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

**[2025] SGHC 116**

Magistrate's Appeal No 9214 of 2024/01

Between

Toh Lam Seng

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9214 of 2024/02

Between

Public Prosecutor

… *Appellant*

And

Toh Lam Seng

… *Respondent*

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# JUDGMENT

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[Criminal Law — Offences — Outrage of modesty]
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**See Kee Oon JAD:**

## Introduction

1 The appellant was convicted after trial in a District Court of a single charge under s 354(2) of the Penal Code (Cap 224, 2008 Rev Ed) for using criminal force on a 13-year-old female victim with the intention to outrage her modesty (the "OM Offence"). The grounds of decision on conviction by the learned District Judge (the "DJ") are set out in *Public Prosecutor v Toh Lam Seng* [2023] SGDC 294 (the "Conviction GD").

2 Upon the appellant's conviction for the OM Offence, the appellant pleaded guilty to one charge each of voluntarily causing hurt (DAC-917902-2023) punishable under section 323 of the Penal Code 1871 (2020 Rev Ed) (the "VCH Offence") and storing duty unpaid cigarettes (DAC-909191-2023), an offence under s 128I(1)(*a*)(*ii*) of the Customs Act 1960 (2020 Rev Ed) and

punishable under s 128L(4) of the same Act (the "Customs Offence"). The appellant also consented to a charge under s 128(1)(*a*)(*ii*) of the Customs Act 1960 (DAC-909192-2023), for the offence of storing duty unpaid cigarettes on which the Goods and Services tax was unpaid being taken into consideration.

3 The DJ imposed a sentence of five years' corrective training ("CT") and set out her reasons for sentence in *Public Prosecutor v Toh Lam Seng* [2024] SGDC 285 (the "Sentencing Judgment").

4 The appellant appealed against both his conviction for the OM Offence and the sentence imposed. The Prosecution cross-appealed against the sentence. Having considered the parties' submissions, I dismiss the appellant's appeal and allow the Prosecution's cross-appeal. I sentence the appellant to seven years' preventive detention ("PD") in place of five years' CT. In this Judgment, I set out the full reasons for my decision.

## The proceedings below

5 The detailed evidence led at trial may be found in the Conviction GD. For present purposes, I will only provide a brief account of the proceedings below.

### *The Prosecution's case*

6 The charge in question (the "OM Charge") states:

> You… are charged that you, on 22 June 2020, at or about 4:00pm, at X location, Singapore, did use criminal force on PW9 (female, then 13 years old), with the intention to outrage her modesty, *to wit*, by placing your hand on her left shoulder and moving it down to touch her left upper arm, left breast, hip area and inner thigh area, and you have thereby committed an offence punishable under s 354(2) of the Penal Code (Cap 224, 2008 Rev Ed).

7 The Prosecution's case was that the offence took place at a pet shop where the appellant worked (the "Pet Shop") on 22 June 2020. Earlier that year, the victim had purchased a pet hamster from the Pet Shop. The victim had gone there that day intending to purchase some powder to treat her pet hamster's skin condition. While the victim was in the Pet Shop, the appellant asked the victim whether she would like to see his new hamster. The victim agreed and sat on a white stool in the corner of the Pet Shop. The appellant returned with a baby hamster, which he passed to the victim.

8 According to the victim, the appellant was seated in front of her on a grey stool. The victim told the court that while she was holding the baby hamster in her hand and wondering why it was not fidgeting; the appellant placed his hand on her knee for a few seconds before moving on to touch her shoulder. The appellant rubbed the victim's left shoulder for a few seconds before moving to the top of her left arm. He next moved his hand to the top of her chest and brushed against her breasts. Thereafter, the appellant moved his hand to touch the side of the victim's body. Finally, he proceeded to touch her left thigh and left inner thigh.

