120_231013" at timestamp 23:10:49.

44 P42 - Living Room, "050120_231442" at timestamp 23:14:42.

45 P42 - Living Room, "050120_231442" at timestamp 23:15:07.

46 P42 - Living Room, "050120_231442" at timestamp 23:15:08.

47 Exhibit P42T (5 Jan) at s/n 589; P42 - Living Room, "050120_231442" at timestamp 23:15:08.

48 Exhibit P42T (5 Jan) at s/n 594; P42 - Living Room, "050120_231442" at timestamp 23:15:14.

49 Exhibit P42T (5 Jan) at s/n 596; P42 - Living Room, "050120_231442" at timestamp 23:15:27 to 23:15:33.

50 P42 - Living Room, "050120_231442" at timestamp 23:15:36 to 23:16:52.

Refilling of the wine glasses and the Complainant's complaint of pain in her abdomen

23 At about 11.32pm, the Accused was seen getting up and apparently refilling both their glasses with more wine.[51] At the same time, the Complainant could be heard telling the Accused that she had been having trouble sleeping.[52] The Accused responded by asking the Complainant some questions, including questions about her last menstrual period. The Complainant replied that she was in the "second week" of her cycle.[53] There then followed a gap in the CCTV footage.

24 On the recording which resumed at 11.34pm, the Complainant could be seen telling the Accused about pain in her stomach and her breast.[54] When asked by the Accused how long she had been feeling pain, the Complainant stated that it had been "two days already".[55] The CCTV recording then stopped again at this point.

The events leading up to the injections

25 It was not disputed that after the above exchange, the Accused and the Complainant spoke about his giving her injections of some health supplements.

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51 P42 - Living Room, "050120_233206" at timestamp 23:32:10 to 23:32:40.

52 Exhibit P42T (5 Jan) at s/n 614–616; P42 - Living Room, "050120_233206" at timestamp 23:32:17 to 23:32:24.

53 Exhibit P42T (5 Jan) at s/n 621–626; P42 - Living Room, "050120_233206" at timestamp 23:32:43 to 23:32:51.

54 P42 - Living Room, "050120_233358" at timestamp 23:34:12 to 23:34:14. The phrase "and then the breast" was not reflected in Exhibit P42T (5 Jan) at s/n 632.

55 Exhibit P42T (5 Jan) at s/n 636–639; P42 - Living Room, "050120_233358" at timestamp 23:34:20 to 23:34:30.

26 When the CCTV recording resumed at about 11.43pm, the Accused was seen heading upstairs, apparently to retrieve the materials he needed to prepare the injections.[56] He came back carrying a box which he placed at the dining table; and from 11.44pm to 11.46pm, he could be seen preparing the injections at the dining table while the Complainant went to the toilet.[57]

27 When the Complainant returned from the toilet and sat back down in the living room,[58] the Accused switched the TV back on for her, after which he was seen walking to her room. It was at this juncture – at 11.49pm – that the footage from the Bedroom CCTV showed the Accused shifting the Bedroom CCTV camera, such that the Complainant's bed could no longer be seen from the CCTV camera's field of view.[59]

28 Having moved the position of the Bedroom CCTV camera, the Accused returned to the living-room[60] where he was subsequently seen chatting with Complainant about the TV show she was watching. He was then seen reaching for his wine glass and clinking it against the Complainant's glass before saying to her, "Ok! We go and give you the injection and then you can sleep".[61]

29 As the Accused switched off the TV,[62] the Complainant got up from the living-room floor. At this point, she could be heard remarking, "I feel dizzy

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56 P42 - Living Room, "050120_234318" at timestamp 23:43:19 to 23:43:26.

57 P42 - Living Room, "050120_234432" at timestamp 23:44:56 to 23:45:46.

58 P42 - Living Room, "050120_234728" at timestamp 23:47:30 to 23:47:34.

59 P42 - Bedroom, "050620_234909" at timestamp 23:49:50 to 23:50:00.

60 P42 - Living Room, "050120_235104" at timestamp 23:15:08.

61 Exhibit P42T (5 Jan) at s/n 655; P42 - Living Room, "050120_235456" at timestamp 23:55:36 to 23:55:42.

62 P42 - Living Room, "050120_235456" at timestamp 23:56:17.

now"[63] – to which the Accused responded by remarking, "Oh, it's good! Easy to sleep". The Accused next retrieved the injections he had prepared[64] and proceeded to switch off the lights in the living room, prompting the Complainant to exclaim aloud, "*Eh*". This led to the Accused switching the lights back on. The Complainant then gestured to the sofa bed in the living room and said "I open *ah*? Open here". To this, the Accused initially replied "no *la*, on the bed", as he switched the living-room lights off again and gestured towards the Complainant's room. A moment later, he paused and asked the Complainant, "you want to open here?" – to which the Complainant replied, "ya *la*". After the Accused said "ok *la*" and switched on the living-room lights again,[65] the Complainant proceeded to pull out the sofa bed in the living room. It was at this point, however, that the Accused switched off the living-room lights yet again and walked to the kitchen to switch the kitchen lights on.[66] It was also at this point that the Complainant could be seen stumbling a little while unfolding the sofa bed.[67]

30 At trial, the reason for the Accused's behaviour in switching off the living-room lights was disputed. The Prosecution argued that there was no legitimate reason for him to switch off the living-room lights before administering the injections to the Complainant. The Accused, on the other hand, claimed that he switched off the living-room lights in order to prevent

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63 P42 - Living Room, "050120_235456" at timestamp 23:56:22 to 23:56:25. The Complainant's chuckle was not reflected in Exhibit P42T (5 Jan) at s/n 660.

64 Exhibit P42T (5 Jan) at s/n 661; P42 - Living Room, "050120_235456" at timestamp 23:56:26 to 23:56:31.

65 Exhibit P42T (5 Jan) at s/n 663–669; P42 - Living Room, "050120_235456" at timestamp 23:56:37 to 23:56:47.

66 P42 - Living Room, "050120_235456" at timestamp 23:56:54 to 23:56:57.

67 P42 - Living Room, "050120_235456" at timestamp 23:56:56.

people outside the Flat from looking through the window. I deal with the Accused's purported explanation for his actions in switching off the lights at [282] below.

The injections

31 At about 11.57pm, the Complainant lay down on the sofa bed and unbuttoned her shorts before assuming a prone position on the sofa bed, with her arms beside her head.[68] While doing so, the Complainant could be heard remarking that the Accused's daughters had also previously received injections on the sofa bed.[69] I should point out that it was not disputed that the Accused would typically administer injections of various supplements to his family members on their buttocks and that the Complainant was aware of this practice.

32 Next, the Complainant assisted the Accused in pulling down her shorts halfway, just enough to expose the top half of her buttocks.[70] The Accused then applied pressure onto her buttocks and told her "Ok, I will inject here *ah* – these two sides".[71] The Complainant appeared to inquire "*ar* painful?",[72] to which the Accused replied "this medicine is not painful" before proceeding to pat her buttocks.[73] He also told the Complainant to breathe and relax,[74] to which she

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68 P42 - Living Room, "050120_235456" at timestamp 23:57:13 to 23:57:33.

69 Exhibit P42T (5 Jan) at s/n 676–678; P42 - Living Room, "050120_235456" at timestamp 23:57:44 to 23:57:50.

70 P42 - Living Room, "050120_235456" at timestamp 23:57:49 to 23:57:53.

71 Exhibit P42T (5 Jan) at s/n 680; P42 - Living Room, "050120_235456" at timestamp 23:57:53 to 23:57:59.

72 P42 - Living Room, "050120_235456" at timestamp 23:58:08.

73 P42 - Living Room, "050120_235456" at timestamp 23:58:09 to 23:58:20.

74 P42 - Living Room, "050120_235456" at timestamp 23:58:19 to 23:58:28.

responded by mumbling "ok" and adjusting the position of her arms.[75] Up until this point, therefore, it appeared that the Complainant was still able to move her limbs and to converse with the Accused without difficulty.

33 The CCTV footage next showed the Accused applying what appeared to be a sanitising wipe to the Complainant's right buttock.[76] However, the actual administering of the injections to the Complainant's right buttock was not captured on the footage as the CCTV camera appeared to stop recording at this point. When the recording resumed at 12.01am on 6 January 2020, the Accused could be seen getting up from the Complainant's right side and walking around the sofa to position himself on her left.[77] As he did so, he said "ok *ah*?" – but there was no audible response from the Complainant.[78] The Accused proceeded to pat her left buttock in the same manner in which he had patted her right buttock.[79] He then appeared to administer an injection into her left buttock, at which point there was again a break in the CCTV recording.[80] It should be noted that throughout this 37-second video clip, there was no visible or audible response from the Complainant to what the Accused was doing and saying: her body appeared motionless.

34 Following this 37-second video clip, there was a gap of approximately four minutes before the CCTV recording resumed at 12.06am.

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75 P42 - Living Room, "050120_235456" at timestamp 23:58:22.

76 P42 - Living Room, "050120_235456" at timestamp 23:58:33 to 23:58:35.

77 P42 - Living Room, "060120_000113" at timestamp 00:01:14 to 00:01:20.

78 Exhibit P42T (6 Jan) at s/n 1; P42 - Living Room, "060120_000113" at timestamp 00:01:21 to 00:01:24.

79 P42 - Living Room, "060120_000113" at timestamp 00:01:27 to 00:01:38.

80 P42 - Living Room, "060120_000113" at timestamp 00:01:39 to 00:01:50.

The Incident

35 In the resumed recording, a number of sexual acts were captured across four video clips with gaps of varying lengths between them. While I address in some detail the precise contents of the footage in the later part of these written grounds, for present purposes, I summarise below what is shown in each clip.

(a) First clip (12.06am to 12.07am):[81] The first clip showed the Accused moving the Complainant's apparently limp body, lifting her shirt up to expose her breasts, and placing his mouth over her right nipple for at least 19 seconds, until the end of this first clip. While his mouth was over the Complainant's nipple, he also placed his right hand over her crotch.

(b) Second clip (12.09am to 12.10am):[82] The second clip began with the Accused crouching near the Complainant's crotch with his mouth placed over her vaginal area. The Accused then removed his boxers, and moved into what is referred to colloquially as the "69" position; *ie*, with his crotch over the Complainant's face and with his face over her vaginal area.

(c) Third clip (12.10am):[83] The third clip resumed just seven seconds after the end of the second clip. The Accused could be heard asking the Complainant if she wanted to return to her bed. There was no visible or audible response from the Complainant. As she lay unmoving on the sofa bed, the Accused proceeded to kiss her.

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81 P42 - Living Room, "060120_000637".

82 P42 - Living Room, "060120_000919".

83 P42 - Living Room, "060120_001003".

(d) Fourth clip (12.13am to 12.15am):[84] The fourth clip resumed three minutes later. In this clip, the Accused could be seen lying on top of the Complainant in the missionary position, apparently thrusting in and out of her. Towards the end of the clip, the Accused was seen withdrawing himself from the Complainant and walking away.

The aftermath of the Incident

36 The Accused was out of the CCTV frame for about 30 seconds.[85] When he reappeared, he was seen wiping his hands with some tissue paper.[86] He then put his boxers back on,[87] and walked off again towards the toilet.[88] On the audio recording from the CCTV footage, a door could be heard closing,[89] followed by the sound of running water before the recording was cut off.[90]

37 When the recording resumed 10 seconds later, the Accused was seen coming back towards the sofa bed.[91] He was then out of the CCTV frame for the rest of the clip (which lasted about 29 more seconds).[92] It should be noted that throughout this time, the Complainant could be seen lying motionless and silent on the sofa bed. She appeared to be in the same position she was last seen in during the video clip for the period from 12.13am to 12.15am.

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84 P42 - Living Room, "060120_001335".

85 P42 - Living Room, "060120_001335" at timestamp 00:14:28 to 00:14:57.

86 P42 - Living Room, "060120_001455" at timestamp 00:14:59 to 00:15:01.

87 P42 - Living Room, "060120_001455" at timestamp 00:15:08 to 00:15:15.

88 P42 - Living Room, "060120_001455" at timestamp 00:15:15 to 00:15:17.

89 P42 - Living Room, "060120_001455" at timestamp 00:15:25 to 00:15:27.

90 P42 - Living Room, "060120_001455" at timestamp 00:15:32 to 00:15:46.

91 P42 - Living Room, "060120_001555" at timestamp 00:15:57 to 00:15:59.

92 P42 - Living Room, "060120_001555" at timestamp 00:16:00 to 00:16:28.

38 After a gap of roughly two minutes, the CCTV recording resumed, with the Complainant now fully clothed but still lying motionless in the same position on the sofa bed.[93] The Accused grabbed her right arm with both his hands and pulled her body into a seated position.[94] The Accused could be heard saying "go back to bed" before attempting to lift her up from the sofa by placing his hands underneath her armpits.[95] However, she dropped back down onto the sofa bed without any discernible physical or verbal response.[96] The Accused reiterated "go back to bed" before attempting to lift her up again.[97] This time he was successful, but there was still no response from the Complainant.[98] The Accused was then seen manoeuvring the Complainant from the living-room back to her bedroom by supporting her from under her armpits and pushing her along as he walked behind her. As he was doing so, the Complainant's body appeared to flop listlessly, and the Accused could be heard panting.[99]

39 Next, the footage from the Bedroom CCTV camera showed the Accused placing the Complainant back on her bed before shifting the angle of the Bedroom CCTV back to its original position, such that the Complainant's bed was now back in the camera frame.[100] The Accused was then shown returning to the living-room where he could be seen cleaning up for a few minutes before heading upstairs at about 12.33am.[101]

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93 P42 - Living Room, "060120_001829" at timestamp 00:18:29.

94 P42 - Living Room, "060120_001829" at timestamp 00:18:30 to 00:18:33.

95 P42 - Living Room, "060120_001829" at timestamp 00:18:35 to 00:18:36.

96 P42 - Living Room, "060120_001829" at timestamp 00:18:38 to 00:18:40.

97 P42 - Living Room, "060120_001829" at timestamp 00:18:40 to 00:18:43.

98 P42 - Living Room, "060120_001829" at timestamp 00:18:41.

99 P42 - Living Room, "060120_001829" at timestamp 00:18:46 to 00:18:50.

100 P42 - Bedroom, "060120_001948" at timestamp 00:19:52 to 00:20:04.

101 P42 - Living Room, "060120_003259" at timestamp 00:33:12.

40 The Bedroom CCTV footage showed that the Complainant woke up at about 3.36am on 6 January 2020.[102] She was seen walking to the toilet.[103] On her return to her bedroom, she closed the curtain surrounding her bed such that she could no longer be seen on the Bedroom CCTV camera.[104]

41 At about 3.43am, the Complainant called her sister, [S]. The call logs adduced at trial showed that this call lasted for about one and a half hours.[105] While the contents of this extended telephone call were not audible from the Bedroom CCTV footage, [S] testified at trial that at the Complainant was crying when she called [S].

42 For the rest of the day on 6 January 2020, there was nothing unusual about the interactions between the Complainant and the Accused, insofar as these interactions were captured on the CCTV cameras. At about 1.30pm, the Complainant sent two photographs to [S]: one of an empty wine bottle and another of an empty plastic bottle containing material which had apparently been used for injections.[106] According to the Complainant, she noticed these bottles in the rubbish bin and took a photograph of them to retain as evidence.[107]

43 The Complainant continued to confide in [S] over the next three days, before [D1] and [D2] returned to Singapore.[108] However, the messages

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102 P42 - Bedroom, "060120_033635" at timestamp 03:36:35.

103 P42 - Bedroom, "060120_033635" at timestamp 03:36:36 to 03:36:41.

104 P42 - Bedroom, "060120_033915" at timestamp 03:39:17 to 03:39:27.

105 P21, Annex A – Call Logs, at s/n 73.

106 Exhibit P2, Annex C - Images, "Screenshot_20200109-004106_Gogo Camera.jpg" and "Screenshot_20200109-004110_Gogo Camera.jpg"; Exhibit P21 – Annex E2, p 14, s/n 149–150.

107 Transcript 9 July 2024 at p 50, line 27 to p 51, line 10.

108 P21, Annex E2, at s/n 119–720.

exchanged between them were mostly in Filipino dialects (Ilonggo and Cebuano)[109]. No certified translations of these messages were adduced at trial, as the translator engaged by the Prosecution was not proficient in these dialects.[110]

44 Between 6 and 8 January 2020, the Complainant confided in several other individuals:

(a) The Complainant confided in [N], a Filipino domestic helper in a neighbouring flat, on 6 January 2020.[111]

(b) The Complainant spoke to "Bing", a volunteer from Humanitarian Organisation for Migration Economics ("HOME"), on 7 January 2020.

(c) The Complainant also confided in [S]'s friend [GF], who was a nurse based in the Philippines.[112] Sometime in the morning of 8 January 2020, [GF] sent a long text to the Complainant, telling her that [GF] and [S] would always be there to support her.[113] Thereafter, they continued exchanging messages, with [GF] advising the Complainant on how to protect herself.

45 [D1] and [D2] returned to Singapore on the night of 8 January 2020. After they got home, the Complainant messaged them in a common group chat,

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109 Transcript 11 July 2024 at p 26, lines 16–17.

110 ABOD at p 92, para 9.

111 ABOD at p 210 at s/n 599 et seq; [reference during trial that says Carol is next door neighbour].

112 Transcript 9 July 2024 at p 57, lines 27–31.

113 ABOD at p 112, s/n 427 et seq.

stating that she needed to speak to them both.[114] [D1] and [D2] then spoke to the Complainant at the dining table from 11.38pm to 12.04am. The entire conversation was audio-recorded by the Complainant; and at trial, the Prosecution adduced the audio file in evidence,[115] together with a transcript of the audio-recording prepared by IO Gan.[116]

46 In gist, the Complainant told [D1] and [D2] that she had accepted wine and injections from the Accused. She alluded to having felt "dizzy", waking up "in the morning 4 o'clock" and noticing that "something" had happened, and suggested that she was sexually assaulted by him without going into explicit details.[117] [D1] and [D2] initially reprimanded the Complainant for accepting the wine in contravention of "house rules", before asking her for details of what had happened.[118] When pressed for more specific details, the Complainant stated that the Accused had given her "injection" on her buttocks and that he had "put his finger inside [her]". She then became audibly distressed and could be heard crying.[119] At this juncture, [D1] and [D2] told the Complainant that they would review the CCTV footage to "find out if anything wrong".[120] They also told the Complainant to think about what she wanted to do,[121] adding that they would not "cover" up for the Accused just because he was "family", and that any wrongdoing must be set right.[122]

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114 Transcript 9 July 2024 at p 59, lines 1–8.

115 Exhibit P21, Annex B – Audios "Voice 005".

116 Exhibit P21T(5).

117 Exhibit P21T(5) at p 1, s/n 7.

118 Exhibit P21T(5) at p 13, s/n 162–170.

119 Exhibit P21T(5) at p 17, s/n 222 to p 18 s/n 240.

120 Exhibit P21T(5) at p 19, s/n 243.

121 Exhibit P21T(5) at p 22, s/n 284.

122 Exhibit P21T(5) at p 21, s/n 280; p 22, s/n 286–294.

47 The next morning (*ie*, 9 January 2020), [D1] and [D2] spoke to the Complainant again at about 10.43am. Again, their conversation was recorded by the Complainant on her handphone; and the audio-recording was tendered in evidence.[123]

48 During this conversation, [D1] and [D2] told the Complainant that they wanted to go to the police, so as to be fair to her. They stated that they "don't cover up bad things" or "protect anybody".[124] [D2] added that they should not "drag it anymore" because it had already been four days since the alleged Incident,[125] and any further delay could arouse suspicion.[126] The Complainant's initial response was that she did not want "this problem bigger", and that she also wanted to protect her own family and to go home.[127] She expressed fear that the matter could "be in the newspaper".[128] [D1] and [D2] then assured the Complainant that the police "won't call newspaper reporter" and that "[t]his kind of thing is handled quietly".[129] They also assured her that she would definitely get to go home, and that they would buy the air ticket for her.[130]

First Information Report and the Accused's arrest

49 Sometime between 11am and 11.30am on 9 January 2020, [D1], [D2], and the Complainant arrived at Tampines NPC. The first information report was

123 Exhibit P21, Annex B – Audios "Voice 006".

124 Exhibit P21T(6) at p 3, s/n 23.

125 Exhibit P21T(6) at p 7, s/n 54.

126 Exhibit P21T(6) at p 8, s/n 56–58.

127 Exhibit P21T(6) at p 6, s/n 44.

128 Exhibit P21T(6) at p 8, s/n 59.

129 Exhibit P21T(6) at p 8 s/n 62 to p 9 s/n 64.

130 Exhibit P21T(6) at p 6, s/n 45.

made at 12.26pm. In that report, the Complainant stated: "On 06.01.2020 at about 0030hrs, I was raped".[131] On the same day, the police also interviewed the Accused briefly at Tampines NPC. He was eventually arrested at 6.20pm[132] for the offence of rape.[133]

The parties' cases

50 I next summarise the parties' respective positions vis-à-vis the Five Charges.

The Prosecution's case

51 The Prosecution's case was that the Complainant did not consent to any of the sexual acts alleged in the Five Charges, as she was in a weak and unresponsive state throughout the Incident.[134]

52 The Prosecution submitted that the Complainant was a consistent and credible witness whose account revealed no material inconsistencies.[135] Further, according to the Prosecution, there was other evidence which corroborated her version of events, including evidence of her complaints about the sexual assaults to various individuals,[136] as well as the CCTV footage and the Accused's admissions in the statements recorded from him during a number of video recorded interviews ("VRI").[137]

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131 ABOD at p 5.

132 ABOD at p 286, para 5.

133 ABOD at pp 304–305.

134 Prosecution's Closing Submissions dated 6 September 2024 ("PCS") at paras 1–2.

135 PCS at paras 38–44.

136 PCS at paras 45–52.

137 PCS at paras 57–66.

The Accused's case

53 The Accused denied committing the sexual acts described in the Five Charges. Insofar as he admitted to carrying out certain sexual acts, the Accused claimed that these were done with the Complainant's consent. According to the Accused, the Complainant had already shown interest in having "intimacy" with him prior to the Incident; and she demonstrated her consent to sexual activity during the Incident itself. Her post-Incident conduct was also said to be reflective of the consensual nature of the sexual encounter. Insofar as the CCTV footage showed the Complainant to have been in a limp and unresponsive state during the Incident, the Accused claimed that this was all an act on her part: he believed that she must have been plotting to frame him out of hatred for her employer [D2] and also in order to extract monetary compensation from [D2].