9 Subsequently, the victim left the Pet Shop and contacted her friends, PW1 ("Ms NH") and PW5 ("Ms D"), and told them that the appellant touched her shoulder, chest, side of her body, thigh, and inner thigh. The victim later made her way to her school and spoke to PW7 ("Mdm G"), who was a schoolteacher. The victim told Mdm G about the OM Offence. Pursuant to Mdm G's instructions, the victim wrote down an account of what had happened to her on a piece of paper ("Exhibit P5"). In Exhibit P5, the victim claimed that the appellant touched her around her shoulders, chest, stomach, hips, thigh, inner thigh, and a little bit of the outside of her private part. A police officer, ASP1 Peggy Tan Bao Jun ("ASP1 Peggy Tan"), interviewed the victim later

that evening at her residence. She told ASP1 Peggy Tan that the appellant had touched her shoulder, her chest, her stomach (on her sides), her thigh and inner thigh.

10 A week before the commencement of the trial, the victim informed the police that the appellant had also fingered her. The victim testified at trial that immediately following the acts which formed the subject of the OM Charge, the appellant slipped his hands into her shorts, went under her underwear, and he started to rub her clitoris for a few seconds (the "Rubbing Allegation"). Thereafter, the appellant inserted one or two of his fingers into her vagina and moved them upwards and downwards (the "Digital Penetration Allegation").

11 Notwithstanding the Digital Penetration Allegation, the Prosecution informed the court below of its position to maintain and proceed on the OM Charge as originally particularised. The Prosecution also reiterated that it was not inviting the court to make a finding in respect of the Digital Penetration Allegation.

12 On 15 November 2021, Dr Woo Siew Choo Bernadine ("Dr Woo"), who was a child and adolescent psychiatrist with the Child Guidance Clinic at the Institute of Mental Health ("IMH"), interviewed the victim and her mother. Dr Woo opined that the victim displayed feelings of sadness, fear, and anger, and that the victim had symptoms of post-traumatic stress disorder ("PTSD"). On the point of the victim's delayed disclosure of the Digital Penetration Allegation, Dr Woo opined that in some cases, victims do not reveal all the details at once and might reveal parts at a later stage due to fear and embarrassment.

***The appellant's case***

13 In essence, the appellant's defence was a bare denial. He categorically denied having molested the victim on any part of her body and specifically denied inserting his finger into her vagina.

14 The appellant admitted that he allowed the victim to play with his hamster. He had told her to sit on the floor to avoid hurting the hamster in case she dropped it. However, the appellant claimed that after he passed the hamster to the victim, a female Malay customer came into the Pet Shop, and he walked away to attend to that customer. The appellant also testified that he walked in and out of the shop to speak to a repairman ("Mr K") who was repairing the claw machine outside the Pet Shop. As the victim had shouted when a bird in the shop flew near her, the appellant moved to sweep the bird away but did not touch the victim in doing so.

**The DJ's decision on conviction**

15 At the conclusion of the trial, the DJ convicted the appellant. I summarise her main reasons as follows. First, the DJ found that the victim's evidence was unusually convincing:

(a) The victim had provided a cogent account of the circumstances surrounding the OM Offence and her evidence was internally consistent.

(b) The victim's evidence was supported by the evidence of the other witnesses, and the contemporaneity with which the victim had informed Ms NH, Ms D, her senior schoolmate PW2 ("Mr MH"), and Mdm G of the OM Offence immediately after leaving the Pet Shop bolstered the extrinsic consistency of the victim's evidence.

(c) The victim's behaviour following the OM Offence was consistent with that of someone who had encountered a negative and traumatic experience, which was also supported by Dr Woo's evidence.

16 Second, the DJ rejected the appellant's submission that there was substantial risk that the evidence of the prosecution witnesses was contaminated. The DJ found that the risk of contamination of their evidence was low because both Ms NH and Ms D had testified that they did not share any information relating to the investigations and the trial with the victim. In any event, the DJ found that the testimonies of Ms NH, Ms D, and PW12 ("Ms E") were unaffected by what the victim had told them.

17 Third, the DJ rejected the appellant's submission that no weight should be accorded to Dr Woo's diagnosis of PTSD. The DJ found that Dr Woo was well positioned to render her expert opinion when she examined the victim, and that Dr Woo's evidence was neutral and objective.

18 Fourth, the DJ held that the court must make a finding of fact on whether the digital penetration of the victim did take place, since the Digital Penetration Allegation was a material aspect of the victim's evidence. It was therefore relevant to the credibility of the victim and to sentencing. The DJ found that the victim's omission to reveal the Digital Penetration Allegation to the authorities and to Mdm G at the outset, as well as the lack of timely disclosure to her family members and friends, blunted the reliability of her testimony on this aspect. Thus, the DJ found that the victim's testimony regarding the Digital Penetration Allegation was unreliable and accorded it no weight. However, the DJ found that the Digital Penetration Allegation did *not* undermine the victim's overall credibility for the following reasons:

(a) The mere delay in reporting does not necessarily harm a complainant's credibility.

(b) The victim was candid in admitting that she did not inform the police of the Digital Penetration Allegation and explained that she was embarrassed and disgusted to speak about it out loud. In this regard, Ms D's evidence lent support to the victim's state of mind of being embarrassed and fearful.

(c) Dr Woo opined that the victim's embarrassment and disgust in revealing the digital penetration to her mother, Mdm G, and the police, was due to some degree of denial.

19 Lastly, the DJ found that the appellant's testimony was marked by deception and prevarication. The appellant gave materially inconsistent accounts in his testimony and in his statement to the police, which rendered his evidence unreliable. Moreover, Mr K's evidence materially contradicted the appellant's version and was corroborative of his guilt.

20 In the premises, the DJ found that the Prosecution had proved the OM Charge beyond a reasonable doubt.

## The parties' cases in the appeal against conviction

### *The appellant's case*

21 The appellant makes the following main submissions in his appeal against conviction:

(a) First, the victim's evidence was inconsistent and uncorroborated, and her evidence was not unusually convincing.[1]

(b) Second, the DJ erred in failing to recognise that the overall credibility of the victim had been seriously undermined by her Digital Penetration Allegation and Rubbing Allegation.[2]

(c) Third, the victim's failure to abstain from discussing the incident with other witnesses before and during the trial adversely affected her credibility.[3]

(d) Fourth, the DJ erred in relying on Dr Woo's evidence.[4]

(e) Fifth, the appellant had put forth a consistent defence,[5] and the DJ erred in finding that Mr K's evidence corroborated the appellant's guilt.[6]

(f) Lastly, the victim's account of how the OM Offence was allegedly committed was implausible because anyone could have walked into the Pet Shop at the material time.[7]

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1 Appellant's Written Submissions dated 22 April 2025 ("AWS") at [23]–[44]; [104].

2 AWS at [14]–[19]; [37]–[51].

3 AWS at [125]–[126].

4 AWS at [127]–[128].

5 AWS at [161].

6 AWS at [169].

7 AWS at [190].

***The Prosecution's case***

22 The Prosecution submits that the DJ's decision to convict the appellant cannot be said to be against the weight of evidence, and the appellant's conviction should be upheld.[8] I summarise the Prosecution's main submissions as follows:

(a) First, the victim's Digital Penetration Allegation did not undermine her overall credibility.[9]

(b) Second, the victim's evidence was internally and externally consistent. In any case, the inconsistencies raised by the appellant are immaterial and were already considered by the DJ.[10]

(c) Third, the victim's out-of-court discussions with her friends did not influence their testimony.[11]

(d) Fourth, the DJ treated Dr Woo's evidence correctly. Specifically, the purpose for which the police engaged Dr Woo did not preclude her from making an expert diagnosis,[12] and Dr Woo's opinion was unchallenged by any expert witness from the appellant.[13]

(e) Fifth, the victim's account of the OM Offence was not implausible just because someone else could have walked into the Pet

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8 Respondent's Written Submissions dated 22 April 2025 ("RWS") at [33].

9 RWS at [34].

10 RWS at [64]–[70].

11 RWS at [56].

12 RWS at [79].

13 RWS at [83].

Shop at the material time, since the door to the Pet Shop was always closed.[14]

(f) Lastly, the appellant lacked credibility in view of his inconsistent evidence and lies.[15]

**My decision on the appeal against conviction**

23 The primary issue that arises for my determination on appeal is whether the DJ justifiably concluded that the victim's evidence was credible and unusually convincing.