54 Additionally, the Accused attempted to explain away the admissions in his VRI statements by claiming that these admissions were the result of erroneous assumptions he had made while in a distraught frame of mind.

The issues in dispute

55 In the course of the trial, the Accused denied the voluntariness and admissibility of his VRI statements. An ancillary hearing was therefore conducted. I explain my findings on this issue at [79]–[90] below.

56 At the conclusion of the trial, I had to decide whether the Prosecution had successfully proven the physical elements of the Five Charges and the alleged lack of consent from the Complainant. I explain my findings on these issues at [96]–[231] below.

Voluntariness and admissibility of the Accused's VRI statements

57 The Prosecution sought to admit the following VRI statements given by the Accused during investigations:

(a) Statement recorded on 10 January 2020 at 10.49pm by IO Gan;

(b) Statement recorded on 14 January 2020 at 4.30pm by IO Gan; and

(c) Statement recorded on 15 January 2020 at 4.31pm by IO Gan.

58 The Accused initially challenged the voluntariness of all three statements.[138] However, during the ancillary hearing, he clarified that he was only challenging the voluntariness of the statements recorded on 10 January 2020 and 15 January 2020.[139]

59 Since the Accused did not challenge the voluntariness of the 14 January 2020 statement, I admitted it into evidence. As for the statements of 10 January 2020 and 15 January 2020, I found at the conclusion of the ancillary hearing that both were made voluntarily.

The alleged threat and inducement

60 At the outset, it should be noted that the Accused initially cited an alleged threat by Deputy Superintendent Liao Chengyu ("DSP Liao") as his basis for challenging the voluntariness of the two statements. The Accused claimed that on 9 January 2020, while the Accused was alone with DSP Liao in

138 Transcript 16 July 2024 at p 12 lines 11–32.

139 Transcript 16 July 2024 at p 53 lines 6–9.

an interview room at Tampines NPC, DSP Liao had said to him, "You are in serious trouble, and you will be in there for the rest of your life."[140]

61 Subsequently, the Accused retracted his allegations against DSP Liao.[141] Instead, he claimed that it was Deputy Superintendent Ryan Yue Rui Sheng ("DSP Yue") who had made certain threats and/or inducements to him. According to the Accused, while he was alone with DSP Yue in a waiting room at Tampines NPC on 9 January 2020, DSP Yue had told him, "What you have done is a very serious offence, and based on your age, you will be in there for the rest of your life."[142] A short while later, DSP Yue had also allegedly said to him, "If you cooperate…"[143] The Accused's evidence in the ancillary hearing was that he could not remember if DSP Yue had said anything else after uttering the words "If you cooperate…".[144] Nevertheless, he understood DSP Yue to have meant that if he "cooperated", he might get a "lesser" sentence.[145]

Witnesses called by the Prosecution in the ancillary hearing

DSP Ryan Yue Rui Sheng

62 DSP Yue testified that on 9 January 2020, he was the duty officer at the Serious Sexual Crime Branch ("SSCB"). As the duty officer, his role was to be SSCB's first point of contact for case referrals from the police land divisions: he would gather facts about the cases referred and check with the head of SSCB

140 Transcript of 16 July 2024 at p 48 lines 5–6.

141 Transcript of 17 July 2024 at p 15 lines 20–24.

142 Transcript of 17 July 2024 at p 19 lines 13–17.

143 Transcript of 17 July 2024 at p 26 lines 16–17.

144 Transcript of 17 July 2024 at p 32 lines 9–31.

145 Transcript of 17 July 2024 at p 32 lines 9–10.

to confirm whether the cases fell within SSCB's purview. If they did, he would notify SSCB officers to attend to these cases.[146]

63 On 9 January 2020, after being informed of a report of rape made at Tampines NPC, DSP Yue went to Tampines NPC to gather some facts about the case. At Tampines NPC, DSP Yue conducted a short interview with the Accused in an interview room.[147] In gist, he asked the Accused to confirm his name and place of residence, and whether he was working at the time. DSP Yue recalled the Accused stating that he was retired but had previously practised medicine. The Accused also requested to use the toilet, which he was permitted to do.[148] Apart from this short interview, DSP Yue did not have any other interactions with the Accused.[149]

64 In cross-examining DSP Yue, the Accused said nothing about any threat, inducement, or promise he was alleged to have made. The Accused merely put it to DSP Yue that he had never told DSP Yue anything about previously practising medicine. DSP Yue disagreed.[150]

IO Gan Mei Huey

65 IO Gan testified that she conducted the VRIs with the Accused on 10 January 2020, 14 January 2020, and 15 January 2020.[151] In all three

146 Transcript of 16 July 2024 at p 67 lines 20–31.

147 Transcript of 16 July 2024 at p 67 line 10 to p 69 line 14.

148 Transcript of 16 July 2024 at p 68 lines 16–22.

149 Transcript of 16 July 2024 at p 70 lines 4–6.

150 Transcript of 16 July 2024 at p 72 lines 12–21.

151 Transcript of 16 July 2024 at p 17 lines 10–13; p 24 lines 22–24; p 27 lines 22–23.

interviews, only IO Gan, Deputy Superintendent Sarah Ann Lee ("DSP Lee"), and the Accused were present in the room.[152]

66 IO Gan testified that, at the start of each interview, she would ask the Accused whether he was able to proceed with the interview and if he had any issues to raise.[153] In all three interviews, the Accused did not raise any issues,[154] nor did he tell IO Gan that he had been threatened by another police officer.[155] IO Gan recalled that the Accused's demeanour was calm and collected during all three interviews. He also appeared confident in giving his answers and did not appear to be acting under threat or duress.[156]

DSP Sarah-Ann Lee

67 DSP Lee testified that she assisted IO Gan in recording the three statements given by the Accused on 10 January 2020, 14 January 2020, and 15 January 2020.[157] For the statements of 10 January and 15 January 2020, DSP Lee testified that the Accused did not appear to be operating under any threat, inducement, or promise during the interviews.[158] On both occasions, he did not say anything about having been threatened by another police officer.[159]

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152 Transcript of 16 July 2024 at p 17 lines 19–22; p 24 lines 28–31.

153 Transcript of 16 July 2024 at p 20 lines 8–30; p 25 lines 4–7; p 28 lines 11–13.

154 Transcript of 16 July 2024 at p 21 lines 1–4; p 25 lines 8–10; p 28 lines 13–14.

155 Transcript of 16 July 2024 at p 21 lines 12–15; p 25 lines 11–13; p 28 lines 15–18.

156 Transcript of 16 July 2024 at p 21 lines 24–25; p 25 lines 17–21; p 28 lines 22–26.

157 Transcript of 16 July 2024 at p 55 lines 1–7; p 58 lines 15–19; p 59 to lines 6–8.

158 Transcript of 16 July 2024 at p 58 lines 7–10; p 60 lines 19–22.

159 Transcript of 16 July 2024 at p 58 lines 3–6; p 60, lines 15–18.

DSP Liao Chengyu

68 DSP Liao testified that he was a member of the team assigned to the Accused's case. The team was led by IO Gan. He went to Tampines NPC on 9 January 2020 together with IO Gan and Deputy Superintendent Muhammad Fadzridin ("DSP Fadzridin", then an Assistant Superintendent). He recalled that he and DSP Fadzridin had spoken with the Accused in an interview room.[160] The Accused was calm and cooperative when speaking to them and showed no signs of anxiety or stress.[161] Later that day, the Accused was escorted to the scene of the alleged offence for a scene visit, and DSP Liao spoke briefly with him during this visit.[162] The Accused did not tell him about having been subjected to threats by another police officer

69 On 16 January 2020, DSP Liao was assigned to escort the Accused from Police Cantonment Complex, where he was being held, for another scene visit.[163] DSP Liao recalled speaking to the Accused during this visit. On this occasion, the Accused also did not say anything about having been subjected to threats by another police officer.[164]

70 In cross-examining DSP Liao, the Accused put it to DSP Liao that during the interview at Tampines NPC on 9 January 2020, it was DSP Liao who had told him, "You are in serious trouble, and you will be there for the rest of

160 Transcript of 16 July 2024 at p 42 lines 6–19.

161 Transcript of 16 July 2024 at p 43 lines 23–28.

162 Transcript of 16 July 2024 at p 44 lines 23–26.

163 Transcript of 16 July 2024 at p 45 lines 2–13.

164 Transcript of 16 July 2024 at p 44 lines 4–6; p 44 lines 28–31; p 45, lines 2–13.

your life."[165] DSP Liao denied this allegation and asserted that in fact, DSP Fadzridin had also been present in the room when he spoke to the Accused.[166]

71 As I noted earlier, the Accused subsequently retracted his allegation against DSP Liao.[167]

DSP Muhammad Fadzridin

72 DSP Fadzridin testified that on 9 January 2020, he and DSP Liao had briefly interviewed the Accused at Tampines NPC. He recalled entering the interview room when DSP Liao was already speaking to the Accused. The Accused was coherent and did not appear upset at the time.[168] He also recalled that the Accused had remained calm and cooperative when brought for a scene visit later that day.[169]

The Accused's evidence

73 In his testimony in the ancillary hearing, the Accused claimed that on 9 January 2020, he was alone in a waiting room at Tampines NPC when DSP Yue entered the room.[170] DSP Yue said to him, "What you have done is a very serious offence, and based on your age, you will be in there for the rest of your life."[171] Shortly after saying this, DSP Yue also uttered the words, "If you

165 Transcript of 16 July 2024 at p 46 line 8; p 48, lines 5–6.

166 Transcript of 16 July 2024 at p 46 line 9.

167 Transcript of 17 July 2024 at p 15 lines 20–22.

168 Transcript of 16 July 2024 at p 77 lines 1–23.

169 Transcript of 16 July 2024 at p 80 lines 1–9.

170 Transcript of 17 July 2024 at p 18 lines 8–15.

171 Transcript of 17 July 2024 at p 19 lines 14–28.

cooperate…"[172] The Accused did not remember if DSP Yue said anything else after uttering the words, "If you cooperate…".[173]

74 Both in his evidence-in-chief and in cross-examination during the ancillary hearing, the Accused asserted that he was unable to recognise DSP Yue when the latter was in the witness stand, and that this had led to his "wrongly" identifying DSP Liao as the officer responsible for making the threats and/or inducements.[174]

75 According to the Accused, the words spoken to him by DSP Yue at Tampines NPC kept "flash[ing]" through his mind during the subsequent VRIs conducted by IO Gan.[175] As a result, he felt "very torment[ed]"[176] and confused as he was giving his statements; and he also experienced "bad thoughts" about going to prison for the rest of his life.[177]

76 When asked to explain what he understood by the term "cooperate", the Accused said that to "cooperate" meant to tell the truth.[178] At the same time, he also understood the word "cooperate" to mean cooperating "with the police" and "with the investigation".[179] His "perception" was that he would "get a lesser sentence" if he showed the police that he was not giving them any "trouble".[180]

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172 Transcript of 17 July 2024 at p 26 lines 16–26.

173 Transcript of 17 July 2024 at p 32 lines 9–31.

174 Transcript of 17 July 2024 at p 17 line 24 to p 18 line 6.

175 Transcript of 17 July 2024 at p 37, lines 1–17.

176 Transcript of 17 July 2024 at p 37 line 17 to p 38 line 6.

177 Transcript of 17 July 2024 at p 44, line 6 to p 45 line 19.

178 Transcript of 17 July 2024 at p 40 lines 7–26.

179 Transcript of 17 July 2024 at p 36 lines 1–3.

180 Transcript of 17 July 2024 at p 40 lines 20–21.

He added that he wanted the investigators to "feel better" so that they would finish the interviews "sooner", because he was handcuffed during the interviews, and this gave him a "very very bad feeling, a very sad feeling".[181] The Accused claimed that it was this belief which led him to give IO Gan "dressed-up statements" in an attempt to make her "happy" – "like…when you are in the army camp, your instructors – or your superiors, if you please them more, they tend to go easier on you".[182] However, he conceded that it was an assumption on his part that the investigators would shorten the interviews or consider his requests more favourably if they were "pleased" with his answers.[183]

The law on voluntariness

77 In assessing the voluntariness of the 10 January and 15 January 2020 statements, I bore in mind the principles articulated by the Court of Appeal in *Chai Chien Wei Kelvin v PP* [1998] 3 SLR(R) 619 ("*Chai Chien Wei Kelvin*") at [53] and in *Sulaiman bin Jumari v PP* [2021] 1 SLR 557 ("*Sulaiman*") at [39]: namely, that the determination of voluntariness is a two-stage, factual inquiry comprising an objective and a subjective limb. The first stage entails an objective consideration of whether there was a threat, inducement, or promise, having reference to the charge against the Accused. The second stage is a subjective consideration of whether the threat, inducement, or promise operated on the mind of the Accused, through hope of escape or fear of punishment connected with the charge: in other words, whether the threat, inducement, or promise was such that it would be reasonable for the Accused to think that he

181 Transcript of 17 July 2024 at p 42 lines 11–30.

182 Transcript of 17 July 2024 at p 91, line 15 to p 92 line 10.

183 Transcript of 17 July 2024 at p 92, line 7.

would gain some advantage or avoid any adverse consequences in relation to the proceedings against him (*Chai Chien Wei Kelvin* at [53]).

78 Where voluntariness is challenged, the burden of proof lies on the Prosecution to prove beyond a reasonable doubt that the statement was made voluntarily. It is "only necessary for the Prosecution to remove a reasonable doubt of the existence of the threat, inducement or promise, and not every lurking shadow of influence or remnants of fear" (*Chai Chien Wei Kelvin* at [53], citing *Panya Martmontree and others v PP* [1995] 2 SLR(R) 806 ("*Panya Martmontree*") at [29]).

My findings on the voluntariness of the challenged statements

The objective limb

79 In respect of the first limb of the two-stage test articulated in *Chai Chien Wei Kelvin*, I rejected the Accused's allegations about DSP Yue having told him that what he had done was "a very serious offence" and that he would "be in there for the rest of [his] life". I also rejected the Accused's allegation about DSP Yue having said to him the words, "If you co-operate…".

80 At the ancillary hearing, the Accused gave two contradictory accounts: he first alleged that it was DSP Liao who had threatened him, but later retracted this allegation and claimed instead that it was DSP Yue who had made the threats.[184] I found the Accused's explanation for this *volte-face* to be wholly unbelievable. When DSP Liao took the witness stand, the Accused had confidently asserted that he recognised DSP Liao.[185] The Accused even stated

184 Transcript of 16 July 2024 at p 48 lines 5–6; Transcript of 17 July 2024 at p 15 lines 20–24.

185 Transcript of 16 July 2024 at p 46 line 5.

in his evidence-in-chief that he recognised DSP Liao because the latter had escorted him on several occasions and had been friendly towards him.[186] In other words, the Accused could recall the context in which he had interacted with DSP Liao. It was in this context that the Accused had put it to DSP Liao in cross-examination that he was the officer responsible for making the threatening statements. This version of event contradicted the Accused's subsequent claim that his interaction with the officer responsible for the threats was very short, and that he could not remember or recognise this officer until DSP Yue took the witness stand.[187] In short, therefore, the Accused's evidence as to who made the threatening remarks to him was riddled with inconsistencies. The fact that he was unable to maintain a consistent account of who was responsible for the threats suggested that he was making up his story on the fly. It should be pointed out, moreover, that the Accused's retraction of his allegations against DSP Liao came after DSP Fadzridin gave evidence that he too had been in the interview room with DSP Liao and had not witnessed the latter making any threats, inducements, or promises to the Accused.

81 More fundamentally, the Accused's evidence about what was actually said to him was simply unbelievable. In cross-examining the Prosecution's witnesses, the Accused had asserted that the words said to him were along the lines of, "You are in serious trouble, and you will be in there for the rest of your life."[188] The Accused did not mention anything else being said. Even in his evidence-in-chief, he had started by testifying that DSP Yue's words to him were, "What you have done is a very serious offence, and based on your age,

186 Transcript of 17 July 2024 at lines 25–29.

187 Transcript of 17 July 2024 at lines 29–31.

188 Transcript of 16 July 2024 at p 48 at lines 5–6.

you will be in there for the rest of your life."[189] Again, he did not mention anything else being said. Subsequently, however, when asked to confirm if anything else was said, the Accused purported to remember that DSP Yue had also said the words, "If you cooperate…"[190] These additional words "If you cooperate" were never put to any of the prosecution witnesses during the ancillary hearing. If these additional words had in fact been spoken to the Accused, then it was unbelievable that he should have failed to remember them until midway through his evidence-in-chief and long after the prosecution witnesses had completed their testimony. After all, the Accused claimed that DSP Yue's words had a "huge impact" on him. In particular, it was his evidence that the words "If you cooperate" had "repeatedly" flashed through his mind during his period of remand and when his statements were recorded. As seen from the summary of his evidence (at [73]–[76]), it was after hearing these words that he had decided to try to "please" the investigating officers by showing them "cooperation". Given his evidence as to the "huge impact" that the words "If you cooperate" had on him, it was illogical and quite incredible that he should have been incapable of recalling these words until after all the prosecution witnesses had completed their testimony.

82 In short, therefore, the Accused's allegations about what was said to him were self-contradictory and inherently improbable. In contrast, I found DSP Yue's evidence to be cogent and credible. I was satisfied that DSP Yue had no reason to make the alleged threats or inducements to the Accused. It was not disputed that DSP Yue went to Tampines NPC on 9 January 2020 in his capacity as the SSCB duty officer for that day. His inquiries of the Accused were meant to be brief and of a purely preliminary nature, since he was not

189 Transcript of 17 July 2024 at p 19 lines 13–17.

190 Transcript of 17 July 2024 at p 26 line 17.

tasked with investigating the report of rape: his role was to gather enough facts to allow the Head of SSCB to determine whether the case fell within SSCB's purview. Indeed, the Accused himself testified that DSP Yue's interaction with him was "very short".[191]

83 For the reasons set out above, I was satisfied that the two statements which were alleged to constitute the threats and/or inducements to the Accused were never made by DSP Yue (or indeed, by any police officer).

84 Even assuming for the sake of argument that the alleged statements were made by DSP Yue, I agreed with the Prosecution that they were in any event insufficient to amount to a threat, inducement, or promise. Critically, the Accused himself conceded that he could not actually remember DSP Yue saying "you will get a lighter sentence if found guilty" after saying the words "If you cooperate": these further words were the Accused's own "perception"[192] and "interpretation".[193] In this connection, it is useful to have regard to the case of *Roshdi bin Abdullah Altway v PP and another matter* [2022] 1 SLR 535 ("*Roshdi*"). In that case, the appellant Roshdi – who claimed trial to a capital charge of drug trafficking – had challenged the voluntariness of his statements. According to Roshdi, prior to the recording of the impugned statements, the officers from the Central Narcotics Bureau had told him, firstly, "Now Singapore has a new law. If this thing is not yours, you will not be hanged. You don't be afraid"; and secondly, "Those things are not yours, so you don't have to be afraid" (at [19] of *Roshdi*). The Court of Appeal held that as an objective

191 Transcript of 17 July 2024 at p 17 lines 29–30.

192 Transcript of 17 July 2024 at p 34 lines 10–17.

193 Transcript of 17 July 2024 at p 32 lines 9–10.

matter, these statements did not constitute a threat. As the Court of Appeal pointed out (at [68]):

> … the Alleged Representations were much too vague and ambiguous to constitute a promise or inducement of any sort and there is certainly no threat at all to speak of. The Alleged Representations would give [the appellant] no reasonable grounds for supposing that an advantage could be gained or an evil of temporal nature could be avoided by taking a particular course, leaving aside the difficulty that no such course was even suggested.

85 In similar vein, in the present case, I found that the alleged statements – "What you have done is a very serious offence, and based on your age, you will be in there for the rest of your life" and "If you co-operate" – were, as an objective matter, too vague to amount to a threat or an inducement of any sort. It was unclear from these alleged statements what the Accused was (supposedly) being threatened or induced into doing. To borrow the words of the Court of Appeal in *Sulaiman*, the alleged statements gave the Accused no reasonable grounds for supposing that an advantage could be gained or an evil of a temporal nature could be avoided by taking a particular course.

The subjective limb

86 Further and in any event, even assuming for the sake of argument that the two alleged statements were made and that they were sufficient to constitute threats, inducements, or promises, the subjective limb of the two-stage test for voluntariness was not made out. This was because the Accused's own evidence did not show that the words allegedly spoken by DSP Yue "operate[d] on [his] mind … through hope of escape or fear of punishment connected with the charge" (*Chai Chien Wei Kelvin* at [53]).

87 In *Panya Martmontree*, the Court of Appeal framed the subjective stage of the inquiry in the following terms:

> What … is required of a trial judge in [an ancillary hearing] is to decide whether the evidence of the accused alleging, inducements, threats, promises or assaults, taken together with the Prosecution's evidence has raised a reasonable doubt in his mind that the accused was thus *influenced into making the statement*, in much the same way as a jury would if they were faced with a similar question. [emphasis added]

88 In the present case, the Accused claimed that the words "If you cooperate" kept "flash[ing]" through his mind when he was giving the VRI statements. When asked to explain the effect which these words had on his state of mind during the VRI process, the Accused said that he had tried to "dress up" the statements and to "say something that would be pleasant to the interviewers". When he was then asked to explain what he meant by "dressing up" the statements, it transpired that he meant only that he had made minor adjustments to some of the phraseology in the statements. Thus, for example, instead of saying "I wasn't very sensible", he had said "I wasn't sensible". As another example, instead of saying "it is stupid and maybe unforgivable", he had said "it is stupid and it is unforgivable".