***Whether the victim's evidence was unusually convincing***

24 The appellant submits that the victim's evidence is not unusually convincing essentially because her evidence was inconsistent and there is no objective evidence to corroborate her allegations.

25 I see no merit in these submissions. I explain my reasons in turn below.

*The inconsistencies in the victim's evidence are immaterial*

26 The appellant highlights the following main inconsistencies:

(a) The victim initially claimed that she did not inform anyone of the Digital Penetration Allegation prior to 31 May 2022. However, she later claimed that she had informed her classmates, her aunt, and also her mother.[16]

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14 RWS at [86]–[88].

15 RWS at [89]–[109].

16 AWS at [35]–[36].

(b) The victim's belated allegations were not corroborated by those she claimed were among the first to know of her alleged full account.[17]

(c) The victim was inconsistent as to when she informed her peers about the Digital Penetration Allegation and Rubbing Allegation.[18]

(d) The victim told the police on the day of the OM Offence that the appellant molested her while he was explaining to her how to apply the powder on her own hamster. However, the victim later testified that the appellant molested her while she was playing with one of his hamsters.[19]

(e) The victim was inconsistent as to whether she and the appellant were standing or sitting when he molested her.[20]

(f) The victim was inconsistent in alleging that she was touched on the knee, stomach, and elbow.[21]

(g) By returning to the Pet Shop after the OM Offence to buy a replacement hamster and lying to her mother about it, the victim's conduct was inconsistent with her allegations and her evidence was incredible.[22]

27 In my judgment, the inconsistencies highlighted above are immaterial and may be reasonably attributable to innocent mistakes or lapses of memory.

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17 AWS at [38]–[44].

18 AWS at [46]–[51].

19 AWS at [52]–[54].

20 AWS at [59].

21 AWS at [74]–[75].

22 AWS at [95].

As the High Court emphasised in *Tay Wee Kiat v Public Prosecutor and another appeal* [2018] 4 SLR 1315 (at [21]), human observation and recollection can be fallible, and inconsistencies are inevitable – the critical issue is whether the totality of the evidence suggests that the witness' evidence in respect of the material elements of the charges is untrue or unreliable. In the present case, the victim's evidence – at its core – is that the appellant touched her shoulder, breasts, and thigh (which is the subject of the OM Charge). These aspects of the victim's evidence were consistent from the day of the offence and corroborated by what she told multiple witnesses (namely, Ms NH, Ms D, Mr MH and Mdm G) on that same day. The same account was largely given to ASP1 Peggy Tan as well. I thus consider the internal inconsistencies such as whether the victim was standing or sitting when the appellant molested her and the exact dates or sequence as to when the victim spoke to the other witnesses to be immaterial.

28 Further, some of the external inconsistencies highlighted by the appellant (*eg*, the external inconsistencies highlighted above at [26(b)] and [26(c)] regarding whether and when exactly the victim told her friends – Ms NH, Ms D, and PW13 ("Ms B") – about the Digital Penetration Allegation),[23] rest on the different and possibly fallible recollections of these witnesses. It is untenable for the appellant to submit that these external inconsistencies demonstrate by themselves that the victim had lied.

29 Regarding the inconsistency at [26(g)] above, the victim explained that she did in fact try to buy a hamster from other pet shops but could not do so

[23] AWS at [35]–[44].

because she was not old enough,[24] and had lied to her mother to avoid conflict and anger between her mother and herself.[25] The victim also testified that because she had doubts about entering the Pet Shop, she video-called her friend, Ms B, in case "anything did happen".[26]

30 I note that the appellant disputes that the victim video-called Ms B for "safety" when she returned to the Pet Shop. In this connection, the appellant points to Ms B's surprise when Ms B was told that the victim had purchased the replacement hamster from the same Pet Shop.[27] However, this inconsistency could reasonably be explained by an innocent mistake in Ms B's recollection. As the Court of Appeal emphasised in *Sandz Solutions (Singapore) Pte Ltd and others v Strategic Worldwide Assets Ltd and others* [2014] 3 SLR 562, generally, a witness' ability to recollect the material events and the accuracy of his recollections are inversely proportional to the length of time that has elapsed (at [50]). Bearing this observation in mind, it is entirely and reasonably possible that Ms B recalled wrongly or misheard that the pet shop that the victim visited was a different pet shop. The mere fact that Ms B was surprised that the victim went back to the same Pet Shop to buy a replacement hamster is insufficient to establish that the victim had lied about video-calling Ms B while she was at the Pet Shop.

31 In my judgment, the victim had given a reasonable explanation as to why she went back to the Pet Shop and lied to her mother about it. She only felt

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24 Notes of Evidence ("NEs") (3 June 2022), p 102 at lines 2–20 (Record of Appeal ("ROA") at p 413); NEs (3 June 2022), p 86 at line 15 to p 87 at line 4 (ROA at p 397–398).

25 NEs (3 June 2022), p 102 at lines 8–10 (ROA at p 413).

26 NEs (3 June 2022), p 87 at lines 15–26 (ROA at p 398).

27 AWS at [98]–[100].

compelled to return, albeit fearfully, because she could not purchase a replacement hamster from other pet shops.[28]

*Corroborative evidence was not required for the victim's evidence to be considered unusually convincing*

32 In addition, the appellant submits that because there is no objective evidence to corroborate the victim's evidence, the unusually convincing "standard" is not met.[29] I do not accept this submission.

33 The unusually convincing "standard" is not a separate "standard" of proof 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. Its aim is to ensure that the trial judge has an awareness of the dangers of convicting the accused person on uncorroborated evidence, and that he or she (as well as an appellate court) undertakes a rigorous and holistic assessment of the evidence (*Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 ("*GCK*") at [91]–[92]).

34 In this connection, it is trite that a complainant's testimony *alone* can constitute proof beyond reasonable doubt if it is so "unusually convincing" as to overcome any doubts that might arise from the lack of corroboration. Where the evidence of a complainant is not "unusually convincing", an accused's conviction is unsafe unless there is some corroboration of the complainant's story (*Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 at [57]). In other words, it is *only if* the evidence of the complainant is *not* unusually convincing that corroborative evidence would be needed. In the present case, the DJ found

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28 NEs (3 June 2022), p 86 at line 15 to p 87 at line 4 (ROA at p 397–398).

29 AWS at [23]–[24].

that the victim's evidence was unusually convincing. Therefore, if this finding was justified, no corroborative evidence was required to prove the OM Charge beyond a reasonable doubt.

35 In any event, the DJ did take into consideration other evidence in the form of the observations of several witnesses, including Ms NH, Ms D, Mdm G and ASP1 Peggy Tan, who all gave evidence as to what the victim had told them about the molest, and also that they *independently* observed that the victim was "crying",[30] "shocked",[31] "worried and unhappy",[32] and "uneasy"[33] immediately following the OM Offence. The observations of these witnesses and their accounts of what the victim had contemporaneously told them constitute corroborative evidence pursuant to s 159 of the Evidence Act 1893 (2020 Rev Ed) ("EA"). However, these aspects of their evidence did not amount to independent corroboration given that none of them had directly observed the commission of the OM Offence. The corroborative value of their evidence was thus attenuated (*Kwan Peng Hong v Public Prosecutor* [2000] 2 SLR(R) 824 at [39]; *Haji Muhammad Faisal Bin Johar v Public Prosecutor* [2025] SGHC 102 ("*Haji Muhammad Faisal*") at [16]). Accordingly, the DJ correctly determined that the "unusually convincing" standard continued to apply in this case.

***Whether the victim's belated allegations undermined her overall credibility***

36 I next consider the effect of the belated Digital Penetration Allegation and Rubbing Allegation on the victim's overall credibility.

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30 Conviction GD at [48].