89 When asked to explain why he had made these minor adjustments to phraseology, the Accused claimed that it was "to make the interviewer happy" and to "reinforce the feeling" that he was "very co-operative". Importantly, the Accused also testified that he wanted to "make the interviewer happy" so that they would ask him "[e]asier questions" and end the interview session "sooner". According to him, he wanted the interviews to end "as soon as possible" because

he was then handcuffed to a bench, and his "cervical pinched nerve was not good".[194]

90 In sum, therefore, even if I were to accept the Accused's evidence, nothing in his evidence suggested that the words allegedly spoken by DSP Yue had "operated on his mind…through *hope of escape or fear of punishment connected with the charge*".

Conclusion at the end of the ancillary hearing

91 For the reasons explained above, I found that the statements of 10 January and 15 January 2020 were voluntarily given by the Accused; and I admitted them into evidence.

Evaluation of the Five Charges

92 I turn next to my findings in respect of each of the Five Charges. To recapitulate, the Accused denied having carried out any of the sexual acts described in these charges; and insofar as he did admit to certain sexual acts, he claimed that they were carried out with the Complainant's consent. In evaluating the evidence adduced in respect of the Five Charges, I noted that in this case, in addition to the Complainant's testimony, the Prosecution also sought to rely on other evidence which was said to be corroborative of the Complainant's testimony: namely, the Accused's VRI statements of 10 January 2020, 14 January 2020 and 15 January 2020; CCTV footage of the Incident; and evidence of the Complainant having confided in others about the sexual assaults shortly after their occurrence.

194 Transcript of 17 July 2024 at p 48 line 20 to p 49 line 27.

The applicable standard

93 By way of general principle, it is trite that in a criminal trial, the burden lies on the Prosecution to prove the elements of the charge beyond a reasonable doubt. In particular, in cases where "[the] conviction turns solely on the bare words of the complainant, the complainant's testimony must be weighed against that of the accused, and the court should not convict unless it finds on a close scrutiny that the evidence of the complainant is unusually convincing" (*per* the High Court in *PP v Ridhaudin Ridhwan bin Bakri and others* [2019] SGHC 105 ("*Ridhaudin*") at [111], citing the judgment of the Court of Appeal in *AOF v PP* [2012] 3 SLR 34 at [111]).

94 The "overwhelming consideration" that triggers the application of the "unusually convincing" standard is the amount and availability of evidence (*PP v GCK* [2020] 1 SLR 486 ("*GCK*") at [90], citing *Kwan Peng Hong v PP* [2000] 2 SLR(R) 824 at [29]). This standard is a cognitive aid and does not change the ultimate standard of proof required of the Prosecution (*Ridhaudin* at [112]; *XP v PP* [2008] 4 SLR(R) 686 at [31]; *Haliffie bin Mamat v PP and other appeals* [2016] 5 SLR 636 ("*Haliffie*") at [29]). The corollary of this principle is that where there exists other evidence which corroborates the complainant's testimony, the need for the application of the "unusually convincing" standard may be obviated. Examples can be found in caselaw of such corroborative evidence in the form, *inter alia*, of an accused's own statements (*PP v Yue Roger Jr* [2019] 3 SLR 749 at [74], *Ridhaudin* at [115]–[116], *PP v Yap Pow Foo* [2023] SGHC 11 ("*Yap Pow Foo*") at [56]), as well as CCTV footage (*Ng Kum Weng v PP* [2021] SGHC 100 at [44]).

95 In the present case, the Prosecution submitted that in light of the existence of corroborative evidence, the "unusually convincing" standard would

not apply to the Complainant's testimony. In the next section of these written grounds, I will examine the evidence relied on by the Prosecution in respect of each of the Five Charges. It must be remembered, though, that the "unusually convincing" standard "is not a 'test' at all, but rather, a heuristic tool. It is a cautionary reminder to the court of the high threshold that the Prosecution must meet in order to secure a conviction, and of the anxious scrutiny that is required because of the severe consequences that will follow from a conviction" (*per* the Court of Appeal in *GCK* at [91]; see also *Yap Pow Foo* at [56]). The credibility of the Complainant's evidence thus remained an important issue in my assessment of the entire body of evidence.

The evidence in respect of the physical elements of the Five Charges

96 I next set out my evaluation of the evidence adduced in respect of the physical elements of the Five Charges.

97 In gist, according to the Prosecution's case, the sequence of the physical acts carried out by the Accused was as follows. First, the Accused inserted at least one finger into the Complainant's vagina while she was lying face-down on the sofa bed (2nd Charge). This took place right after he had administered the injection to her buttocks. He then flipped her body over such that she was lying face-up, licked her breast and touched her vagina. Both these acts involved skin-on-skin contact (3rd Charge). Next, he licked her vagina in another instance of skin-on-skin contact (5th Charge), before proceeding to climb on top of her and inserting his penis into her mouth (4th Charge). As he was doing this, he continued to lick her vagina, in what is colloquially referred to as a "69" position. After this, he climbed off her, positioned himself between her legs and pulled her body to the edge of the sofa. He then inserted his penis into her vagina (1st Charge).

98 I will deal with the evidence in respect of the physical elements of each charge in the order in which the Prosecution has numbered them, starting with the 1st Charge.

1st Charge: penile-vaginal penetration

99 In respect of the 1st Charge (*ie*, the charge of penile-vaginal penetration), the Prosecution relied on the Complainant's testimony and other evidence which was said to constitute corroboration of her testimony.

(1) The Complainant's evidence

100 I found the Complainant's testimony on the act of penile-vaginal penetration to be credible, being both internally and externally consistent. It was also corroborated by CCTV footage and the Accused's admissions in his VRI statements.

101 In her evidence-in-chief, the Complainant gave a detailed account of the act of penile-vaginal penetration. According to her account, the Accused had positioned himself between her legs and pulled her towards the edge of the sofa bed before inserting his penis into her vagina.[195] The Complainant testified that at the time of the incident, she was feeling "so dizzy… like everything [was] spinning around [her]".[196] Because of this feeling of dizziness, she "could barely open [her] eyes".[197] Despite this, she was certain that it was the Accused's penis which penetrated her vagina because she "know[s] the feeling" and could tell

195 ABOD at p 3, para 16.

196 Transcript 9 July 2024 at p 42, line 24.

197 Transcript 9 July 2024 at p 46, lines 10–11.

the difference between a penis entering her vagina and a finger doing so.[198] She could not confirm whether the Accused's penis was erect, if he used a condom during the penile-vaginal penetration, or whether he ejaculated.[199] However, she was aware that as he was penetrating her vagina with his penis, he was also kissing her on her lips and breast:[200] she felt him inserting his tongue into her mouth and licking her tongue. She felt "disgusted and helpless" as the Accused "abused her like an animal".[201] She tried to raise her hand "to prevent" the Accused "from what he [was] doing to [her]" but was too weak to "even defend [herself]".[202]

102 I also found that the Complainant's post-Incident behaviour was consistent with her evidence that penile-vaginal penetration did occur. While the Complainant did not explicitly describe the penile-vaginal penetration to [D1] and [D2] during their conversation on the night of 8 January 2020, she explained her reasons for this to her sister [S] and her friend [GF] the following morning. In the group chat with [S] and [GF], the Complainant explained that she had been afraid when she was speaking to [D1] and [D2], as she could not bring herself to tell them that "grandfather" (*ie*, the Accused) had "penetrated [her] with his penis".[203] I noted that following reassurance from [S] and [GF] that she should disclose everything as she had done nothing wrong, when the Complainant was brought by the police for a medical examination on 9 January 2020, she *did* report to the examining doctor that the Accused had "inserted his

198 Transcript 9 July 2024 at p 46, lines 14–16.

199 Transcript 9 July 2024 at p 46, lines 24–29.

200 Transcript 9 July 2024 at p 46, lines 20–21.

201 Transcript 9 July 2024 at p 47, lines 9–15.

202 Transcript 9 July 2024 at p 47, lines 28–31.

203 ABOD at p 149, s/n 632; and p 152 s/n 694.

penis into her vagina" after "pull[ing] her to the edge of the sofa".[204] While she could not remember if the Accused had ejaculated, she was able to recall that he had gone to the toilet before returning to carry her back to her room.[205]

103 Having considered the evidence, I accepted that the Complainant had a cogent explanation for her initial reluctance to provide an explicit account of the penile-vaginal penetration to [D1] and [D2]. The angst and stress associated with having to recount such a sensitive matter would have been exacerbated by her awareness of the Accused's position as a senior member of the household – as demonstrated by her reference to him as "grandfather" during the group chat with [S] and [GF]. It should also be pointed out that in describing what the Accused had done, the Complainant was scrupulously honest in admitting that there were details she could not remember; in particular, whether the Accused's penis had been erect and whether he had ejaculated after penetrating her. This showed that she was concerned with telling the truth and was not inclined to embellish or exaggerate her account of events. Overall, I was satisfied as to the internal consistency of her evidence on the physical act of penile-vaginal penetration.

104 The Complainant's account was also externally consistent, in that her account of events was borne out by the CCTV footage and the Accused's own admissions in his VRI statement. I address below these two pieces of corroborative evidence.

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204 ABOD at p 31.

205 ABOD at p 31.

(2) The CCTV footage

105 The relevant portion of the CCTV footage consisted of a roughly two-minute clip from 12.13am to 12.15am.

106 At the start of this clip, the Accused could be seen lying on top of the Complainant, who was then lying on her back, such that his groin area was positioned over hers. It was clear from the CCTV footage that the Accused was thrusting his hips vigorously towards the Complainant;[206] and that he made minor adjustments in the positioning of his body throughout the two minutes of footage while the Complainant lay, apparently motionless, on the sofa bed. The only discernible movement from the Complainant throughout the two-minute footage occurred when she appeared to raise her right hand briefly towards the Accused before dropping the hand back onto the sofa.[207] This brief movement on her part did not appear to have any effect on the Accused. At one point, the Accused was seen moving his upper body into a more upright position such that his torso was perpendicular to the Complainant's body.[208] At this point, both the Accused's and the Complainant's crotches could be seen as the Accused continued the thrusting motion of his hips and buttocks. Significantly, although both their crotches could be seen, the Accused's penis could not be seen – which strongly suggested that his penis was inside the Complainant's vagina. Further, as he was thrusting his hips and buttocks towards the Complainant, he placed his right hand onto her crotch and appeared to fondle her genitals while continuing his thrusting movements.[209] When his thrusting movements

206 P42 - Living Room, "060120_001335" at timestamp 00:13:35 to 00:13:38.

207 P42 - Living Room, "060120_001335" at timestamp 00:13:41 to 00:13:42.

208 P42 - Living Room, "060120_001335" at timestamp 00:13:46.

209 P42 - Living Room, "060120_001335" at timestamp 00:13:50 to 00:13:59.

eventually ceased, he could be seen kissing the Complainant[210] before lowering his body and pulling his crotch away from the general area of the Complainant's genitals – in what appeared to be an act of withdrawing his penis from her vagina.[211] As he moved away from the Complainant, her legs fell limply to the floor over the edge of the sofa, making an audible "*thud*" sound.[212] The Accused was then shown walking towards the kitchen. He could be heard breathing heavily on the CCTV audio recording.[213]

107 The Complainant was next shown remaining motionless on the sofa bed for about four minutes, until the Accused returned to bring her back to her room.

108 This detailed sequence of events, as captured on CCTV, provided strong corroborative evidence for the Complainant's account of penile-vaginal penetration. While the CCTV recording did not provide explicit visual confirmation of the Accused's penis entering the Complainant's vagina, what could be seen from the footage – in particular, the positioning of the Accused's body over the Complainant's and the thrusting motion of his hips and buttocks towards her – corroborated her evidence that there was penile-vaginal penetration.

(3) The Accused's admissions in his VRI statements

109 The Complainant's account of events was also corroborated by the admission by the Accused in his VRI statements to having penetrated the Complainant's vagina with his penis.

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210 P42 - Living Room, "060120_001335" at timestamp 00:14:13 to 00:14:14.

211 P42 - Living Room, "060120_001335" at timestamp 00:14:15 to 00:14:18.

212 P42 - Living Room, "060120_001335" at timestamp 00:14:19 to 00:14:22.

213 P42 - Living Room, "060120_001335" at timestamp 00:14:20 to 00:14:28.

110 In his VRI statement of 10 January 2020, in recounting the Incident, the Accused admitted that he had been able to penetrate the Complainant:[214]

> I've tried to penetrate her, but I was somehow not able to get a complete erection. I tried again and ***I was able to penetrate her***. And then I realised that something was not right, so I quickly came off, and then I went to the toilet. I washed myself and came back. I thought she has to sleep on the bed.
>
> [emphasis added]

111 In responding to the follow-up questions posed by DSP Lee, the Accused elaborated upon the above account by volunteering various details such as the condition of his penis and his state of mind during the act of penetration:[215]

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214 Transcripts of VRIs recorded from the Accused (with corrections) at Tab 1, Chapter 6, p 27, lines 13–19.

215 Transcripts of VRIs recorded from the Accused (with corrections) at Tab 1, Chapter 6, p 35, line 9 to p 36, line 12.

DSP Lee: … You said at first you tried to penetrate her and somehow you did not have a complete erection.

The Accused: Yes.

DSP Lee: OK and at first you couldn't and then subsequently you could…

The Accused: Yes.

DSP Lee: … penetrate her vagina with your penis.

The Accused: Yes ***'uh'*** even though it was still se-, semi ***'uh'*** semi-hard, not fully erected.

DSP Lee: OK, OK ***'uh'*** and then you said that was when you realised that something was not right.

The Accused: Yes.

DSP Lee: Can you tell us what was not right?

The Accused: (Sound of "sighing".)

The Accused: It just occurred to me that I should, should not be doing that. That ***'eh'*** this is wrong, I mean, somewhere or somebody whispering to me and say something and "words not clear" eh bro, this is ***'uh' 'uh'*** this is uncool, this is not the right thing to do.

112 Further on in the VRI statement, the Accused went on to explain in greater detail the thoughts which had passed through his mind when he penetrated the Complainant:[216]

The Accused: You know when ***'uh'***, when I was able to penetrate her, I was not, I don't know, I was not enjoying it. ***'Uh'*** I don't know. And, it just happened that, you know, somebody tells me or my mind was telling me that hey bro, this is not

[216] Transcripts of VRIs recorded from the accused (with corrections) at Tab 1, Chapter 6, p 41, line 31 to p 43, line 16.

> right, you know. Because she's a, she's a staff at home. …
>
> …
>
> DSP Lee: Right, what was she doing when you penetrated her with your penis?
>
> The Accused: When I wasn't able to penetrate her, I wasn't paying attention. I was only concentrating on penetrating her. When I was able to penetrate her, there was a, I don't know if she groaned or she winced or something to some sound from somewhere I, this would be the sound from the back of my head or this would be ***'uh'*** the sound that she made, I don't know.

113 While the Accused attempted at trial to explain away the admissions in his VRI statement, for the reasons I explain below (at [120]–[125]), I rejected these attempts.

(4) Alleged inconsistencies relied on by the Accused: The medical and forensic evidence

114 I next address the medical and forensic evidence which – according to the Accused – was inconsistent with the Complainant's account of there having been penile-vaginal penetration. In gist, the Accused relied on the following:

(a) Dr Lee and Dr Wong's medical report, which appeared to show that the Accused suffered from erectile dysfunction;

(b) the fact that there were no traces of his DNA or semen found in the Complainant's vaginal swabs; and

(c) the fact that although the Complainant tested positive for two strains of sexually transmitted diseases ("STDs"), (*viz*. chlamydia and trichomonas), these were not detected in the Accused.

In my view, the above evidence did not assist the Accused. I explain.

115 First, the Accused's claim about suffering from erectile dysfunction did not negate the possibility of penetration. Both Dr Lee (the urologist) and Dr Wong (the radiologist) were clear in testifying that it was still possible for the Accused to have achieved an erection in a non-clinical setting:

> (a) Dr Wong was requested by Dr Lee to perform a doppler arterial penile ultrasound test on the Accused. This involved a drug called "prostaglandin E1" being injected into the Accused in order to induce a pharmacologic erection.[217] After administering this injection, Dr Wong noted that there was "minimal increase in the length, girth and rigidity" of his penis: a "full erection [was] not achieved". The Accused was assigned an erection hardness score of 1.[218] Dr Wong explained that test results were scored on "a 5-point scale, from 0 to 4": a score of 0 would mean that "the penis does not enlarge"; a score of 1 would mean that "the penis is larger but not hard"; a score of 2 would mean that the "penis is hard but not enough for penetration"; a score of 3 would mean that the "penis is hard enough for penetration but not completely hard"; and a score of 4 would mean that the "penis is completely hard and fully rigid".[219] Pertinently, however, Dr Wong pointed out that the test would have been performed in a clinic setting, with a "male chaperone" and Dr Wong himself present in the same room.[220] In his opinion, it was possible

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217 Transcript 11 July 2024 at p 4 line 31 to p 5 line 23.

218 ABOD at p 37.

219 Transcript 11 July 2024 at p 7 line 22 to p 8 line 19.

220 Transcript 11 July 2024 at p 9, lines 28–30.

that a different erection hardness might be achieved in different settings.[221]

(b) Dr Lee noted that the findings from the test conducted by Dr Wong showed a "peak systolic velocity of less than 35 cm/s associated with a low erection hardness score":[222] a "normal value should be more than 35" cm/s.[223] Persistent raised end diastolic flow was also noted. In simplified terms, this indicated that there was insufficient blood flow into the penis, coupled with persistent blood flow out of the penis. Both these factors "would… contribute to erectile dysfunction".[224] According to Dr Lee, the venous leak would generally be a permanent condition.[225] However, Dr Lee also testified that patients with erectile dysfunction could still be capable of achieving an erection, albeit a "lesser degree of an erection", "depending on the situation" – such as, for example, the patient's level of sexual arousal and whether there was manual stimulation.[226]

116 Second, the absence of the Accused's DNA or semen in the Complainant's vaginal swabs did not negate the possibility of penetration. Dr Judith Ong, the doctor who examined the Complainant upon referral by the police on 9 January 2020, testified that in sexual assault cases, DNA collection would generally be done within "3 days, or 72 hours" from the alleged incident, as "most of the forensics would remain at the areas that they are in for, roughly,

221 Transcript 11 July 2024 at p 9, lines 1–14.

222 ABOD at p 35.

223 Transcript 17 July 2024 at p 9, lines 23–24.

224 Transcript 17 July 2024 at p 5, lines 13–29.

225 Transcript 17 July 2024 at p 11, line 28 to p 12 line 2.

226 Transcript 17 July 2024 at p 6, line 11 to p 7 line 26; and p 12, lines 19–28.

about 72 hours or less".[227] In the present case, the Incident was alleged to have occurred between 11.50 pm on 5 January 2020 and 12.20 am on 6 January 2020 – a time-frame gleaned from the CCTV footage. Dr Ong examined the Complainant at about 10.10 pm on 9 January 2020 and took the vaginal swabs in the course of that examination.[228] In other words, the swabs were taken more than 72 hours after the Incident. Dr Ong pointed out, moreover, that forensic evidence was likely to be eroded by everyday activities such as showering, defecating, changing clothes, or eating – all of which the Complainant had done between the time of the Incident and the time when the swabs were taken.[229] In short, therefore, the absence of the Accused's DNA and/or semen in the Complainant's vaginal swabs did not negate the possibility of penile-vaginal penetration having occurred.

117 Third, while the Accused asserted that he had not been shown to have contracted either chlamydia or trichomonas (which were both detected in the Complainant), there was actually no evidence of the Accused having tested negative for these infections. More precisely, there was no evidence of his having been tested for these infections to begin with. Even assuming such test results existed, their probative value would have been limited since there was no evidence to show that transmission of these infections was inevitable during sexual intercourse. Indeed, in his closing submissions, the Accused himself appeared to acknowledge that transmission of the infections during intercourse was *not* inevitable, as he purported to estimate (without the benefit of any expert evidence) that the "transmission rate" of chlamydia through "vaginal

227 Transcript 12 July 2024 at p 12, lines 14–20.

228 ABOD at p 21 para 2.

229 Transcript 12 July 2024 at p 13, lines 1–4.

intercourse" was "around 25-50%" and that the "transmission rate" of trichomonas was "about 70%".[230]

118 For the reasons explained above, I rejected the Accused's argument that the medical and forensic evidence in this case contradicted the Complainant's evidence about penile-vaginal penetration having taken place.

(5) The Accused failed to raise a reasonable doubt in respect of the physical elements of the 1st Charge

119 Having examined the evidence, I was further satisfied at the conclusion of the trial that the Accused was unable to raise a reasonable doubt in respect of the physical elements of the 1st Charge. As I alluded to earlier, the Accused's defence at trial was that no penile-vaginal penetration had occurred and that he could not have committed any penile-vaginal penetration because he suffered from erectile dysfunction. I found this defence entirely untenable, because it was contradicted by an abundance of other evidence; in particular, the Accused's own admissions in his VRI statements and the CCTV footage of the Incident. While the Accused did attempt at trial to explain away these admissions and to align his narrative with the CCTV footage, I found his testimony to be contrived and disingenuous. I explain.

(A) THE ACCUSED'S FAILURE TO EXPLAIN THE ADMISSIONS IN HIS VRI STATEMENTS

120 Having admitted in his VRI statements to penile-vaginal penetration, the Accused sought to retract these admissions in the witness stand but was clearly unable to adhere to a consistent explanation. To begin with, he claimed that he

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230 Defence's End of Trial Submission dated 6 September 2024 ("Defence's Closing Subs") at para 28.

believed he had penetrated the Complainant's vagina with his penis "at that point in time".[231] When asked whether he actually *remembered* penetrating the Complainant's vagina at the time he made these admissions, the Accused's reply was, "I have no such memory, but after looking at the video, I thought I did".[232] The Prosecution then pointed out that at the time he made these admissions to the police, he had not yet been shown any videos.[233] Faced with this contradiction, the Accused's evidence grew even more incoherent. He insisted that he "believed" he had penetrated the Complainant's vagina – but in the same breath, claimed that he "[did] not have a clear picture that [he had] actually done that".[234]

121 As his cross-examination continued, the Accused persisted in claiming that he did not have any memory of penetrating the Complainant's vagina at the time he made the admissions.[235] When pressed to explain why he would have admitted to penetration if he had no memory of such an act occurring, the Accused stated that he had simply assumed penetration was "supposed to have happened".[236] This statement appeared to me to be frankly unbelievable. In the first place, the admissions of penile-vaginal penetration were made on 10 January 2020, *ie*, just five days after the Incident. I did not find it believable that at that point in time, the Accused's memory had already deteriorated to the extent that he could not recall whether penile-vaginal penetration had taken place. Second, the Accused's claim that his admissions were based on a mere

231 Transcript 25 July 2024 at p 62, lines 9–10.

232 Transcript 25 July 2024 at p 62, lines 24–25.

233 Transcript 25 July 2024 at p 63, lines 13–16.

234 Transcript 25 July 2024 at p 63, lines 17–19.

235 Transcript 25 July 2024 at pp 63–65.

236 Transcript 25 July 2024 at p 66, line 8; at p 67, lines 3–5 and 21–22.

"assumption" ran contrary to the level of detail that he was able to provide in his VRI statements about the act of penile-vaginal penetration. *Inter alia*, in admitting the act of penile-vaginal penetration, he had described quite vividly the semi-erect state of his penis, and the multitude of emotions experienced – including his feeling "horrible" and being unable to "enjoy" the experience, as well as his realisation that "this [was] not right" because the Complainant was "a staff at home".[237]

122 Midway through cross-examination, the Accused came up with a new story: he said that his "memory" of not having penetrated the Complainant "came back" only after he was shown video footage in which there was a "frontal" view of him "holding [his] penis very hard and walking to the toilet".[238] According to him, this video "jolted" him into remembering that he had gone to the toilet in an attempt to masturbate and achieve an erection:[239] it was "after viewing the video much more times" and after "repeated searching at the back of [his] mind" that he (allegedly) realised he could not have penetrated the Complainant because he "didn't have an erection at all".[240]

123 I did not find the Accused's belated claims about having had his memory "jolted" by such a video to be at all credible. Despite being given the opportunity to review various video clips in court, the Accused was unable to identify the specific clip which had "jolted" his memory.[241] The Accused claimed that he was certain such a clip existed because he had asked IO Gan to replay it in the

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237 Transcripts of VRIs recorded from the Accused (with corrections) at Tab 1, Chapter 6, pp 40–41.

238 Transcript 25 July 2024 at p 64, lines 19–21.

239 Transcript 25 July 2024 at p 64, lines 20–23; at p 65, lines 23–25.

240 Transcript 25 July 2024 at p 65, lines 23–25.

241 Transcript 25 July 2024 at pp 69–77. Transcript 26 July 2024 at pp 31–37.

course of the VRI. This then led to IO Gan being recalled so that the Accused could be given the opportunity to further cross-examine her. However, IO Gan refuted the Accused's allegation that he had been shown such a video by her and that he had even "asked [her] to stop and replay that video and… pointed to [her] that was what reminded [him] that [he] didn't have an erection".[242] IO Gan pointed out that since all the Accused's interviews were video-recorded, any such conversation – if it had occurred – would have been captured on video.[243] Yet, despite the Accused's insistence, no such conversation could be found on the video footage.

124 Although the Accused claimed at the conclusion of the trial that he would "endeavour to look" for the video and "put it in [his] closing argument",[244] his closing submissions failed to identify any evidence to support his allegation of the existence of such a video.

125 In the circumstances, I rejected the Accused's attempt to disavow the admissions made in his VRI statements.

(B) THE ACCUSED'S CONSTANTLY EVOLVING CASE AT TRIAL

126 Quite apart from being unable to furnish any coherent explanation for the admissions in his VRI statement, the version of events which the Accused proffered at trial was plagued by obvious inconsistencies. To begin with, the Accused asserted that he had merely "rubbed" his "flaccid" penis up and down the outside of the Complainant's vagina. When he was first shown the video clip from 12.13am to 12.15am, the Accused insisted that he was only moving

242 Transcript 26 July 2024 at p 37, lines 10–11.

243 Transcript 26 July 2024 at p 37, lines 28–30.

244 Transcript 26 July 2024 at p 37, lines 12–14.

in an "up and down" motion. He denied any "forward and backward" movement.[245] It was only when the Prosecution replayed the specific portions of the CCTV footage which showed him thrusting in and out of the Complainant in a "forward and backward" motion that the Accused conceded having moved in a "forward and backward" motion.[246]

127 Next, the Accused was shown the portion of the CCTV footage in which he could be seen withdrawing his penis from the Complainant's genital region. When it was put to him that this portion of the footage showed him withdrawing his penis from the Complainant's vagina, the Accused initially agreed.[247] In the next breath, however, he came up with another new allegation. According to him, in the CCTV footage in which he had appeared to be thrusting in and out of the Complainant, his penis had actually been positioned "outside [the Complainant]'s anus", between her buttocks and the sofa bed, and he had been "rubbing [himself], again hoping to get an erection" in that position, because "the bed is a bit harder, so it's rougher".[248] When it was pointed out to him that this new allegation contradicted his claims about having rubbed his "flaccid" penis at the outside of the Complainant's vagina, the Accused said he had only managed to remember in court that in fact, he had rubbed his penis between her anus and the bed.[249]

128 In my view, the numerous shifts and incongruities in the Accused's testimony at trial were the result of his desperate – and ultimately futile –

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245 Transcript 25 July 2024 at p 53, line 26.

246 Transcript 25 July 2024 at p 54, line 2 to p 55, line 6.

247 Transcript 25 July 2024 at p 56, lines 1–4.

248 Transcript 25 July 2024 at p 56, lines 5–11.

249 Transcript 25 July 2024 at p 57, lines 6–15.

attempts to reconcile his narrative with the objective evidence of the CCTV footage. I found that his narrative at trial simply could not be believed.

(6) Summary of findings on the physical elements of the 1st Charge

129 In light of the findings set out at [100]–[128], I was satisfied that there was sufficient evidence to prove the physical elements of the 1st Charge beyond a reasonable doubt.

2nd Charge: digital penetration

130 I next address the 2nd Charge, which alleged digital penetration by the Accused of the Complainant's vagina.

(1) The Complainant's evidence

131 The Complainant testified that after the Accused administered the injections to her buttocks, he "rubbed [her] buttocks in a circular motion" at the injection site.[250] She then felt him touch her vagina before inserting "at least one finger into [her] vagina".[251] As noted earlier, in the Complainant's evidence-in-chief, she described herself as having felt "very dizzy" and barely capable of opening her eyes at this juncture.[252] She stated that while she did not feel any pain during the digital-vaginal penetration and was unable to recall the duration of this action,[253] she was still "aware" and knew what the Accused was doing.[254]

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250 ABOD at p 2, para 13.

251 ABOD at p 2, para 13.

252 Transcript 9 July 2024 at p 42, line 6.

253 Transcript 9 July 2024 at p 44, line 2.

254 Transcript 9 July 2024 at p 43, lines 29–31.

132 Having had the opportunity to observe the Complainant on the witness stand, I found her to be an honest witness who was not given to embellishing her account of events. Her testimony about the act of digital-vaginal penetration was consistent with the allegations she made during her conversation with [D1] and [D2] on 8 January 2020[255] and the account she gave Dr Ong during the medical examination on 9 January 2020.[256]

(2) No corroborative evidence

133 At the same time, in considering the evidence in respect of the 2nd Charge, I bore in mind the ruling by the Court of Appeal in *GCK* that the "unusually convincing" standard would apply to the uncorroborated evidence of a witness in any offences, where such evidence formed the sole basis for a conviction; and that in principle, this standard would apply regardless of whether the witness was an alleged victim or an eyewitness. Delivering the judgment of the Court of Appeal, Sundaresh Menon CJ explained the court's reasoning as follows (at [89]–[90]):

> 89 …[T]he basis for the "unusually convincing" standard has nothing to do with the *status* of the witness concerned (namely, whether he or she is an alleged victim or an eyewitness), and instead has everything to do with "the ultimate rule that the Prosecution must prove its case beyond a reasonable doubt"… In the absence of any other corroborative evidence, the testimony of a witness, whether an eyewitness or an alleged victim, becomes the keystone upon which the Prosecution's entire case will rest. Such evidence can sustain a conviction only if it is "unusually convincing" and thereby capable of overcoming any concerns arising from the lack of corroboration and the fact that such evidence will typically be controverted by that of the accused person: see the decision of this court in *AOF v PP* [2012] 3 SLR 34 ("*AOF*") at [111].

255 P21T(5) at p 17, s/n 224.

256 ABOD at p 31.

> 90 Put simply, the "unusually convincing" standard entails that the witness's testimony *alone* is sufficient to prove the Prosecution's case beyond a reasonable doubt: see *Teo Keng Pong v PP* [1996] 2 SLR(R) 890 at [73]. The overwhelming consideration that triggers the application of the standard is the *amount* and *availability* of evidence…

134 Of the Five Charges against the Accused, the 2nd Charge was the only one which was not captured on CCTV footage. The Prosecution's case was that the act of digital-vaginal penetration occurred during a gap of 4 minutes and 46 seconds in the footage, between 12.01 am to 12.06 am. Prior to this gap in the footage, the last recorded footage showed the Accused administering an injection to the Complainant's left buttock. At this point, the Complainant's shorts were partially pulled down, exposing the upper part of her buttocks.[257] When the CCTV recording resumed after this gap, the Complainant's shorts had been completely removed, and the Accused was seen holding onto both of the Complainant's ankles,[258] before lowering her feet back onto the sofa bed.[259] In short, there was no footage available to show an act of digital-vaginal penetration.

135 As for the Accused, in giving his VRI statements, he denied inserting his finger into the Complainant's vagina.[260] He claimed that because the Complainant's vagina was already "so moist", he saw no need to further stimulate her by inserting his finger into her vagina.[261] I did note that in his VRI statement of 15 January 2020 (commencing at 4.31 pm), the Accused sought to

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257 P42 - Living Room, "060120_000113" at timestamp 00:01:39 to 00:01:50.

258 P42 - Living Room, "060120_000637" at timestamp 00:06:37.

259 P42 - Living Room, "060120_000637" at timestamp 00:06:37 to 00:06:38.

260 Transcripts of VRIs recorded from the Accused (with corrections) at Tab 1 p 39, lines 19–20; Tab 3 p 96, lines 3–4.

261 Transcripts of VRIs recorded from the Accused (with corrections) at Tab 1 p 39, lines 19–20; Tab 3 p 96, lines 10–16.

explain why he had earlier made an erroneous statement about "introducing [his] fingers into [the Complainant]".[262] However, it turned out that he was mistaken, as he had never said anything in his earlier VRI statements about inserting his fingers into the Complainant's vagina. As such, this statement did not amount to an admission of digital-vaginal penetration and certainly could not amount to corroboration of the Complainant's account of the said act.

136 In cross-examination, the Accused maintained his denial of the 2nd Charge. He continued to insist that he had only touched the outer part of the Complainant's vagina without inserting his fingers because her vagina was already "wet" and needed no stimulation.[263]

137 I have set out the Accused's evidence as to the 2nd Charge, not because I accepted his evidence (and indeed, as explained elsewhere in these grounds, I found him to be generally a shifty witness) – but because this showed that unlike the 1st Charge where the Complainant's testimony was corroborated by the Accused's own admissions as well as CCTV footage, the Complainant's evidence in respect of the 2nd Charge was bereft of such corroboration. I reiterate that on the whole, I found the Complainant to be an honest witness who did not seek to exaggerate her account of events. However, even honest witnesses may make mistakes and/or have imperfect recollections of an event. Bearing in mind the cautionary reminder issued by the Court of Appeal in *GCK* at [91] of "the high threshold that the Prosecution must meet in order to secure a conviction, and of the anxious scrutiny that is required because of the severe consequences" following from a conviction, I did not find it safe to conclude

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262 Transcripts of VRIs recorded from the Accused (with corrections) at Tab 3, p 73, lines 6–7.

263 Transcript 24 July 2024 at p 71, line 24 to p 72, line 7.

that the Complainant's testimony *alone* sufficed to prove the Prosecution's case on the physical element of the 2nd Charge.

3rd Charge: sucking breast and touching vagina

138 I next address the 3rd Charge, in which it was alleged that the Accused sucked the Complainant's right breast (skin-on-skin) and touched her vagina (skin-on-skin). To prove the physical element of this charge, the Prosecution relied on the Complainant's testimony and other evidence which was said to constitute corroboration of her testimony.

(1) The Complainant's evidence

139 The Complainant recounted the above acts in her conditioned statement.[264] At trial, the Complainant elaborated on the account given in her conditioned statement: according to her, prior to carrying out these acts, the Accused had pushed her T-shirt and bra up towards her neck. He had also pushed her shorts and panties down towards her knees, although she could not remember if he removed these items of clothing completely.[265] She could not tell how long he spent sucking her breast and touching her vagina as she was "too dizzy" at this juncture.[266]

140 While I noted that the above two acts were not mentioned by the Complainant in the accounts she provided to third parties in the aftermath of the Incident (including to [D1], [D2] and Dr Ong), I did not consider this omission to be fatal to the internal consistency of her evidence. It was evident that the

264 ABOD at p 2, para 14.

265 Transcript 9 July 2024 at p 44, lines 10–25.

266 Transcript 9 July 2024 at p 44, line 7.

Complainant felt great stress and shame in having to recount the sexual acts performed on her by the Accused: on the audio-recordings of her conversations with [D1] and [D2], for example, she could be heard breaking down in tears at various points.[267] It did not appear to me that she had deliberately concocted a story about the Accused sucking her breast and touching her vagina: in her testimony at trial, she made no attempt to embellish her account of these two acts, and was frank in admitting the things she could not remember (for example, whether the Accused had removed her shorts and panties completely prior to committing these acts).

141 More importantly, the Complainant's testimony was consistent with external sources of evidence: namely, the CCTV footage and with admissions made by the Accused during the trial.

(2) The CCTV footage

142 The Accused's acts of sucking the Complainant's breast and touching her vagina were carried out in full view of the Living Room CCTV, in a clip which lasted from 12.06am to 12.07am.[268]

143 At the start of this clip, the Complainant was shown lying face-down on the sofa-bed, clad only in her T-shirt. Her shorts and panties appeared to have been removed prior to the start of this clip. She did not move while the Accused tried to move her body from a prone position into a supine position.[269] After he succeeded in flipping her body over and positioning it such that she was lying

267 Exhibit P21T(5) at p 17, s/n 222 to p 18 s/n 240.

268 Exhibit P42 - Living Room, "060120_000637" at timestamp 00:06:56 to 00:07:19.

269 P42 - Living Room, "060120_000637" at timestamp 00:06:40.

flat on her back, the Accused lifted her shirt up over her breasts.[270] Next, he placed his mouth over her right breast at 12.07am and appeared to suck her breast for at least 19 seconds until the recording ended.[271] The Complainant appeared unresponsive for the first eight seconds. About eight seconds after the Accused started sucking her right breast, the Complainant could be seen shaking her head slowly.[272] She could also be seen lifting her arm over her head momentarily before the arm dropped back onto the sofa bed,[273] and raising her knees. At this point, while his mouth was still positioned over the Complainant's right breast, the Accused could be seen placing his right hand at the Complainant's vagina and moving his hand.[274]

144 In my view, the CCTV footage provided unassailable corroboration of the Complainant's testimony.

(3) The Accused's admissions at trial

145 In cross-examining the Complainant at trial, the Accused took the position that all the sexual acts described in the 1st, 2nd, 4th and 5th Charges never took place. As to the 3rd Charge, the Accused's position was that he did in fact suck the Complainant's breast and touch her vagina, as described in the charge, but that he had done so with her consent.[275] In his evidence-in-chief, the Accused testified that the only acts he had carried out on the night of 5 January 2020 were as follows: sucking the Complainant's breast and rubbing her vagina

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270 P42 - Living Room, "060120_000637" at timestamp 00:06:56 to 00:06:59.

271 P42 - Living Room, "060120_000637" at timestamp 00:07:00 to 00:07:19.

272 P42 - Living Room, "060120_000637" at timestamp 00:07:08 to 00:07:18.

273 P42 - Living Room, "060120_000637" at timestamp 00:07:10 to 00:07:12.

274 P42 - Living Room, "060120_000637" at timestamp 00:07:14 to 00:07:19.

275 Transcript 10 July 2024 at p 15, lines 10–13.

(skin to skin); rubbing his "flaccid" penis "up and down" outside her vagina without penetrating her; and kissing her "lips to lips, tongue to tongue" before "with[drawing] immediately" when his tongue "felt some metal thing on [her] tongue".[276]

146 Belatedly, whilst under cross-examination, the Accused sought to alter his evidence by claiming that he had only "licked" the Complainant's nipple and did not remember sucking her breast; further, that he had not rubbed her vagina, but had instead "felt" the "outer surfaces [of her vagina] which is called 'labia'" and pressed "both sides of the labia together".[277] I did not accept this belated attempt to resile partially from his earlier admission. First, the differing account which the Accused gave in cross-examination did not actually assist his defence. Even from this account, it was clear that he had placed his mouth over part of the Complainant's breast and pressed his hand over the "outer surfaces" of her vagina. In other words, even the account he provided in cross-examination conceded skin-to-skin contact with the Complainant's breast and genitals. Second, the Accused did not offer any coherent explanation as to why these apparently vivid – and differing – details were brought up by him only midway through cross-examination. In my view, this attempt by the Accused to retract (at least partially) the admission made in his evidence-in-chief came about when he belatedly realised the adverse ramifications of that admission; and the only reason why the retraction was only partial was because he could not explain away the CCTV footage.

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276 Transcript 23 July 2024 at p 42 line 27 to p 43 line 4.

277 Transcript 24 July 2024 at p 75 line 26 to p 76 line 11.

(4) The Accused failed to raise a reasonable doubt in respect of the physical elements of the 3rd Charge

147 It will be clear from my findings at [145]–[146] above that I found no merit in the Accused's attempts to retract (at least partially) his admissions to the acts described in the 3rd Charge. In the interests of completeness, I should add that the Accused also asserted at trial that no "criminal force" was used by him in carrying out the acts described in the 3rd charge.[278] He did not explain what he meant by this assertion. To the extent that he was suggesting he had the Complainant's consent to carry out these acts, I rejected such an argument. For the reasons explained at [180]–[231] below, I accepted that the Complainant's evidence about not having consented to the Accused's sexual acts was clear, consistent, and corroborated by evidence which included the CCTV footage; whereas the Accused's claims about a consensual sexual encounter were, conversely, spurious and devoid of merit.

(5) Summary of findings on the physical elements of the 3rd Charge

148 In light of the findings set out at [138]–[147], I was satisfied that there was sufficient evidence to prove the physical elements of the 3rd Charge beyond a reasonable doubt.

4th Charge: penile-oral penetration

149 I next address the 4th Charge, in which it was alleged that the Accused penetrated the Complainant's mouth with his penis. According to the Prosecution, this was done while the Accused was positioned over the Complainant's supine body and simultaneously licking her vagina, in what is colloquially referred to as a "69" position. To prove the physical element of the

[278] Transcript 10 July 2024 at p 14, lines 26–30.

4th Charge, the Prosecution relied on the Complainant's testimony and other evidence which was said to constitute corroboration of her testimony.

(1) The Complainant's evidence

150 In her conditioned statement, the Complainant described the Accused licking her vagina before climbing on top of her and inserting his penis into her mouth, while continuing to lick her vagina. She maintained this account in her testimony at trial. Although she had felt "so dizzy" at the time, she was aware that the Accused had inserted his penis into her mouth while "also playing with [her] vagina".[279] Asked by the DPP to explain how she knew this, the Complainant stated that it was "because [she] once [had] a partner and…[has] four children".[280]

151 While the Complainant did not recount the Accused's act of inserting his penis in her mouth to [S], [GF], [D1] and [D2], given the angst and shame she clearly felt about the sexual acts performed on her, I did not consider her failure to give an exhaustive account to these individuals to be fatal to the consistency and credibility of her evidence. It should be pointed out that when she was interviewed by Dr Ong during the medical examination on 9 January 2020, she did in fact report to Dr Ong the Accused's act of inserting his penis in her mouth while in the "69" position.[281] More importantly, the Complainant's testimony was consistent with the objective evidence of the CCTV footage.

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279 Transcript 9 July 2024 at p 45, lines 24–27.

280 Transcript 9 July 2024 at p 45, lines 3–5.

281 ABOD at p 31.

(2) The CCTV footage

152 In the relevant CCTV footage, the Accused could be seen first moving into a position whereby his crotch was over the Complainant's head.[282] Once he had adjusted the position of his crotch, he proceeded to move his head towards her crotch.[283] While the CCTV footage did not explicitly show the Accused's penis entering the Complainant's mouth, the actions which were visible in the footage aligned closely with the Complainant's account of how the Accused had inserted his penis into her mouth while in a "69" position.[284]

(3) The Accused failed to raise a reasonable doubt in respect of the physical elements of the 4th Charge

(A) THE ACCUSED GAVE INCONSISTENT ACCOUNTS

153 In the face of the Complainant's testimony and the corroborative evidence of the CCTV footage, the Accused failed to raise a reasonable doubt in respect of the physical elements of this 4th Charge. To begin with, it was clear that from the outset, he had given multiple inconsistent accounts. During the VRI on 11 January 2020, when IO Gan played and replayed for him the CCTV footage showing him in the "69" position over the Complainant, the Accused insisted that he had absolutely no recollection of what was shown in this part of the footage.[285]

154 By the time of his subsequent VRI statement on 15 January 2020, the Accused had progressed to asserting that he could say "for sure" that his penis

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282 P42 - Living Room, "060120_000919" at timestamp 00:09:30 to 00:09:31.