31 Conviction GD at [48] and [69].

32 Conviction GD at [84].

33 Conviction GD at [121].

37 As a preliminary observation, I agree with the DJ that the Digital Penetration Allegation is a material part of the Prosecution's case. It cannot simply be severed or sequestered from the rest of its case. In fact, the Prosecution had itself put this allegation to the appellant as part of its case during trial.[34] The Prosecution could not, therefore, ask the court to disregard or avoid making any findings in respect of this allegation. Indeed, as the DJ noted, if this allegation was found to be credible, it could have been validly considered in sentencing to justify a higher sentence even if the OM Charge was not amended to include the specific particulars of the Digital Penetration Allegation. Conversely, if this allegation was rejected, then the appellant could contend that it affects the victim's overall credibility (as the appellant now submits). Hence, I consider that the DJ was correct in determining that a finding in respect of the Digital Penetration Allegation had to be made.

38 The DJ found that the victim's evidence regarding the Digital Penetration Allegation was unreliable primarily due to the lack of contemporaneity and the victim's "deliberate and selective omission", which led to the delay in reporting this allegation.[35] The DJ further found that the victim's evidence regarding this allegation was externally inconsistent for the following reasons:[36]

(a) First, according to the victim, she had revealed this allegation to Ms NH and Ms D. However, Ms NH testified that she was never informed by the victim regarding the allegation. Meanwhile, Ms D testified that she was only informed of the allegation about a month

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34 NEs (20 February 2023), p 68 at lines 22–30 (ROA at p 1005).

35 Conviction GD at [289] and [295]–[299].

36 Conviction GD at [287].

before the hearing, which was inconsistent with the victim's evidence that she told Ms D on the night of the incident.

(b) Second, the victim informed her other classmates of this allegation, namely, Ms E and Ms B, in June 2022 and June 2021 respectively, both of whom testified to the same.

Juxtaposing Ms E and Ms B's evidence against Ms NH and Ms D's evidence, the DJ found that there was a "material" external inconsistency in the victim's evidence which rendered her evidence not unusually convincing.[37]

39 With respect, the DJ's analysis in this connection is not entirely satisfactory. As the DJ did not elaborate on her reasoning beyond pointing out the inconsistencies in the accounts, it is unclear how she concluded that the inconsistency was a "material" external inconsistency. This difficulty is compounded by the fact that the DJ appears to have gone on to find that the victim provided "reasonable justifications" for the delay in reporting the Digital Penetration Allegation.[38] This appears to undercut the DJ's earlier finding that this delay had adversely affected the reliability of the victim's evidence.

40 That being said, regardless of whether there were "reasonable justifications" for the delay which the DJ was prepared to accept, I proceed on the premise that the DJ was entitled to find that the external inconsistency in the victim's evidence and the victim's delay in reporting the Digital Penetration Allegation rendered her evidence in respect of that specific allegation unreliable. For present purposes, it is unnecessary for me to comment further on

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37 Conviction GD at [290].

38 Conviction GD at [314].

whether the DJ was correct or justified in finding that the victim's evidence in respect of the Digital Penetration Allegation was not unusually convincing.

41 On this basis, I turn to the enquiry as to whether the victim's unreliable evidence regarding the Digital Penetration Allegation adversely affected her overall credibility. In this regard, the appellant relies on *Public Prosecutor v Wee Teong Boo and another appeal and another matter* [2020] 2 SLR 533 ("*Wee Teong Boo*") to submit that this "seriously undermined" the victim's overall credibility.[39]

42 In *Wee Teong Boo*, the victim had claimed that she was raped by the accused who had penetrated her vagina with his penis. However, the trial judge concluded that there were reasonable doubts over whether penile-vaginal penetration had occurred. On appeal, the Court of Appeal held that once the trial judge found that the victim's claim of penile-vaginal penetration was not credible, he must reappraise the entirety of the victim's credibility in that light (at [63]). In the present case, even though the Digital Penetration Allegation was not particularised in the OM Charge, the act of digital penetration was alleged to have been committed in a single transaction with the other acts specified in the OM Charge. Therefore, I agree with the appellant that the same principle set out in *Wee Teong Boo* applies in the present case, *ie*, the victim's overall credibility must be reassessed in light of her unreliable evidence regarding the Digital Penetration Allegation.