283 P42 - Living Room, "060120_000919" at timestamp 00:09:34 to 00:09:50.

284 P42 - Living Room, "060120_000919" at timestamp 00:09:27 to 00:09:31.

285 Transcripts of VRIs recorded from the Accused (with corrections) at Tab 1 pp 102–108.

was not in the Complainant's mouth. He even sought to explain that he was sure of this because if his penis had indeed been in the Complainant's mouth, he would have gotten a full erection, which he had not.[286] However, when asked whether he had tried to insert his penis into Complainant's mouth, the Accused said, "I believe *I was trying to*, but I could not".[287]

155 Under cross-examination at trial, the Accused sought to resile from the above admission: he claimed that he had not even tried to insert his penis into the Complainant's mouth, and that instead, his penis had merely been near the Complainant's cheek because he had been "hoping to get a blowjob".[288] He even added that at that point, he had been hoping that his penis would "be at least a little bit harder so [the Complainant] can take it in her mouth but it was too soft and too small".[289]

156 The Accused conceded that the account(s) provided in his VRI statements differed entirely from the account he gave in court.[290] He attempted to explain away the discrepancies by reference to a video clip which was said to have shown him gripping his penis forcefully and walking to the toilet to masturbate: according to the Accused, it was this video which had "jolted" him into remembering that his penis was not hard at the time of the Incident.[291] In putting forward this explanation, the Accused appeared to be suggesting that

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286 Transcripts of VRIs recorded from the Accused (with corrections) at Tab 3 p 100, lines 10–14.

287 Transcripts of VRIs recorded from the Accused (with corrections) at Tab 3 p 102, lines 10–12.

288 Transcript 25 July 2024 at pp 5–7.

289 Transcript 25 July 2024 at p 7, lines 7–8.

290 Transcript 25 July 2024 at p 8, lines 24–26.

291 Transcript 25 July 2024 at p 8, line 28 to p 11, line 5.

absent a full erection, he could not have inserted his penis in the Complainant mouth. However, as I noted earlier (at [123]), despite the Prosecution replaying the various video clips several times in court and despite IO Gan being recalled for further cross-examination, no evidence emerged of such a video. I concluded that this elusive video was merely an afterthought, concocted by the Accused in an attempt to explain the numerous discrepancies in his narrative.

(B) ADVERSE INFERENCE FROM THE ACCUSED'S FAILURE TO RAISE THIS DEFENCE IN HIS CAUTIONED STATEMENT

157 Further, I agreed with the Prosecution's submission that an adverse inference was warranted against the Accused under s 261 of the Criminal Procedure Code ("CPC"), as he failed to state in his cautioned statement of 6 May 2022 that he had not inserted his penis into the Complainant's mouth. Instead, when he was given notice of the 4th Charge, all he said in response was:[292]

> I was led to believe by her actions that she is a willing party. And I did not force or use criminal force on her. That's all.

158 The Accused was unable to offer any coherent explanation for his failure to mention the absence of any penile-oral penetration in the cautioned statement. First, although he conceded that he was cautioned pre-statement about the consequences of omitting any fact or matter in his defence, he claimed not to have paid attention to the caution. Instead, according to the Accused, he "believe[d] in [his] mind that…[he] would be given a chance to present all [his] facts and to present [his] defence".[293] This explanation made no sense, because this was not a case where the Accused chosen to say nothing and to reserve his

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292 Exhibit P47; Transcript 25 July 2024 at p 30, lines 20–31.

293 Transcript 25 July 2024 at p 33, lines 25–27.

defence for the trial: on the contrary, he chose to say quite a number of things – none of which mentioned his denial of any penile-oral penetration.

159 Second, the Accused claimed to have been labouring under the belief that he only needed to present the "main part" of his defence in the cautioned statement, and that he would be given the chance to present the "supporting parts" at the trial itself.[294] This explanation too made no sense: I could not see how denial of the very act of penile-oral penetration could sensibly be described as a "supporting part" of the Accused's defence to the 4th Charge.

160 Third, the Accused claimed that at the time of giving the cautioned statement, he was not prepared with any files or documentation and did not have lawyers present with him.[295] This explanation also made no sense: there was no reason why he needed to have "files", "documentation" and "lawyers" present before he could deny having inserted his penis into the Complainant's vagina as alleged in the 4th Charge.

161 In short, I rejected the Accused's explanations for his failure to deny the act of penile-oral penetration when giving his cautioned statement for the 4th Charge. I found it appropriate in the circumstances to treat this failure as amounting to additional corroboration of the Complainant's account of events.

(4) Summary of findings on the physical elements of the 4th Charge

162 In light of the findings set out at [149]–[161], I was satisfied that there was sufficient evidence to prove the physical elements of the 4th Charge beyond a reasonable doubt.

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294 Transcript 25 July 2024 at p 38, lines 21–23.

295 Transcript 25 July 2024 at p 33, lines 22–25; p 35, lines 3–4; p 39, lines 15–20.

5th Charge: licking vagina

163 I next address the 5th Charge, in which it was alleged that the Accused licked the Complainant's vagina (skin-on-skin). To prove the physical element of this Charge, the Prosecution relied on the Complainant's testimony and other evidence which was said to constitute corroboration of her testimony.

(1) The Complainant's evidence

164 As with the 4th Charge, the Accused's act of licking the Complainant's vagina was described in her conditioned statement: she described the Accused first licking her vagina, then climbing on top of her, and then inserting his penis into her mouth "while licking [her] vagina".[296] In other words, the Accused licked her vagina twice: once before assuming the "69" position and again after assuming the "69" position. She maintained this account in her testimony at trial. Further, according to the Complainant, she was able to feel the Accused using his tongue to "poke" her, and she was certain that "he did that purposely".[297]

165 Again, while the Complainant did not mention the above act to [S], [GF], [D1] and [D2], given the angst and shame she clearly felt about the sexual acts performed on her, I did not find this omission to be fatal to the consistency and credibility of her evidence. When she was referred by the police to Dr Ong for a medical examination on 9 January 2020, she reported to Dr Ong the Accused's act of licking her vagina while in the "69" position.[298] Dr Ong's report did not mention the Accused licking the Complainant's vagina prior to assuming the

296 ABOD at p 2, para 15.

297 Transcript 9 July 2024 at p 45, lines 24–27.

298 ABOD at p 31.

"69" position. However, this too was not fatal to the consistency and credibility of the Complainant's account of events. Importantly, her account was consistent with the objective evidence of the CCTV footage, which showed two separate instances of the Accused licking her vagina.

(2) The CCTV footage

166 The relevant CCTV footage started at around 12.09 am, with the Accused in what appeared to be at a crouching position at the edge of the sofa bed furthest from the Living Room CCTV.[299] At this point, the Accused's mouth was between the Complainant's legs, at her crotch. His hands appeared to be framing her pubic area as he leaned his head forward in the direction of her vagina.[300] In all, the Accused's movements at this point suggested that he was licking the Complainant's vagina.

167 Shortly thereafter, the Accused was seen standing up and moving towards the foot of the sofa bed.[301] This brought him out of the CCTV frame. He was then wearing a pair of boxer shorts – but by the time he reappeared on the other side of the sofa bed where the Complainant's head was lying, he had removed his boxer shorts.[302]

168 As the Accused reappeared back within the CCTV frame, the Complainant could be seen attempting to get up from the sofa bed, by lifting her right arm and rolling over to her side.[303] However, the Accused grabbed her right

299 P42 - Living Room, "060120_000919" at timestamp 00:09:19.

300 P42 - Living Room, "060120_000919" at timestamp 00:09:19.

301 P42 - Living Room, "060120_000919" at timestamp 00:09:20 to 00:09:22.

302 P42 - Living Room, "060120_000919" at timestamp 00:09:25.

303 P42 - Living Room, "060120_000919" at timestamp 00:09:24 to 00:09:25.

arm and positioned her back onto the sofa bed in a supine position.[304] At this point, the Accused had his back to the CCTV, while the bottom half of his body and the Complainant's head were out of frame. However, the Accused could be seen lifting his right leg (apparently over the Complainant's head),[305] and adjusting his penis in line with the position of the Complainant's mouth.[306] After making the adjustments, he lay down on top of her, with his head at her crotch in the "69" position. He remained in the "69" position for 16 seconds,[307] following which he moved his head away from the Complainant's crotch and closer to her breasts.[308] It was at this point that the CCTV recording stopped.[309] Again, the Accused's movements in this part of the CCTV footage suggested that he was licking the Complainant's vagina as he lay on top of her in the "69" position for some 16 seconds.

(3) The Accused's admissions in his VRI statements

169 The Complainant's testimony in respect of the 5th Charge was also partially corroborated by the Accused's admissions in his VRI statements. During the VRI on 15 January 2020, IO Gan suggested to the Accused that he had used his mouth to kiss and lick the Complainant's vagina. The Accused did not refute this suggestion, seeking instead to explain his reason for having "kissed her vagina":[310]

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304 P42 - Living Room, "060120_000919" at timestamp 00:09:26 to 00:09:27.

305 P42 - Living Room, "060120_000919" at timestamp 00:09:27.

306 P42 - Living Room, "060120_000919" at timestamp 00:09:30 to 00:09:31.

307 P42 - Living Room, "060120_000919" at timestamp 00:09:34 to 00:09:50.

308 P42 - Living Room, "060120_000919" at timestamp 00:09:50 to 00:09:56.

309 P42 - Living Room, "060120_000919" at timestamp 00:09:56.

310 Transcripts of VRIs recorded from the Accused (with corrections) at Tab 3, p 99, lines 20–22.

> The reason is because I was trying to arouse myself. '***Uh'*** knowing that I ***'uh'*** did not have any erection, ***'uh'*** I was trying to arouse myself and ***'uhm'*** that's why I ***'uh'*** kissed her vagina.

The above explanation was repeated by the Accused in the same VRI when he sought to emphasise his difficulty in achieving an erection:[311]

> … I was kissing her, her, her, 'tsk' her, her vagina and after that I couldn't even get an erection.

170 While the Accused did not mention two separate instances of licking the Complainant's vagina, his statements about having "kissed" her vagina in order to "arouse [himself]" amounted to an admission that there had been direct contact between his mouth and the Complainant's vagina. In my view, this was (at the very least) partial corroboration of the Complainant's account of events.

(4) The Accused failed to raise a reasonable doubt in respect of the physical elements of the 5th Charge

171 The Accused's defence at trial was that although he had originally intended to lick the Complainant's vagina, he decided against doing so when he encountered a "strong smell" on bringing his nose near her vagina.[312] He then decided to lick her inguinal region (*ie*, the region where the lower part of her stomach joined the tops of her thigh) instead.[313]

172 In my view, this defence was untenable in light of his own admissions in the VRI statement as well as the objective evidence of the CCTV footage.

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311 Transcripts of VRIs recorded from the Accused (with corrections) at Tab 3, p 100, lines 28–29.

312 Transcript 24 July 2024 at p 81, lines 15–18.

313 Transcript 24 July 2024 at p 82, lines 7–9.

(A) THE ACCUSED'S FAILURE TO EXPLAIN THE ADMISSIONS IN HIS VRI STATEMENTS

173 I alluded earlier (at [169]–[170]) to the Accused's statements about having "kissed" the Complainant's vagina in an effort to arouse himself and achieve an erection. This was, at the very least, a partial admission to there having been direct contact between his mouth and the Complainant's vagina. At trial, the Accused claimed that at the time he made these admissions in his statements, he did not actually remember kissing the Complainant's vagina.[314] When pressed on why he could not have simply told IO Gan that he did not remember, the Accused said that he admitting to kissing the Complainant's vagina because he "believe[d] that was what should happen naturally in foreplay".[315] This answer could not be believed, however, because not only did the Accused fail to tell IO Gan that he was merely articulating a "belief", he went out of his way to explain his *reason* for licking the Complainant's vagina (*ie*, to arouse himself).

174 In the circumstances, I found no merit in the Accused's attempt to recast his former admissions as mere assumptions.

(B) ADVERSE INFERENCE FROM THE ACCUSED'S FAILURE TO RAISE THIS DEFENCE IN HIS CAUTIONED STATEMENT

175 As with the 4th Charge, the Accused also failed to state in his cautioned statement for the 5th Charge that he did not lick the Complainant's vagina in his cautioned statement of 6 May 2022. The only thing the Accused said in response to the 5th Charge was:[316]

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314 Transcript 25 July 2024 at p 21, lines 15–20.

315 Transcript 25 July 2024 at p 21, lines 22–23.

316 Exhibit P48; Transcript 25 July 2024 at p 31, lines 7–30.

> I did not use any force or criminal force on her. And her actions led me believe she is a willing party and she is enjoying it, from the sound she generated and the very deep breathing I heard from her.

176 In my view, the statements about the Complainant having been a "willing party" who had "enjoy[ed] it" carried the implicit acknowledgement that the physical act alleged in the 5th Charge (*ie*, the licking of the Complainant's vagina) did in fact occur. In this connection, I rejected the Accused's attempt to reprise the same excuses he had used to explain his cautioned statement for the 4th Charge. My reasons for rejecting these excuses have been summarised earlier at [158]–[161].

177 Given the critical omission in the Accused's cautioned statement, I agreed with the Prosecution that an adverse inference under s 261 of the CPC was warranted and that the omission should be treated as additional corroboration of the Complainant's account in relation to the 5th Charge.

(C) THE ACCUSED'S DEFENCE WAS REFUTED BY THE CCTV FOOTAGE

178 Finally, the Accused's story about having only licked the Complainant's inguinal regions was proven completely false by the CCTV footage. I have earlier alluded to some of the relevant video clips (at [166]–[168]). At trial, the Accused tried to explain away the footage by claiming that because the Complainant was "fat", her thighs were quite "close to the inguinal which is just next to the Complainant's labia".[317] This glib excuse fell apart, however, when confronted with the enhanced video footage adduced by the Prosecution. This comprised a video enhancement and frame-by-frame export of some of the

317 Transcript 24 July 2024 at p 82, lines 12–15.

CCTV footage.[318] In the enhanced CCTV footage, the Accused's mouth and fingers could be seen in direct contact with the Complainant's vagina: at this point in the footage, the Complainant's inguinal regions were completely visible and plainly not in contact with the Accused's mouth and hands.[319] In my view, this visual evidence left no room for ambiguity or misinterpretation.

(5) Summary of findings on the physical elements of the 5th Charge

179 In light of the findings set out at [163]–[178], I was satisfied that there was sufficient evidence to prove the physical elements of the 5th Charge beyond a reasonable doubt.

The evidence in respect of the lack of consent

180 Having concluded that the Prosecution was able to prove the physical elements of the 1st, the 3rd, the 4th and the 5th Charges, I next address the issue of consent. The Prosecution did not seek to rely on s 90 of the Penal Code and sought, instead, to prove that the Complainant did not *in fact* consent to the sexual acts which formed the subject of these four charges.

The law on consent in cases involving sexual offences

181 In this connection, the general legal principles were clearly summarised by the authors of *Ratanlal & Dhirajlal's Law of Crimes: A Commentary on the Indian Penal Code 1860 vol 2* (CK Thakker & M C Thakker eds) (Bharat Law House, 26th Ed, 2007), in a passage cited with approval by the Court of Appeal in *Pram Nair v PP* [2017] 2 SLR 1015 ("*Pram Nair*") at [93]:

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318 ABOD at pp 73–84.

319 Exhibit P20 – Annex B2 – Frame by Frame Export (Enhanced), pictures 00 to 10.

> … Consent on the part of a woman, as a defence to an allegation of rape, requires voluntary participation, not only after the exercise of intelligence, based on the knowledge of the significance and the moral quality of the act, but after having freely exercised a choice between resistance and assent … A woman is said to consent only when she freely agrees to submit herself, while in free and unconstrained possession of her physical and moral power to act in a power she wanted. Consent implies the exercise of free and untrammeled right to forbid or withhold what is being consented to; it is always a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former.

182 In *Mustapah bin Abdullah v PP* [2023] SGCA 30 ("*Mustapah*"), the Court of Appeal emphasised that there was a vital difference between submission and consent. A person might *submit* to sexual contact in the sense that they offered no physical resistance to the offender carrying out the act, but this did not mean that they necessarily *consented* to the act (*Mustapah* at [104], citing Stanley Yeo, Neil Morgan and Chan Wing Cheong, *Criminal Law in Singapore* (LexisNexis, 2022) at para 12.68; and *Augustine Foong Boo Jang v PP* [1990] 1 MLJ 225).

183 In the present case, the Complainant asserted that she had never consented to any sexual contact with the Accused: according to the Complainant, she had not been able to offer physical resistance to the various sexual acts he carried out because at the material time, she had been weak and very dizzy. The Prosecution contended that her evidence on the lack of consent should be accepted because unlike the Accused, she was a reliable and credible witness whose version of events was corroborated by other evidence.

The Complainant's evidence

184 I address first the Complainant's evidence.

185 In her conditioned statement, the Complainant stated that she had not consented to any of these sexual acts done by the Accused, but had been "too weak to resist". She described how she had "tried to say "no", but no sound came out as [she] was too weak", and how she had "also tried to move [her] hand to stop him".[320] At trial, the Complainant maintained this account of events. She testified, in addition, that it was after drinking the wine offered to her by the Accused that she had started feeling dizzy. By the time she lay down on the sofa for the injections, she "felt like [her] body was so heavy":[321]

> I felt something wrong... I felt so very dizzy that… I don't have the means or ways to talk or say something or to move. I don't understand that feeling… [W]hen I drink wine or liquor with my family in Philippines, I may feel drunk but I'm still in control of my body. I still know what's going on. I'm still aware of my surroundings. But unlike this time, with the wine given by Kong Kong [the Accused], it's very different because this is my first time to feel that my whole body was so heavy. I felt so dizzy and it's like everything is spinning around me, so I know it's very different from…the way I drink in Philippines than here… [W]hat happened was I'm still very conscious. In in mind, I'm very conscious. I'm aware what's going on but I cannot just control…like my body is so heavy, something like that… My eyes is [*sic*] also very heavy, as if my eyes wanted to sleep but I'm trying as much as possible to stay awake, because at the back of my mind I know there's something wrong going on. … I can see my surroundings but a bit blurry.

186 In assessing whether the Complainant's narrative was internally consistent, I did consider, *inter alia*, her explanation as to how she came to be in the physically weakened state described above. In her evidence-in-chief, the Complainant testified that while it was "difficult to say", she thought that the wine given to her by the Accused might have been "spiked with something".

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320 ABOD at p 3, para 18.

321 Transcript 9 July 2024 at p 42 line 4 to p 43 line 10.

However, she clarified that she did not know if this was actually the case.[322] It was not disputed that the bottle from which the Accused had poured the wine on the night of the Incident was never retrieved. The Complainant's blood and urine samples were sent to the Health Sciences Authority ("HSA") for testing, but the test results came back negative for the list of drugs which the HSA had screened for.[323] At trial, the HSA analyst Mr Widodo Andreas ("Mr Widodo") testified that the list of drugs which the HSA had screened for was derived from "the standard test panel for the sexual assault cases" – *eg*, barbiturates, benzodiazepines and opiates.[324] Mr Widodo pointed out that aside from this "standard test panel" of drugs relied on by the HSA, there were "many other drugs" that could cause "drowsiness or incapacitation".[325] In Mr Widodo's experience, "different drugs would have different time frame for the detection window": "[g]enerally, for blood specimen, drugs will be detectable up to 1 day after consumption", whereas "for urine sample… the drug may be detected up to 3 days of the consumption".[326] In the present case, the Complainant's blood and urine samples were sent to the HSA for testing on 10 January 2020,[327] *ie*, at least 4 days after the Incident.

187 In cross-examination, Mr Widodo testified that where drugs had been consumed by an individual, they might be detected in the individual's hair up to a year post-consumption, depending on multiple factors such as the quantity

322 Transcript 9 July 2024 at p 43, lines 15–23.

323 ABOD at pp 57–59.

324 Transcript 11 July 2024 at p 18 line 6.

325 Transcript 11 July 2024 at p 19, lines 10–12.

326 Transcript 11 July 2024 at p 19, lines 24–27.

327 ABOD at p 57.

of drugs consumed and the length of the hair in question.[328] However, as Mr Widodo noted, this present case "was four years ago"; and there were simply no other methods at this stage to test whether any drugs had been consumed by the Complainant.[329]

188 In the circumstances, the fact that the HSA test on 10 January 2020 came back negative for the drugs listed in the "standard test panel" was a neutral factor: it did not detract from the credibility of the Complainant's evidence as to her weak and dizzy state on the night of the Incident. In my view, her evidence on this issue was internally and externally consistent. I set out below my reasons for this finding.

189 First, as seen earlier at [185], the Complainant's testimony at trial was consistent with the account of events given in her conditioned statement. Insofar as there were some additional details which emerged in her testimony (*eg*, her eyes feeling "heavy" and "blurry"), these details were consistent with her account of having been in a physically weakened state.

190 Second, the Complainant's account of the physically weakened state she was in at the time of the Incident was a consistent theme in the statements she made to various persons post-Incident. In particular, [S] testified that at 3.43am on 6 January 2020, she had received a telephone call from the Complainant in which the latter was "really crying, like… something terrible happened to her".[330] The Complainant informed [S] that "something" had "happened between her and grandfather [the Accused]"; that she had noticed that "her

328 Transcript 11 July 2024 at p 22, lines 10–12.

329 Transcript 11 July 2024 at p 21, lines 12–13.

330 Transcript 11 July 2024 at p 29, lines 27–30.

panty… was worn wrong side" when she woke up and went to the toilet; and that after drinking wine offered by the Accused, she had felt so weak and dizzy that she could not stop or resist what he was doing to her.[331]

191 The Complainant's 3.43 am telephone call to [S] on 6 January 2020 was documented in the relevant call logs.[332] This call would have been made only a few hours after the Accused was seen helping an apparently limp and quiescent Complainant back to her bed at 12.19am on 6 January 2020. The fact that she had woken up from sleep and gone to the toilet just shortly before making this call could be discerned from the Bedroom CCTV footage, which showed her waking up at 3.36am on 6 January 2024,[333] going to the toilet,[334] and then returning to her bed and drawing the curtain around her bed.[335] In other words, therefore, the Complainant's complaint to [S] about the non-consensual nature of the Accused's sexual acts was made at the first reasonable opportunity after the commission of those acts. Pursuant to the more "liberal approach" to corroboration espoused by the Court of Appeal in *PP v Mohammed Liton Mohammed Syeed Malik* [2008] 1 SLR(R) 601 at [43] and *Haliffie* at [66], this complaint to [S] and the distress which [S] observed during the call would amount to corroborative evidence.

192 In the days which followed 6 January 2020, the Complainant continued to tell various other individuals about the non-consensual nature of the Accused's sexual acts on 5 and 6 January 2020 and her own inability to resist

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331 Transcript 11 July 2024 at p 30, lines 6–13.

332 P21, Annex A – Call Logs, at s/n 73.

333 P42 - Bedroom, "060120_033635" at timestamp 03:36:35.

334 P42 - Bedroom, "060120_033635" at timestamp 03:36:36 to 03:36:41.

335 P42 - Bedroom, "060120_033915" at timestamp 03:39:17 to 03:39:27.

those acts. In the Complainant's subsequent messages to [S] and their friend [GF] on 8 January 2020, for example, she stated that "when he [the Accused] did it", she had "no energy [to] even [lift her] hand".[336]

193 In her first conversation with [D1] and [D2] following their return to the Flat on 8 January 2020, the Complainant told them that she had felt very dizzy after drinking the wine offered by the Accused,[337] and that she "cannot stand up" at the time when he was administering the injections to her buttocks.[338] In response to [D1]'s question about whether she had said "no" to the Accused, the Complainant stated that she did not have the strength and "cannot say properly".[339] She added that following the Incident, she had to be helped back to her room by the Accused.[340]

194 In the course of the medical examination on 9 January 2020, the Complainant gave the same account of events to Dr Ong. According to Dr Ong's medical report, the Complainant said that she had begun to feel "weak and giddy" after drinking the wine offered by the Accused; that she "did not lose consciousness" but felt "too weak" to resist the sexual assault by the Accused; and that it was the Accused who had "carried" her back to her room following the sexual assault.[341]

195 In the interests of completeness, I noted that in the telephone call between the Complainant and the HOME volunteer Bing on 7 January 2020,

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336 ABOD at p 121, s/n 51.

337 Exhibit P21T(5) at p 1, s/n 7.

338 Exhibit P21T(5) at p 16, s/n 208.

339 Exhibit P21T(5) at p 18, s/n 227–230.

340 Exhibit P21T(5) at p 18, s/n 233–238.

341 ABOD at p 31.

Bing was heard volunteering her personal opinion that it did not sound as if the Complainant had been raped – to which the Complainant replied "*opo*" (meaning "yes" in Tagalog). In her examination-in-chief at trial, the Complainant explained that she had uttered the word "*opo*" merely to indicate that she was still listening to Bing, not to express agreement with Bing's opinion.[342] She had also been feeling very "nervous", "helpless", "hurt", and "emotional", and had no time during the telephone call to analyse what Bing was saying – which was why she had simply kept saying "*opo*" in response to Bing's comments.[343]

196 In my view, the Complainant was telling the truth as to why she had said "*opo*" in response to Bing's remark that it did not sound as if she had been raped. The telephone call in question took place the day after the Incident, when the Complainant would still have been in a state of considerable emotional distress. Indeed, from the audio-recording of the telephone call, the Complainant could be heard speaking in an emotional – even harried – tone of voice. It was hardly surprising that she should not have possessed the presence of mind to protest or deplore Bing's remark. Importantly, in the same telephone call, the Complainant *did* in fact describe to Bing how she had felt "dizzy" and "weak" during the Incident,[344] and how her body had felt "withered like [a] vegetable".[345] In other words, the description she gave Bing of her physical state at the time of the Incident was consistent with the descriptions given to [S], [D1], [D2], and Dr Ong.

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342 Transcript 9 July 2024 at p 68, lines 11–16.

343 Transcript 9 July 2024 at p 69, lines 1–5.

344 ABOD at p 245, s/n 42.

345 ABOD at p 246, s/n 50.

197 In sum, I found that the Complainant had maintained from the outset a consistent account of not having consented to sexual activity with the Accused and having been too weak to put up physical resistance to his sexual acts.

198 Importantly, apart from the corroboration provided by [S]'s account of the Complainant's 3.43am telephone call on 6 January 2020, the available CCTV footage corroborated the Complainant's evidence about her physical condition during the Incident and the lack of any consent from her to the Accused's various sexual acts.

The CCTV footage

199 I do not propose to recount the contents of each clip of the CCTV footage. For present purposes, it suffices to highlight the following

(a) In the clip from 12.06am to 12.07am, the Complainant appeared limp and unresponsive as the Accused struggled to flip her body over. When the Accused began sucking her breast, she remained unresponsive for the first eight seconds. After this, she could be seen shaking her head slowly and feebly. Her arm was also raised briefly before it dropped back onto the sofa bed.[346]

(b) In the clip from 12.09am to 12.10am, the Complainant could be seen making a brief and clearly ineffectual attempt to get up from the sofa bed by lifting her right arm and rolling over to her side.[347]. She was

346 P42 - Living Room, "060120_000637".

347 P42 - Living Room, "060120_000919" at timestamp 00:09:24 to 00:09:25.

unsuccessful as the Accused swiftly grabbed her right arm and placed it back on the sofa bed, causing her to lie back down in a supine position.[348]

(c) In the clip at 12.10am, the Complainant was shown being supported and re-positioned by the Accused. The Accused could be heard asking her if she wanted to go back to her bed, but there was no response from her, and she remained motionless.[349]

(d) In the clip from 12.13am to 12.15am (which captured the act of penile-vaginal penetration), apart from a brief moment when the Complainant was seen attempting to raise her right hand, her body remained limp and unresponsive. The moment the Accused withdrew his penis from her vagina, her legs could be seen falling limply over the edge of the bed, making a "*thud*" sound.[350]

(e) In the aftermath of the Incident, the Complainant was shown lying motionless on the sofa bed for approximately four minutes. The Accused subsequently put her clothes back on for her.[351] The Complainant remained limp and silent as the Accused helped her up from the sofa bed and wrangled her back to her bedroom while supporting her by her arms.

200 As the Court of Appeal has highlighted in *Mustapah*, there is a vital difference between submission and consent: a person may submit to sexual contact in the sense of offering no physical resistance to the offender carrying

348 P42 - Living Room, "060120_000919".

349 P42 - Living Room, "060120_001003".

350 P42 - Living Room, "060120_001335".

351 P42 - Living Room, "060120_001335" at timestamp 00:14:28 to P42 - Bedroom, "060120_001904" at timestamp 00:19:11.

out the act, but this does not mean that they necessarily consent to the act (*Mustapah* at [104]). In the present case, the CCTV footage showed that throughout the Incident, the Complainant was too weak to put up any effective resistance. Even when she tried to get up from the sofa bed by raising her arm and rolling over to her side, that attempt was effortlessly quelled by the Accused.[352] The CCTV footage thus provided compelling corroboration of the Complainant's evidence that she never consented to the Accused's sexual acts but was simply unable to put up a fight.

The Accused failed to raise a reasonable doubt in respect of the Prosecution's case on lack of consent

201 By the conclusion of the trial, I was also satisfied that the Accused could not raise a reasonable doubt in respect of the Prosecution's case on the lack of consent from the Complainant to his sexual acts.

202 The Accused raised the following arguments in support of his narrative of a consensual sexual encounter. First, he claimed that it was the Complainant who had – prior to the Incident – hinted at her interest in engaging in sexual intimacy with him. According to the Accused, the Complainant's conduct during and subsequent to the Incident demonstrated her consent to his various sexual acts. The Accused did not dispute that the CCTV footage appeared to show the Complainant in a limp and unresponsive state during their sexual encounter, but contended that this was merely an act on her part. According to him, this was because the Complainant had in reality been plotting to frame him.

203 The Accused called his daughter [D1] to give evidence in support of his allegations against the Complainant. [D1] testified, in gist, that the family had a

352 P42 - Living Room, "060120_000919".

"terrible relationship"[353] with the Complainant because she "wouldn't do her chores properly",[354] had "all sorts of excuses",[355] and was "constantly asking… for advancement in pay".[356] As an example of the Complainant's poor performance as a domestic helper, [D1] alleged that the Complainant had "on a few occasions" been found to have taken "little pouches", "coin pouches or wallets" belonging to [D1] and/or [D2] which had been "left in [their] miscellaneous cupboard".[357] [D1] also alleged that when the Complainant spoke to [D1] and [D2] on 8 January 2020 about the Incident, she had "hinted at [them] giving her something".[358]

204 Having considered the evidence, I rejected the Accused's allegations against the Complainant. In my assessment, his story about her having lured him into having sex with her and then framing him to exact revenge against [D2] was devoid of evidential basis and logic. I explain.

(1) No motive for the Complainant to have plotted against the Accused

205 At the outset, I address the Accused's claim that the Complainant had a motive to frame him because she hated her employer [D2] and intended to extract some form of financial gain from [D2] and her family by making false allegations of sexual assault. In my view, there was no merit to this claim.

353 Transcript 26 July 2024 at p 4, line 28.

354 Transcript 26 July 2024 at p 5, lines 10 and 21.

355 Transcript 26 July 2024 at p 5, line 21.

356 Transcript 26 July 2024 at p 7, lines 30–31.

357 Transcript 26 July 2024 at p 8, lines 1–15.

358 Transcript 26 July 2024 at p 13, line 5.

206 Notably, the only piece of objective evidence that the Accused purported to rely on as evidence of the Complainant's hatred for [D2] was a series of messages exchanged between the Complainant and [N] (the domestic helper in the adjacent flat) in August 2019. In these messages, the Complainant was shown complaining about [D2] not having allowed her a day off on a public holiday when the entire family was overseas. Having overheard [D2]'s husband questioning [D2] about this decision,[359] the Complainant told [N] that [D2]'s husband as well as [D1] were "ok" and that it was "just the woman [*ie,* [D2]] who is a female villain sometimes".[360]

207 I did not find that the above evidence suggested in any way a motive on the Complainant's part to frame the Accused as a means of revenging herself upon a hated employer. First, when questioned on these text messages, the Complainant explained that it was "very normal" for domestic helpers to "have misunderstanding" with their employer, and to chat with other domestic helpers about their employers and their "conditions inside the house". The Complainant emphasised that it did not mean she hated [D2].[361]

208 I accepted the Complainant's explanation as being honest and persuasive. Her grumble about being denied a day off on a public holiday (and in the family's absence) appeared to me to be an understandably human reaction to the inevitable strain of domestic service in a moderately sized household. From the text messages, it was clear that her disappointment was heightened by the perception that even [D2]'s husband disagreed with [D2]'s decision. This was, in short, an instance of everyday workplace frustration; and it was in this

359 ABOD at p 176, s/n 114–115.

360 ABOD at p 176, s/n 123–124.

361 Transcript 10 July 2024 at p 77, lines 12–25.

context that the Complainant described [D2] to a fellow domestic helper as a "female villain". None of this struck me as being unusual or sinister. Certainly, it did not suggest that the Complainant was harbouring so deep a hatred for [D2] as to be motivated to plot against her.

209 Even if I were to assume for the sake of argument that [D1] was telling the truth about the Complainant having been a problematic employee, there was no evidence that the latter resented her employer [D2] enough to plot some elaborate revenge against [D2]. Indeed, accusing [D2]'s father of rape and sexual assault would appear to be a convoluted and potentially self-sabotaging means of exacting such revenge, since such accusations would inevitably subject the Complainant herself to close – and uncomfortable – scrutiny. In the text messages she exchanged with [N], while she did express frustration with [D2], the Complainant's intention – as she told [N] – was to "just finish her contract here" and then "look for a new one".[362] This reflected a stoic pragmatism entirely at odds with the picture which the Accused tried to paint of an aggrieved employee bent on payback.

210 I should also make it clear that I rejected the Accused's allegation that in addition to "hating" her employer [D2], the Complainant intended to profit from what was essentially a consensual sexual liaison by falsely claiming rape and then demanding monetary recompense.[363] Insofar as the Accused sought to rely on [D1]'s evidence in support of this allegation, I found [D1]'s evidence to be unreliable and ultimately unhelpful to the Accused's case.

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362 ABOD at p 176, s/n 122.

363 Transcript 10 July 2024 at p 15, lines 21–29; p 17, lines 15–18.

211 Tellingly, although [D1] claimed in examination-in-chief that the Complainant had asked if [D1] and [D2] could "find a way to compensate her",[364] she conceded in cross-examination that the Complainant did not in fact use the word "compensate" and that there was no "outright" request money for money in exchange for not reporting the matter to the police.[365] When [D1] insisted that the Complainant had nevertheless "hinted" at such an arrangement by saying "maybe I can go home early and then the remaining pay can give to me because my contract was not up",[366] she was referred by the DPP to the transcripts of audio-recordings capturing the conversations between her, [D2] and the Complainant on 8 January 2020 and 9 January 2020. [D1] then conceded that these transcripts did not show the alleged "hints" by the Complainant.[367]

212 Having made the above concessions, [D1] sought to claim that the Complainant's "hints" about compensation were actually made during *other* parts of their conversations on 8 January and 9 January 2020 which were not captured in the audio-recordings.[368] [D1] also claimed that the Complainant made these "hints" by remarking on her "contract not up, and then needed money, and maybe… the remaining pay could be used to that extent".[369]

213 I did not find these claims to be at all credible. For one thing, it did not comport with the overall tenor of the recorded conversations. Nothing in these recordings suggested that there had been any requests – even veiled requests –

364 Transcript 26 July 2024 at p 9, lines 1–2.

365 Transcript 26 July 2024 at p 24, lines 28–31.

366 Transcript 26 July 2024 at p 13, lines 13–16.

367 Transcript 26 July 2024 at p 18 line 28 to p 19 line 8.

368 Transcript 26 July 2024 at pp 19–21.

369 Transcript 26 July 2024 at p 21, lines 24–25.

made by the Complainant outside of the recorded conversations, for money in return for not making a police report. In particular, I noted that after [D1] and [D2] broached the subject of a police report on the morning of 9 January 2020, the Complainant's chief concerns were the potential publicity which might result from a police report and the repercussions of such a report on her family back in the Philippines.[370] While she did allude to wanting "to go home", the only remark she made in connection with going home was in relation to getting her passport back:[371] she said nothing at all about her "contract" not being "up" and/or any "remaining pay". Moreover, in the same conversation, [D1] and [D2] could be heard repeatedly assuring the Complainant that they had no wish to protect their father when it came to such serious wrongdoing and that they would be "very fair" to her.[372] If the Complainant had indeed been "hinting" at wanting to be paid for not reporting the matter, it was highly implausible that [D1] and [D2] would have responded with these assurances of support and fairness.

214 I make three further points about the allegation that the Complainant had a motive for framing the Accused.

215 First, [D1] claimed in examination-in-chief that she and [D2] had decided to "get [the Complainant] out of the house" and to "[escort] her to the police station at Tampines as soon as possible" because they were afraid that when "it comes to money", the Complainant would get "vindictive" if she did not get what she wanted; and they were "very worried for the safety" of [D2]'s

370 Exhibit P21T(6) p 6, s/n 42.

371 Exhibit P21T(6) p 6, s/n 44 to p 7, s/n 48.

372 Exhibit P21T(5) p 23, s/n 304 and p 25, s/n 325; Exhibit P21T(6) p 7, s/n 54.

two young children at home.[373] I did not believe this claim because it too ran contrary to the overall tenor of the recorded conversations. In particular, in the recorded conversation of 9 January 2020, [D1] and [D2] could be heard earnestly explaining to the Complainant that a police report should be made because they did not want to "cover up bad things" and "[did] not want anything like this to happen in the future again". For example, when the Complainant stated that she felt "afraid" and "ashamed" about what the Accused had done to her, [D1]'s reply was:[374]

> I understand. I understand. But now moving forward. Because this kind of thing should not happen to anybody. Shouldn't happen in this house especially… Then now we want to be fair. We don't cover up bad things. We don't want to protect anybody. This is very unfair to you. I am sorry this happened to you. But I think we should make a Police report because I don't want…We have two small children at home. I don't want anything like this to happen in the future again… So I think we got to make a Police report because we have 2 children at home. And this is unfair to you as this happened to you. I think the police they will look through the evidence and everything and they will do…the right thing because now there is nothing much we can do to help you that something happened to you and there is really nothing much we can do except to be fair.

216 The manner in which [D1] and [D2] were interacting with the Complainant during the recorded conversations was thus inconsistent with [D1]'s claim about their having been fearful of the Complainant posing a threat to [D2]'s children. If anything, insofar as [D1] mentioned the children, it was in the context of expressing concern that there being "two small children at home", what had happened *to the Complainant* should not happen "in the future again".

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373 Transcript 26 July 2024 at p 9, lines 3–10.

374 Exhibit P21T(6) p 3, s/n 21, 23; and p 4, s/n 26.

217 Second, while the Accused made much of the Complainant's initial reluctance to make a police report, I found that she had a reasonable explanation for this. According to her, she had been afraid that as a domestic helper, she would have "no ways and means to fight in Court for justice".[375] She expressed concern about the disparity in financial resources between her and the Accused, fearing that he would be able to "pay someone so that he will win".[376] Further, as she told [S] and [GF] during their group chat, she feared losing the income from her job, which she needed to support her children back in the Philippines.[377] In my view, these were very reasonable concerns, given her personal circumstances.

218 Third, the allegation that the Complainant failed to tell the Accused about [D2]'s injunction against her consuming alcohol in the Flat was irrelevant to the question of whether she had a motive to accuse him falsely of rape. Even assuming that [D2] had imposed such a prohibition and that the Complainant was wrong to have concealed this fact from the Accused, such behaviour suggested at best that she wanted to drink the wine offered by the Accused and was prepared to ignore [D2]'s rules against her drinking at home. It did not suggest that she had a motive to frame the Accused for rape.

219 To sum up, therefore, I found no merit in the Accused's allegations about the Complainant having a motive to frame him. I was satisfied that the Complainant's limp and unresponsive state during the Incident – as seen on the CCTV footage – was genuine: it was not a case of her "pretending" to be unresponsive in order to set the stage for a false accusation of rape.

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375 Transcript 9 July 2024 at p 55, lines 28–29.

376 Transcript 9 July 2024 at p 56, lines 1–4.

377 ABOD at p 145, s/n 554.

(2) The Complainant did not indicate interest in sexual intimacy with the Accused

220 Similarly, I found no merit in the Accused's allegation that prior to the Incident, the Complainant had already shown interest in sexual intimacy with him.

221 The Accused claimed that a number of incidents occurred over a period of time leading up to 5 January 2020 – and on 5 January 2020 itself – which amounted to deliberate attempts by the Complainant to seduce him. He described these incidents as follows

(a) First, the Accused claimed that there were three occasions on which the Complainant had emerged from the bathroom in revealing clothing. She had also told him about her health issues, which allegedly included menstrual pain, vaginal discharge, and concerns about breast cancer.

(b) Second, the Accused relied on a conversation on the morning of 5 January 2020, in which he had made a suggestive remark to the Complainant about oral sex being effective in alleviating menstrual pain.[378] According to the Accused, the Complainant's response to his remark – which was to laugh – indicated that she consented to intimacy with him.

(c) Third, the Accused claimed that various aspects of the Complainant's behaviour on the night of the Incident indicated her sexual interest in him. In particular, he contended that in agreeing to watch TV and drink wine late into the night with him and in inviting him

[378] Exhibit P42T(5 Jan) at p 4, s/n 63.

to touch her stomach when she spoke about her abdominal pain, the Complainant was signalling her readiness for sexual intimacy with him.

222 I did not find these arguments to be of any help to the Accused's defence. For the avoidance of doubt, I did not find that the above incidents amounted to deliberate attempts by the Complainant to seduce the Accused. In particular, given that the Accused was indisputably in the habit of administering injections to his family members, and kept a ready store of health supplements in the Flat, I did not find it surprising that the Complainant should have sought advice from him about her various health issues. Indeed, the Accused himself testified that prior to 5 January 2020, he had on several occasions provided TCM products and health supplements to the Complainant for issues ranging from menstrual problems to digestion problems.[379]

223 More importantly, even if I were to accept the Accused's characterisation of the Complainant's behaviour as being overly familiar or flirtatious, such behaviour would not be capable of being construed as consent to sexual activity on 5 and 6 January 2020. In *Pram Nair*, for example, the Court of Appeal (at [67]) emphatically rejected the notion that the victim's sociable or friendly behaviour towards the appellant prior to the assault could be construed as consent to sexual activity. The Court stressed that this conclusion would not change even if it assumed in the appellant's favour that the victim "had gone beyond being friendly and flirted with him". I would apply the same approach to the facts in the present case.

379 Transcript 23 July 2024 at p 9, lines 19–20; p 11, lines 10–19.

(3) The Complainant did not demonstrate consent to the Accused's sexual acts during the Incident

224 I also found no merit in the Accused's allegation that the Complainant's behaviour during the Incident demonstrated her consent to his sexual acts.

225 The Accused contended that such consent was discernible from the Complainant having allegedly "wriggled" her buttocks after he administered the injections into her buttocks[380] and from certain "moaning sounds" she made during the Incident.[381] However, a review of the CCTV footage gave the lie to the Accused's story. The events surrounding the administering of the injections were captured on the Living Room CCTV footage (see [31]–[34] above),[382] which clearly showed the Complainant in a motionless state throughout. As for the alleged "moaning sounds", no such sounds could be heard on the audio-feed from the CCTV footage. This was despite the fact that the Living Room CCTV was sufficiently sensitive to pick up minute sounds such as the Accused's heavy breathing during and after the Incident.

(4) The Complainant's post-Incident conduct did not show that she had consented to the Accused's sexual acts

226 Finally, the Accused contended that the Complainant's post-Incident conduct supported his account of a consensual sexual encounter. According to the Accused, the Complainant behaved normally after the Incident, continued to interact with him in a friendly manner, and showed no signs of any trauma.

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380 Transcript 24 July 2024 at p 68, lines 7–26.

381 Transcript 24 July 2024 at p 70, line 20 to p 71, line 10.

382 P42 - Living Room, "050120_235456" and P42 - Living Room, "060120_000113".

227 I rejected the Accused's contention. Insofar as the Complainant might have given the appearance of being her "normal" self after the Incident, her evidence was that although she felt "very scared" of the Accused and wanted to avoid him where possible, she did at the same time try "to be calm" and to "pretend…as if nothing happened". She explained that she did so in an attempt to calm herself and to manage her own unease.[383]

228 I found the Complainant's explanation to be sincere and persuasive. She could not, after all, have avoided the Accused: as she pointed out, as the domestic helper, she needed to "come out from [her] room" to do the household chores.[384] She also knew that her employer [D2] was due to return home by 8 January 2020 – *ie*, within a relatively short window of time. Her decision to feign normalcy in her interactions with the Accused until the return of her employer was in my view understandable and reasonable, considering the strained circumstances she found herself in.

229 Further and in any event, the Complainant's post-Incident communications with various individuals – including her sister [S] and the neighbour's domestic helper [N] – showed that she had in fact expressed worry about a repeat of the sexual assault by the Accused. Thus, for example, [S] testified that following the incident, the Complainant had told [S] that she was "scared" about the possibility of the Accused sexually abusing her again.[385] [S] advised the Complainant *inter alia* to be aware of her surroundings; to keep a pen inside her pocket so that "if something happens, at least she have a weapon"; and to place "the children's toys in front of…the door in her room" so that "in

383 Transcript 9 July 2024 at p 55, lines 5–9.

384 Transcript 9 July at p 54, lines 23–25.

385 Transcript 11 July at p 33, lines 31–32.

case someone attempt to enter her room…she will notice it".[386] As for [N], although she was not called as a witness, the Prosecution adduced in evidence the certified translation of her exchange of WhatsApp messages with the Complainant on 6 and 7 January 2020. The Accused did not challenge the authenticity of these messages, which showed *inter alia* the Complainant informing [N] at 9.16pm on 6 January 2020 that she had "placed a toy car in front of [her] bed" so that she would hear the Accused if he came into her room,[387] and then updating [N] at 7.24am the following morning that "he did not disturb [her]" but that she had recorded the "whole night" on her "other phone just in case".[388]

230 To sum up, therefore, I found that the Complainant's post-Incident conduct did not in any way suggest that she had consented to the Accused's sexual acts on 5 and 6 January 2020.

Conclusion on the issue of lack of consent

231 In light of the findings set out at [180]–[230], I was satisfied that the Prosecution had proven beyond a reasonable doubt that the Complainant did not consent to the Accused carrying out the sexual acts described in the 1st, the 3rd, the 4th and the 5th Charges.

The defence of mistaken consent

232 In the interests of completeness and fairness to the Accused, although he did not expressly rely on the defence of mistake under s 79 of the Penal Code,

386 Transcript 11 July at p 34, lines 3–22.

387 ABOD at p 212, s/n 623.

388 ABOD at p 214, s/n 646.

I did consider whether this defence was available to him on the facts of the present case.

The law on the defence of mistake

233 Section 79 of the Penal Code states:

> Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it.

234 In *Pram Nair*, the Court of Appeal held (at [110]–[111]) that an accused who invokes the defence under s 79 Penal Code bears the burden of establishing, on a balance of probabilities, that "by reason of a mistake of fact", he "in good faith" believed himself to be justified by law in doing what he did to the victim. Nothing is believed "in good faith" if it is believed "without due care and attention": s 52 of the Penal Code. It must be noted that the inquiry under s 79 is not based purely on the actual belief of the accused: the accused has to persuade the court that he arrived at his belief after "having exercised due care and attention" (*Pram Nair* at [111]).

The evidence did not support the defence of mistake of fact

235 In order for the defence under s 79 to apply in the present case, I would have to be satisfied on a balance of probabilities that having exercised due care and attention, the Accused believed that the Complainant consented to the sexual acts described in the Five Charges. This obviously required more than bare assertions of belief by the Accused: I had to consider the objective evidence of the circumstances of the Incident.

236 Having regard to the evidence canvassed above, I was of the view that the defence under s 79 was not available to the Accused. Based on the objective evidence of the CCTV footage, the Complainant's limp and unresponsive state throughout the Incident would have been apparent to any reasonable person, and would have signalled to any reasonable person the need to obtain explicit confirmation of her consent to sexual activity. Critically, the Accused himself accepted that the Complainant appeared to be "limp and weak" – yet he did not obtain her express consent before engaging in the sexual acts.[389]

237 In cross-examination, the Accused claimed that in his experience, "usually, no words [would be] spoken" during sex; and "two adults together wanting to have intimacies" would not mechanically seek each other's consent to every step of their sexual encounter.[390] His claim rang hollow, however, in the present case, where the recipient of his sexual advances was in an obviously feeble and unresponsive state. His failure to check for her express consent to sexual activity in such circumstances ruled out any possibility of a s 79 defence.

Conclusion on conviction

238 Having regard to the above findings, I was satisfied that the Prosecution had successfully proven all the elements of the 1st, 3rd, 4th, and 5th Charges; and I convicted the Accused of these four charges.

239 As to the 2nd Charge, as I observed at [133]–[137], this was the only charge where the Prosecution could not point to any evidence corroborative of the Complainant's testimony. The Accused denied having committed the acts alleged in this Charge. While I found the Complainant to be an honest witness,

389 Transcript 24 July 2024 at p 72, lines 11–15.

390 Transcript 24 July 2024 at p 70, lines 2–9.

I decided that it would not be safe to conclude, on the basis of her uncorroborated testimony, that the physical element of this charge had been proven beyond a reasonable doubt. Given this conclusion, it was not necessary for me to consider the issue of lack of consent in relation to the 2nd Charge; and I granted the Accused a discharge amounting to an acquittal on this charge.

Sentence

240 Following his conviction on the 1st, 3rd, 4th, and 5th Charges, both the Accused and the Prosecution were given time to put in written submissions on the issue of sentence. The Accused was eventually sentenced to an aggregate imprisonment term of 19 years and six months. I explain in the next section the reasons for my decision on sentence.

Enhanced punishment for offences against domestic workers under s 73 Penal Code

241 Given the Accused's position as a member of the household in which the Complainant was employed as a domestic worker, the provision for enhanced penalties in s 73(1) of the Penal Code applied to all four Charges on which he was convicted.

242 Section 73(1) Penal Code states as follows:

> **73.**—(1) Where an employer of a domestic worker, a member of the employer's household or an employment agent of a domestic worker is convicted of an offence under this Code (other than an excluded offence) that is committed against that domestic worker, the court may sentence the person convicted to twice the maximum punishment that the court could, but for this section, impose for that offence.
>
> (2) This section does not apply where the offender (*A*) proves that, despite *A* being an employer of the domestic worker (*B*), a member of *B*'s employer's household or an employment agent of *B*, the relationship between *A* and *B* did not adversely affect

> *B*'s ability to protect herself from *A* in respect of the harm caused by the offence.
>
> …
>
> (4) In this section —
>
> "domestic worker" means any female house servant employed in, or in connection with, the domestic services of her employer's private dwelling house and who is required to reside in her employer's private dwelling house;
>
> "dwelling house" means a place of residence and includes a building or tenement wholly or principally used, constructed or adapted for use for human habitation;
>
> …
>
> "employment agent", in relation to a domestic worker, means an employment agency personnel or a person who performs work similar to an employment agency personnel, and whose orders the domestic worker has reasonable grounds for believing she is expected to obey;
>
> "excluded offence" means an offence —
>
> (a) under section 304B, 304C or 335A; or
>
> (b) under this Code which is punishable with death or imprisonment for life;
>
> "member of the employer's household", in relation to a domestic worker, means a person residing in the private dwelling house of the domestic worker's employer at the time the offence was committed, and whose orders the domestic worker has reasonable grounds for believing she is expected to obey.

243 To understand the regime of enhanced penalties under s 73, it is pertinent to have regard to the objective behind its introduction. The enactment of s 73 in 1998 was prompted by an alarming increase in reported cases of maid abuse. In his Second Reading Speech in respect of the amendments which created a new s 73 in the Penal Code, the then Minister for Home Affairs noted that maid abuse reports had nearly doubled from 105 in 1994 to 192 in 1997. He emphasised the unique vulnerability of domestic helpers, who are predominantly female and who work in their employers' homes round the clock, isolated from the rest of

society except during their limited time-off. Domestic helpers also depend on their employers for food and lodging. These factors made them "more vulnerable to abuse by employers and their immediate family members, than any other categories of employees". Section 73 was therefore introduced "to send a strong signal to employers who have a tendency to abuse their domestic maids". (Singapore Parliamentary Debates, Official Report (20 April 1998) vol 68 (Mr Wong Kan Seng, Minister for Home Affairs) ("20 April 1998 Parliamentary Debates") at cols 1925–1927).

244 When s 73 was first introduced, the enhanced penalties were 1.5 times the maximum punishment and applied to a narrower range of applicable offences and offenders. In its report in August 2018, the Penal Code Review Committee ("PCRC") recommended increasing the penalties under s 73 to twice the maximum punishment provided for applicable offences. The PCRC explained that the key reasons for recommending this increase were (*Penal Code Review Committee Report* (August 2018), at p 139, para 21(b)):

(a) to "signal society's strong disapprobation of such offences";

(b) to "strengthen the deterrent effect of s 73"; and

(c) to align s 73 "with similar [proposed] enhancements to offences committed against children and vulnerable persons".

245 The PCRC's recommendations were accepted by Parliament. In 2019, amendments were introduced to the Penal Code to enhance penalties for all offences committed against three categories of vulnerable victims, up to twice the maximum penalties prescribed for these offences. The three categories of vulnerable victims were: children below 14 years of age; persons who were vulnerable due to mental or physical disabilities; and domestic workers. In

moving the amending legislation in Parliament, the Minister for Home Affairs explained that the intention was to "provide stronger protection for those who cannot protect themselves" (Singapore Parliamentary Debates, Official Report (6 May 2019) vol 94 ("6 May 2019 Parliamentary Debates") (Mr K Shanmugam, Minister for Home Affairs)).

246 In short, s 73 recognises the especial vulnerability of domestic workers vis-à-vis their employers (or members of the employers' households or employment agents): the regime of enhanced punishments is intended both to deter and denounce those who abuse these relationships by committing crimes against the domestic workers.

The interaction between s 73(1) Penal Code and the established sentencing frameworks for sexual offences

247 There are currently no reported cases dealing with the precise interaction between s 73(1) Penal Code and the established sentencing frameworks for sexual offences. In sentencing the Accused for the offences on which he had been convicted, I first had to consider how s 73(1) should apply vis-à-vis the sentencing frameworks established for rape (as set out in *Ng Kean Meng Terence v PP* [2017] 2 SLR 449 ("*Terence Ng*")) and outrage of modesty (as set out in *Kunasekaran s/o Kalimuthu Somasundara v PP* [2018] 4 SLR 580 ("*Kunasekaran*")).

Not appropriate simply to treat the vulnerability of a domestic helper as an aggravating factor in the context of applying the established sentencing frameworks

248 At the outset, I should make it clear that I did not think it would be appropriate simply to apply the existing sentencing frameworks for these sexual offences while treating the vulnerability of the domestic helper as an

aggravating factor. In my view, such an approach would not cohere with the legislative intent behind s 73(1) Penal Code: rigidly applying the existing frameworks to these cases would effectively thwart the operation of s 73(1), as the enhanced punishment of up to twice the ordinary maximum punishment would never be utilised. Indeed, the Prosecution in this case did not recommend such an approach.

Not appropriate to transpose the Tay Wee Kiat sentencing framework to the context of sexual offenders against domestic helpers

249 Next, I considered the case of *Tay Wee Kiat and another v PP and another appeal* [2018] 4 SLR 1315 ("*Tay Wee Kiat*"), where a new sentencing framework was established by a three-judge High Court for offences of voluntarily causing hurt ("VCH") to domestic helpers punishable with the enhanced penalties under s 73(1). However, I did not find it appropriate to transpose the *Tay Wee Kiat* framework to the present context. Nor, for that matter, did I find it appropriate to jettison the sentencing frameworks already established in *Terence Ng* and *Kunasekaran* and to seek to create a new sentencing framework for sexual offences against domestic helpers.

250 In *Tay Wee Kiat*, the three-judge High Court held that a new framework was necessary for VCH offences against domestic helpers because of the fundamental differences between maid abuse cases and typical VCH cases: the former were underscored by psychological harm and the inherent inequality of the relationship between the abuser and the abused, whereas the latter often involved spontaneous altercations where the harm caused was predominantly physical. In that context, the dominant sentencing factors for VCH offences under s 323 – namely, "the degree of deliberation, the extent and duration of the attack, the nature of the inquiry and the use of a weapon (*ie*, the dangerousness

of it)" – were clearly inadequate to deal with the added dimension of psychological harm in maid abuse cases (at [65] of *Tay Wee Kiat*). The High Court therefore formulated a new sentencing framework which required the court to determine, as the first step, whether the harm caused to the domestic maid was predominantly physical, or both physical and psychological (at [70]–[74] of *Tay Wee Kiat*). Where both physical and psychological harm had occurred, the sentencing court was to consider the table of sentencing ranges set out by the High Court in *Tay Wee Kiat*, in which the indicative ranges corresponded to the degree of physical and psychological harm caused. In the third and final step of this framework, the court would go on to adjust the sentence for each charge in light of other aggravating or mitigating circumstances.

251 While I derived guidance generally from the High Court's observations regarding the sentencing considerations applicable in cases of maid abuse, I did not think it would be appropriate to transpose the *Tay Wee Kiat* framework to the context of sexual offences against domestic helpers. While sexual offences against domestic helpers may feature some different characteristics from sexual offences against other victims, they do not differ in the fundamental and pronounced manner in which VCH offences involving maid abuse differ from the typical VCH offences. The sentencing factors enumerated in *Terence Ng* and *Kunasekaran* already consider factors such as the psychological harm caused to the victim. In other words, the sentencing frameworks established for rape and outrage of modesty in *Terence Ng* and *Kunasekaran* remain apposite and adequate for dealing with sexual offences against domestic helpers: what is needed is not a new sentencing framework as such, but a principled approach to the application of s 73 within these established sentencing frameworks.

252 Having considered the Prosecution's written submissions on sentence, I broadly agreed with their suggestion that the approach adopted in *GFX v PP* [2024] 4 SLR 1423 ("*GFX*") would – with certain modifications – be the most appropriate.

The GFX approach

253 *GFX* involved the offence of voluntarily causing grievous hurt against a person below 14 years old (punishable under s 325 read with s 74B(2) Penal Code). Section 74B(2) was introduced in the same set of 2019 amendments to the Penal Code which saw the enhanced penalties under s 73 increased from 1.5 times the maximum punishment to twice the maximum punishment. Section 74B(2) provided for enhanced punishment of up to twice the maximum sentence for offences perpetrated against children below 14 years of age. In *GFX*, the appellant had physically abused two of his children who were around two years old at the material time. He forcefully shook one child like a "baby spring" when she cried, and repeatedly shoved the other child's head, causing him to fall thrice. Both children suffered severe injuries, including skull fractures. The appellant subsequently pleaded guilty to two charges of voluntarily causing grievous hurt ("VCGH") under s 325 of the Penal Code, as well as a charge under s 182 of giving false information to the police.

254 In dismissing the appellant's appeal against sentence, the three-judge High Court held that in sentencing accused persons who had committed s 325 offences punishable with enhanced penalties under s 74B(2), the existing two-stage sentencing framework for s 325 Penal Code offences – as set out in *PP v BDB* [2018] 1 SLR 127 ("*BDB*") – would continue to apply but with an additional multiplier, based on the victim's age, interposed between the two

existing stages. The resulting three-step process would thus be as follows (at [40]–[47]):

(a) First, the court considers the sentencing starting point for the "base" offence under s 325 Penal Code. This mirrors the first stage of the *BDB* framework. In that framework, an indicative starting point for the appropriate sentence is based on the seriousness of the injury caused.

(b) Second, the court imposes a multiplier (from 1% to 100%) depending on the victim's age at the time of the offence:

Age of victim	**Enhancement (the younger the victim, the higher the multiplier) (%)**
0–3 years	76–100
Just over 3 years–6 years	51–75
Just over 6–10 years	26–50
Just over 10 years–just under 14 years	1–25

It should be noted that in introducing the multiplier stage into the sentencing framework for s 325 offences, the High Court pointed out that for the purposes of applying s 74B(2), it was the age of the victim – and not the relationship between the offender and the victim or any other factor – that resulted in the enhanced punishment.

(c) Third, the court will adjust the indicative enhanced starting point either upwards or downwards based on the relevant aggravating and/or mitigating factors. This mirrors the last stage of the *BDB* framework,

and the non-exhaustive aggravating factors set out in *BDB* (at [62]) are relevant.

Modifying the GFX approach in the context of sexual offences against domestic helpers

255 The Prosecution suggested adopting in this case an approach similar to that used in *GFX*, whereby an additional "multiplier" step would be added to the existing "two-step sentencing bands" frameworks for rape and outrage of modesty (as set out in *Terence Ng* and *Kunasekaran* respectively).[391] I found this suggested approach to be appropriate. First, it ensured stability and continuity by retaining the "two-step sentencing bands" approach, which – as the High Court pointed out in *Kunasekaran* (at [47]) – "is a reliable methodology to adopt in the context of sentencing sexual offences because it improves clarity, transparency, coherence and consistency in sentencing such offences". Second, the addition of a "multiplier" step within these existing frameworks allows the sentencing court to state precisely the amount by which the indicative sentence arrived at under the first step of either the *Terence Ng* framework or the *Kunasekaran* framework is being enhanced pursuant to s 73(1), and to communicate clearly the reasons therefor.

256 While I agreed with the Prosecution that a "modified *GFX* approach" should be adopted, I did not agree entirely with their proposal as to how the "multiplier" step should operate. I set out below the three-step process which I decided to adopt; and where relevant, I highlight the areas where I disagreed with the Prosecution's submissions and explain why.

391 Prosecution's Submissions on Sentence dated 3 January 2025 ("PSS") at para 13.

(1) Step one: the indicative starting point

257 At the first step, the court applies stage one of the *Terence Ng* or *Kunasekaran* framework, depending on the offence in question. However, the court must consciously disregard at this stage factors relating to the offender's abuse of position (as an employer or a member of the employer's household or an employment agent) and the victim's vulnerability (as a domestic helper). This is necessary to avoid double counting, as these relationship-specific factors will be considered when determining the appropriate multiplier in step two. Having said that, other aspects of the victim's vulnerability or the accused's abuse of position that do not stem from the specific domestic helper-employer relationship can be taken into account at this first step. For instance, the fact that the victim was intoxicated is a factor which increases her vulnerability and which has nothing to do with her position as a domestic helper.

258 Once an appropriate sentencing band is selected based on the offence-specific factors, the court should determine the indicative starting sentence within that band.

(2) Step two: multiplier

259 Next, the court should apply a multiplier – ranging from 1% to 100% – to the indicative starting sentence to derive an indicative *enhanced* starting sentence.

260 In this connection, I did not agree with the Prosecution's suggestion that a default multiplier of 1.5x be adopted, subject to adjustments to be made depending on the degree of vulnerability and abuse of authority in the specific case at hand. With respect, such an approach would seem to me to be quite arbitrary: for example, there appeared to be no cogent reason why the default

starting figure should be 1.5x. Such an approach would likely also result in an opaque process where parties would end up with little understanding as to why a particular multiplier figure was selected by the sentencing court.

261 To ensure a higher degree of consistency and predictability, there should be a more structured process for the selection of the appropriate multiplier. To this end, I considered the legislative objective behind s 73 Penal Code. As seen from the above summary of the relevant Second Reading Speeches (at [243]–[246]), there are two critical elements that characterise the relationship between an offending employer and his/her domestic helper.

(a) First, the special *vulnerability* of domestic helpers who are usually female and completely dependent on their employers for food and lodging. Having travelled long distances to work in Singapore, they usually lack the support network of family and friends which other classes of victims may have; and/or they may be unfamiliar with various aspects of life in Singapore, including the various official institutions and processes in Singapore (for example, the legal system).

(b) Second, the *authority* which the employer has over the domestic helper. As Menon CJ highlighted in *Janardana Jayasankarr v PP* [2016] 4 SLR 1288 ("*Janardana*") at [3(b)], domestic helpers "are in an inherently unequal position of subordination in relation to their employers". In this connection, it may be noted that when s 73 Penal Code was introduced, the Minister for Home Affairs explained in his Second Reading Speech that the enhanced penalties would not apply to visiting relatives and friends, or even where the victim is sent to the employer's brother's home to work and gets abused there, because these

offenders "do not exercise any real authority over the maid" (20 April 1998 Parliamentary Debates at cols 1925–1926).

262 Given that the above two factors were the main considerations leading to the introduction of the enhanced punishment regime in s 73, I was of the view that it would be appropriate to base the selection of the multiplier figure on a calibration of these two factors. The extent to which these two factors are present in any given case may of course vary: the vulnerability of the victim and the authority of the offender are not binary concepts, but rather, exist on a spectrum. I found it apt to employ the following matrix in determining the appropriate multiplier:

Authority of offender / **Vulnerability of victim**	**Low degree of authority**	**Moderate degree of authority**	**High degree of authority**
Low degree of vulnerability	1% to 20% multiplier	20% to 40% multiplier	40% to 60% multiplier
Moderate degree of vulnerability	20% to 40% multiplier	40% to 60% multiplier	60% to 80% multiplier
High degree of vulnerability	40% to 60% multiplier	60% to 80% multiplier	80% to 100% multiplier

263 In assessing the vulnerability of the victim, I was of the view that the sentencing court should consider the following *non-exhaustive* factors:

(a) First, the victim's age and amount of work experience in Singapore. Generally speaking, a young domestic helper who has just arrived to work in Singapore days before the offending conduct would be "particularly vulnerable" (see *PP v Chong Siew Chin* [2001] 3 SLR(R) 851 at [40] *per* Yong CJ). This vulnerability stems from their unfamiliarity with the local environment, customs, and the legal system.

(b) Second, the victim's access to a social network, and her degree of social isolation from the rest of society. As Menon CJ observed in

Janardana at [3(a)], "[d]omestic helpers who have just arrived in Singapore" ... "will often not have the time or opportunity to develop familiarity or a support network". Indeed, the Minister for Home Affairs specifically emphasised this factor when introducing s 73 Penal Code in 1998, pointing out that domestic helpers typically "work within the confines of their employers' home for 24 hours of the day, and except during their time-off, are isolated from the rest of society nearly all the time" (20 April 1998 Parliamentary Debates at col 1923). In the context of sexual offences, a domestic helper who is usually confined at home and has no social network to turn to would be especially vulnerable, as the social isolation would heighten her feelings of fear and helplessness when faced with sexual abuse. In this regard, it would be relevant for the sentencing court to consider factors such as the access which the domestic helper has to communication devices and opportunities to interact with others outside the employer's household.

(c) Third, previous incidents of threats, intimidation or abuse by the employer or other members of the employer's household may also be relevant. This is because such incidents may create a pervasive climate of fear and helplessness, making the victim more susceptible to predatory sexual behaviour on the part of the employer or members of their household. For instance, in the context of VCH offences against domestic helpers, the offending employer in *ADF v PP and another appeal* [2010] 1 SLR 874 ("*ADF*") repeatedly emphasized to the victim his position as a police officer and repeatedly threatened to send her to jail for her minor oversights in attending to household duties (see [101]–[103]). This seeded and nourished in the victim a fear that her complaints would go unheeded or even that she would be punished if she reported his VCH offences against her to the police. It is not difficult to envisage

a similar scenario in the context of sexual offences against domestic helpers, where an offending employer leverages the domestic helper's deference to the position of authority he holds in society, so as to create the (misguided) belief on her part that any complaints she makes about sexual abuse will go unheeded by the authorities. While such manipulative conduct may take place outside the context of relationships between employers and their domestic helpers, it is particularly pronounced in this context because domestic helpers are typically "not well educated and unfamiliar with the legal system in Singapore" (*ADF* at [102]). I add the caveat that while this factor is relevant to the vulnerability of the victim, the sentencing court should be careful not to double-count this factor at the first and the third steps of the framework.

(d) Fourth, the presence of factors external to the employer's household may also contribute to the domestic helper's fear of reporting any sexual abuse – for example, where the domestic helper is the sole breadwinner for her family and/or has taken on significant debt in order to travel to Singapore for work, thereby making her fearful that reporting sexual abuse may lead to termination of her employment and loss of income.

264 Apart from being non-exhaustive, the above factors will often overlap. This is perhaps inevitable because of the qualitative nature of vulnerability. It is thus important for the sentencing court to approach the assessment of the victim's vulnerability holistically, instead of applying the above factors in a mechanistic fashion.

265 Next, I was of the view that in assessing the degree of authority an accused had over the victim, the following non-exhaustive (and potentially overlapping) factors would be relevant:

(a) First, the accused's relationship to the domestic helper – *ie*, whether the accused was the employer, employment agent or a member of the employer's household. Generally speaking, the employer would have the highest degree of control over the domestic helper. An employment agent may have significant influence during the hiring process and initial placement, while members of the employer's household may exercise varying degrees of authority over the domestic helper, depending on their role within the family and their relationship to the employer.

(b) Second, the extent to which the accused exercised control over the victim's day-to-day living conditions. This would include control over her workload and also the imposition of any restrictive rules which fetter or circumscribe the victim's personal freedoms (for example, restrictive rules on the use of communicative devices).

(c) Third, the extent of the accused's authority or influence over the terms of the domestic helper's employment. This relates to the accused's ability to affect matters such as the victim's job security, salary, and overall employment conditions. For example, an accused with the authority to terminate employment and withhold pay would wield substantial authority over the victim. This would generally make any sexual abuse more egregious as it would create a significant power imbalance which could in turn be exploited to facilitate and perpetuate the abuse.

(3) Step three: calibration based on aggravating and mitigating factors

266 Finally, the sentencing court considers the offender-specific aggravating and mitigating factors present in order to calibrate the final sentence for a particular charge. These are the factors enumerated in *Terence Ng* (at [62]–[71]), and include matters such as the number of charges taken into consideration, relevant antecedents demonstrating recalcitrance, a timeous plea of guilt, and/or the presence of a mental disorder or intellectual disability on the accused's part which relates to the offence.

The parties' respective positions on sentence

267 I next explain how I applied the above three-step approach to this case.

268 I first summarise the parties' respective positions on sentence. The Prosecution submitted for a global sentence between 19 years and two months' imprisonment and 20 years and three months' imprisonment. They derived this global sentence by submitting for sentences of 17 and a half to 18 and a half years' imprisonment on each of the rape charges, and for sentences of 20 to 21 months' imprisonment on each of the charges of outrage of modesty, with the sentences for one rape charge and one outrage of modesty charge to run consecutively.[392]

269 For his part, the Accused sought a global sentence of eight years and 20 months' imprisonment. He argued for sentences of eight years' imprisonment on each of the rape charges, and sentences of 20 months' imprisonment on each

[392] PPS at para 4.

of the outrage of modesty charges, with the sentence for one rape charge and one outrage of modesty charge to run consecutively.[393]

My decision on sentence

The applicability of s 73 Penal Code to the Accused

270 In this case, although the Accused did not submit on the applicability of the exception in s 73(2) Penal Code, I considered this provision in the interests of completeness. Section 73(2) provides that the enhanced penalties under s 73(1) do not apply where:

> … the offender (*A*) proves that, despite *A* being an employer of the domestic worker (*B*), a member of *B*'s employer's household or an employment agent of *B*, the relationship between *A* and *B* did not adversely affect *B*'s ability to protect herself from *A* in respect of the harm caused by the offence.

271 In seeking to understand the scope of the exception in s 73(2), I noted that during the second reading of the Criminal Law Reform Bill 2019, some questions were raised about the introduction of s 73(2) and similar exceptions in other provisions such as ss 74A(2A) and 74B(3), having regard to concerns about potential "victim-blaming" (see *eg*, 6 May 2019 Parliamentary Debates (Ms Anthea Ong, Nominated Member) at 4.38pm). In response, the Senior Parliamentary Secretary for Home Affairs explained (6 May 2019 Parliamentary Debates (Mr Amrin Amin, Senior Parliamentary Secretary to the Minister for Home Affairs) at 6.47pm) that Parliament's intention in introducing the exception found in s 73(2) and several other sections was to exclude from the enhanced punishment regime those situations where the vulnerability of the alleged victims did not, in any way, make them more susceptible to the offence.

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393 Defence's Submissions on Sentence dated 17 January 2024 ("DSS") at p 4.

In other words, the enhanced punishment regime under s 73(1) is not intended to apply in situations where there is no link between the alleged victim's vulnerability and the offence. In the example given by the Senior Parliamentary Secretary, a person with a physical disability, "for instance, may not necessarily be vulnerable, say, in respect of a white collar crime like fraud".

272 In the present case, there was clearly a link between the Complainant's position as a domestic helper and her susceptibility to the sexual offences committed by the Accused. As I elaborate below (at [292]), the Complainant's increased vulnerability as a domestic helper was evident from the fact that she was left alone with the Accused in the Flat while the rest of the family was overseas, had no means of retreating to the safety of her own residence, and could not immediately seek help from her own family members and friends. In addition, her lack of familiarity with the Singapore criminal justice system contributed to her harbouring fears about lodging a police report.

273 In the circumstances, I was satisfied that s 73(2) Penal Code had no application in the present case, and that the Accused was liable for enhanced penalties of up to twice the maximum punishments under s 73(1). I therefore proceeded to apply the three steps of the modified *GFX* approach described earlier at [257]–[266].

Step one: the indicative pre-enhanced sentences

274 As I noted earlier, the sentencing court derives at the first step an indicative starting sentence based on the offence-specific factors which relate to the manner and mode by which the offence was committed as well as the harm caused to the victim. At this stage, the court consciously disregards factors

which relate to the accused's abuse of position *qua* employer or member of the employer's household, and to the victim's vulnerability *qua* domestic helper.

(1) Indicative sentence in respect of the rape offences (the 1st and 4th Charges)

275 In respect of the 1st and the 4th Charges (*ie*, the rape charges), I first considered the offence-specific factors under the first step of the *Terence Ng* framework.

(A) THE OFFENCE-SPECIFIC AGGRAVATING FACTORS

276 On the facts, I found that there were three offence-specific aggravating factors in this case.

(I) VULNERABILITY

277 First, as seen from the CCTV footage, the Complainant was obviously vulnerable given her physically weakened state. I have earlier described in detail those portions of the CCTV footage which showed the Complainant lying limp and unresponsible on the sofa bed – at one point for up to four minutes when left alone on the sofa by the Accused following the completion of his various sexual acts. It was apparent from the CCTV footage that the Complainant's condition rendered her physically incapable of fending off the numerous acts of sexual violation visited on her body. Indeed, as I noted earlier, even when she attempted to get up from the sofa bed by lifting her arm and rolling onto her side,[394] the Accused was quickly able to grab her arm and to position her back onto the sofa bed in a supine position.[395]

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394 P42 - Living Room, "060120_000919" at timestamp 00:09:24 to 00:09:25.

395 P42 - Living Room, "060120_000919" at timestamp 00:09:26 to 00:09:27.

278 I emphasise that at this stage, it was the vulnerability stemming from the Complainant's physically weakened state that I took into consideration. This had nothing to do with her vulnerability *as a domestic helper*: I considered the latter in the next step of this modified *GFX* approach.

279 I should also make it clear that it was irrelevant whether the Accused in fact *caused* the Complainant's physically weakened state. In *PP v CPS* [2024] 2 SLR 749 ("*PP v CPS*") at [34], the Court of Appeal held that "[t]he essence of a victim's vulnerability as an aggravating factor does not depend on whether the vulnerability was *caused* or *contributed* by the offender; [rather] it lies in the *exploitation* of that vulnerability". In *PP v CPS*, the Court of Appeal cited the example of an offender who raped a mentally impaired victim, knowing that her mental impairment precluded her capacity to consent to sexual activity. In such a case, the offender would clearly have exploited the vulnerability of such a victim even though he had nothing to do with creating or causing her mental impairment.

280 The CCTV footage in the present case showed that prior to carrying out the various sexual acts on the Complainant, the Accused was struggling to flip her limp body from a prone position to a supine position (see [199(a)] above). It was also obvious from the audio recording of the CCTV footage that the Complainant remained mute for virtually the entire length of the Incident, even when addressed directly by the Accused – as, for example, when he could be heard remarking to her at one stage, "*OK ah*?".[396] This meant that from the outset, the Accused would have been well aware that the Complainant was simply in no position to offer any physical resistance to his sexual advances.

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396 Exhibit P42T (6 Jan) at s/n 1; P42 - Living Room, "060120_000113" at timestamp 00:01:21 to 00:01:24.

Despite knowing this, he brazenly exploited that vulnerability for his own sexual gratification. In my assessment, this was a significant offence-specific aggravating factor.

(II) PREMEDITATION

281 Second, I agreed with the Prosecution that there was some element of premeditation in this case. This could be seen from the sequence of events leading up to the Incident.

282 To begin with, by inviting the Complainant to watch TV with him, the Accused was clearly establishing a casual and relaxed environment. This would have had the effect of persuading the Complainant to let her guard down. He then introduced alcohol, which would have led to the further lowering of the Complainant's inhibitions. Next, the offer to administer injections of health supplements could be seen as a pretext to create a situation in which she would potentially be at her most vulnerable – lying down prone with her buttocks at least partially exposed to him. The fact that prior to administering the injections, he took pains to adjust the Bedroom CCTV camera *away* from the Complainant's bed – and then attempted to get the latter to move to the bedroom – suggested that he had formulated some sort of plan to conceal his subsequent actions. His actions in switching off the living room lights after the Complainant expressed her wish to have the injections administered on the living room sofa demonstrated his determination to create a secluded and poorly lit environment. I did not believe his assertion that he had switched off the living-room lights in order to prevent people outside the Flat from looking in at the Complainant while he was administering the injections to her. If he had genuinely been worried about potential intrusion on the Complainant's privacy by voyeurs outside the Flat, the natural thing to do would have been to caution the

Complainant against having the injections done on the sofa bed in the living-room. He did not do so. Instead, he proceeded to dim the lights and to administer the injections to her exposed buttocks under the dim lighting.

283 Viewed collectively, therefore, the Accused's actions were deliberate and calculated: with each action, he was progressively creating an environment conducive to his intended sexual advances. There was, in short, evidence indicative of premeditation on his part.

(III) FAILURE TO WEAR A CONDOM

284 Third, I accepted that the Accused's failure to wear a condom during the act of penile-vaginal rape also constituted an aggravating factor. As the courts have repeatedly recognised, unprotected rape exposes the victim to various risks including the risk of unwanted pregnancy and disease (*Chang Kar Meng v PP* [2017] 2 SLR 6814 at [21](b); *PP v CPS* at [39]).

(IV) PSYCHOLOGICAL HARM NOT SO SEVERE AS TO CONSTITUTE A SEPARATE OFFENCE-SPECIFIC AGGRAVATING FACTOR

285 I did not, however, accept the Prosecution's contention that the psychological and emotional harm suffered by the Complainant in this case was so severe as to constitute a separate offence-specific aggravating factor.

286 To be clear, I did not doubt that the Complainant was in a distraught state following the Incident – not only in its immediate aftermath, but also for a not inconsiderable period of time thereafter. Her distress could be discerned, for example, from the phone call to her sister [S] at around 4am in the morning of 6 January 2020 and in the ensuing exchange of messages with [S] and [N]. Without seeking in any way to downplay the trauma experienced by her, however, the question which I had to ask was whether her distress could be said

to constitute "severe" harm in the sense that it was harm "beyond that suffered normally by victims of rape" (*PP v CPS* at [44]). On the evidence available, I was not able to say that it was.

(B) THE INDICATIVE PRE-ENHANCED STARTING SENTENCE

287 The above three offence-specific factors applied equally to both the rape offences in the 1st Charge (penile-vaginal penetration) and the 4th Charge (penile-oral penetration) respectively. In my view, these two offences fell within the low to mid-point of Band 2 of the *Terence Ng* framework. Based on this assessment, I adopted an indicative starting sentence of 14 years' imprisonment each in respect of the 1st Charge and the 4th Charge.

(2) Indicative sentence in respect of the outrage of modesty offences (the 3rd and 5th Charges)

288 I next considered the indicative starting sentences for the offence of outrage of modesty. Applying *Kunasekaran*, I was satisfied that the offence-specific factors relating to the Complainant's vulnerability (see [277]–[280] above) and the presence of premeditation (see [281]–[283] above) would apply equally to the two charges of outrage of modesty (*ie*, the 3rd and 5th Charges).

289 Specifically in relation to these two charges of outrage of modesty, I accepted the Prosecution's submission that there was a significant degree of sexual exploitation. For the 3rd Charge, the Accused had sucked on the Complainant's bare breast for a fairly extended period of at least 19 seconds, while also touching her vagina skin-on-skin (see [143] above). As for the 5th Charge, he had licked the victim's vagina on two occasions: once when he was crouching near the Complainant's legs with his mouth at her vagina; and again when he forced himself on the Complainant in the "69" position. Both instances

involved direct skin-on-skin contact with the most intimate and sensitive parts of the Complainant's body.

290 In light of the above offence-specific aggravating factors, I concluded that this case fell at the higher end of band 2 of the *Kunasekaran* framework. I therefore adopted an indicative starting sentence of 12 months' imprisonment for each charge of outrage of modesty (*ie*, the 3rd Charge and the 5th Charge respectively).

Step two: the appropriate multiplier

291 Having arrived at indicative starting sentences for the rape offences as well as the outrage of modesty offences, I proceeded to the second step of the modified *GFX* approach: *ie*, to consider the appropriate multiplier under s 73(1), having regard to the vulnerability of the victim (*qua* domestic helper) and the offender's abuse of authority (*qua* employer or household member) (see [259]–[265] above).

(1) Vulnerability of the Complainant as a domestic helper

292 In assessing the Complainant's vulnerability *qua* domestic helper, I accepted that she had fairly strong social support from her sister and her neighbour – as evident from her chats with them before and after the Incident. On the other hand, she was undeniably unfamiliar with the Singapore justice system; and this lack of familiarity led to her harbouring fears about lodging a police report (see [217] above). In addition, the incident occurred during a period when the Complainant was left alone in the flat with the Accused for eight days while her employer [D2] and all the other members of the household were overseas. This isolation accentuated her vulnerability, as it meant that she could immediately seek help when she was sexually assaulted.

293 Weighing all these factors in the balance, I found the Complainant to be moderately vulnerable as a domestic helper.

(2) The Accused's abuse of authority as a member of the employer's household

294 As to the authority of the Accused, I found this to be of a moderate degree as well. While the Accused was not the Complainant's direct employer and did not control her day-to-day workload, his position as the father of the Complainant's employer meant that he held a position of not inconsiderable influence within the household. The Complainant would reasonably have been expected to (and did in fact) obey his instructions in her employer's absence.[397]

295 Given my findings on the moderate degree of the Complainant's vulnerability *qua* domestic helper and of the Accused's authority *qua* a member of her employer's household, I concluded that a multiplier of 50% should be applied to the indicative starting sentences for all four charges. This would translate into the following enhanced sentences:

(a) 21 years' imprisonment for each of the rape charges (*ie*, the 1st and 4th Charges); and

(b) 18 months' imprisonment for each of the outrage of modesty charges (*ie*, the 3rd and 5th Charges).

Step three: the calibration of the indicative enhanced sentences

296 At the third step of the modified *GFX* approach, I considered whether there were any significant offender-specific factors warranting a further

397 Exhibit P42T (5 Jan) at s/n 139.

calibration of the sentences for each of the individual charges, and concluded there were none.

297 In this connection, I did not accept the Prosecution's submission that the Accused's lack of remorse should be treated as an offender-specific aggravating factor. In *Terence Ng*, the Court of Appeal explained that an evident lack of remorse may be found if the offender had conducted his defence in "an extravagant and unnecessary manner" (at [64(c)]). The Court of Appeal cited the example of *PP v AHB* [2010] SGHC 138 where the offender not only failed to take responsibility for raping his daughter, but also blamed his wife for depriving him of vaginal intercourse (at [21]).

298 While the Accused in this case claimed that it was the Complainant who had seduced him and plotted to frame him, these claims were made as part of his defence, which centred on the allegation that the Complainant had consented to his sexual acts. The fact that I found his claims to be false did not *ipso facto* mean that he had conducted his defence in "an extravagant and unnecessary manner". Thus, for example, although he did try to ask the Complainant about her sexual history, he did not persist when I told him to move on;[398] and overall, he was not unduly offensive in his cross-examination of the Complainant.

No additional imprisonment in lieu of caning

299 While the Accused was not liable for caning in this case due to his age, the Prosecution did not seek the imposition of any additional imprisonment in lieu of caning.

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398 See *eg*, Transcript 10 July 2024 at p 23 line 16 to p 24 line 20.

300 Applying the principles articulated by the court in *Amin bin Abdullah v PP* [2017] 5 SLR 904 ("*Amin*"), the starting point in such cases is that the sentence should not be enhanced, unless there are grounds to justify doing so (*Amin* at [53]). In light of the lengthy sentence of imprisonment to be imposed in respect of the four charges, I was of the view that the deterrent and retributive effects of caning were not lost in this case (see *Amin* at [69]). Accordingly, I agreed with the Prosecution that the imposition of an additional imprisonment term in lieu of caning was not warranted.

The global sentence

301 Finally, I considered the global sentence to be imposed on the Accused. Section 307(1) of the Criminal Procedure Code 2010 requires that the sentences for at least two of the present offences run consecutively. In this connection, I agreed with the Prosecution that running the sentences for *both* rape charges consecutively would lead to a global sentence of potentially over 40 years and would be disproportionately high. I accepted their submission that the sentences for one of the rape charges and one of the outrage of modesty charges should run *consecutively*.

302 In considering the operation of the totality principle, I had regard to the following principles articulated by the Court of Appeal in *PP v UI* [2008] 4 SLR(R) 500 ("*PP v UI*") at [78]:

> [I]n general, the mature age of the offender does not warrant a moderation of the punishment to be meted out (see *Krishan Chand v PP* [1995] 1 SLR(R) 737 at [8]). But, where the sentence is a long term of imprisonment, the offender's age is a relevant factor as, unless the Legislature has prescribed a life sentence for the offence, the court should not impose a sentence that effectively amounts to a life sentence. Such a sentence would

> be regarded as crushing and would breach the totality principle of sentencing.

303 I add that I did not find the three cases cited by the Prosecution to be particularly relevant to the sentencing of the present Accused.

(a) *PP v BVR* [2022] SGHC 198 ("*BVR*") was a case involving a 54-year-old offender who had sexually abused eight victims over 16 years. The court in *BVR* was plainly justified, on the facts, in refusing to calibrate the offender's punishment *downward* on account of his age. *BVR* was clearly much more egregious than the present case which involved a single victim.

(b) *PP v CSK* [2024] 4 SLR 301 ("*CSK*") involved a 64-year-old offender who had sexually abused a 15-year-old victim suffering from an intellectual disability. The offender was sentenced to a total of 18 years' imprisonment. However, it must be pointed out that the initial sentence was 24 years' imprisonment with an additional 12 months' imprisonment in lieu of caning. In other words, the court in *CSK* deliberately calibrated the individual sentences downward because the initial global sentence would have been crushing on the offender (at [144]).

(c) As for the case of *PP v Tan Jeck Tuang* (HC/CC 32/2023), this was an unreported case where no written grounds of decision were issued. As such, I did not think it would be helpful to rely on this case.

304 Having regard to the totality principle and the decision in *PP v UI*, I found it appropriate to calibrate the sentence for each of the rape charges (*ie*, the 1st and the 4th Charges) downward, on account of the potentially crushing effect of a lengthy imprisonment term on the 69-year-old Accused in this case.

I therefore adjusted the imprisonment sentence for these two charges from 21 years to 18 years.

Conclusion on sentence

305 In summary, the Accused was sentenced as follows:

(a) 18 years' imprisonment for the 1st Charge of penile-vaginal penetration;

(b) 18 months' imprisonment for the 3rd Charge of sucking the Complainant's breast and touching her vagina;

(c) 18 years' imprisonment for the 4th Charge of penile-oral penetration; and

(d) 18 months' imprisonment for the 5th Charge of licking the Complainant's vagina.

306 I ordered that the sentences on the 1st and 5th Charges were to run consecutively, with the sentences on the 3rd and 4th Charges being concurrent. The global sentence of imprisonment imposed on the Accused was 19 years and 6 months.

307 The Accused filed an appeal against both conviction and sentence on 5 February 2025. He is currently on $80,000 bail pending the hearing of his appeal.

Mavis Chionh Sze Chyi
Judge of the High Court

Chew Shi Jun James, Tin Shu Min, and Yap Jia Jun (Attorney-General's Chambers) for the Prosecution;
Accused in person.