43 That said, I disagree with the appellant's submission that the DJ did not "reassess the entirety of [the victim's] credibility in light of a material aspect of

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[39] AWS at [14].

her testimony being disbelieved".[40] It is clear that the DJ did, in fact, reassess the victim's credibility and conclude that her overall credibility was not undermined by her delayed reporting of the Digital Penetration Allegation.[41]

44 Fundamentally, I do not agree that the victim's unreliable evidence regarding the Digital Penetration Allegation had, by analogy with the finding of the Court of Appeal in *Wee Teong Boo*, "seriously undermined" her overall credibility. To my mind, two considerations are apposite.

45 First, in *Wee Teong Boo*, the victim had maintained that the accused had penetrated her with his penis, to the extent of saying that she had seen the accused's penis in her vagina. This was described as a "central aspect of her account" (at [63]), and its rejection by the trial judge had thus cast serious doubts on her credibility (at [62]). In the present case, the issue of whether the victim was digitally penetrated, while no doubt a material allegation which was relevant to her overall credibility, was less central to her evidence, having regard also to the particulars of the OM Charge as framed. Importantly, *unlike* the circumstances in *Wee Teong Boo*, the Digital Penetration Allegation had no bearing on whether the OM Offence could have been committed as alleged.

46 Second, the appellant also presents a false dichotomy – the DJ did not find that the victim's evidence about the Digital Penetration Allegation to be unusually convincing, but this does not mean that the victim must have *lied* or was somehow *dishonest* about the alleged OM Offence.[42] The DJ emphasised

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40 AWS at [14].

41 Conviction GD at [313]–[314].

42 AWS at [14].

that there was "no malice in the victim's delayed reporting",[43] the victim was "candid",[44] and did not embellish her evidence in court.[45] Having regard to s 3 of the EA which states that a fact may be "proved", "disproved", or "not proved",[46] I consider that the DJ did not find the Digital Penetration Allegation to have been "disproved". Given the context and overall tenor of her reasoning in the Conviction GD, this allegation was simply "not proved".

47 As the Court of Appeal emphasised, if a judge finds that a particular offence was not proven beyond a reasonable doubt, it does not mean that the judge must have found the witness to lack credibility (*ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 ("*ADF*") at [23]). There is no rule of law that the testimony of a witness must either be believed in its entirety or not at all (*Haji Muhammad Faisal* at [54] citing *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 at [72]). For example, in *Farida Begam d/o Mohd Artham v Public Prosecutor* [2001] 3 SLR(R) 592 ("*Farida*"), the appellant was acquitted of some charges and convicted on only one. The trial judge stated that the appellant's acquittal on three other charges was not due to the complainant's unreliability, but because of the lack of specific details in her evidence (*ADF* at [23] citing *Farida* at [11]).

48 Similarly, in the present case, the fact that the DJ found that the victim's evidence regarding the Digital Penetration Allegation was unreliable did not ineluctably mean that her overall credibility was undermined. Rather, the DJ was still entitled to find that the victim's overall credibility was not undermined

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43 Conviction GD at [299].

44 Conviction GD at [302].

45 Conviction GD at [314].

46 RWS at [36].

because the victim had provided reasonable explanations as to why she had not disclosed the Digital Penetration Allegation earlier.

49 It bears reiterating that a victim of sexual assault may not report the offence in a timely manner as there are "empirically supported psychological reasons for delayed reporting, including feelings of shame and fear" (*Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2019] 2 SLR 490 ("*Ariffan [2019]*") at [65]). The Court of Appeal also noted that the explanations proffered by the complainant for the delay in reporting the offences to the police are to be considered by the court in determining the impact of the delay (if any) on the credibility of the complainant (*Ariffan [2019]* at [67] citing *DT v PP* [2001] 2 SLR(R) 583 at [62]). Applying these principles to the present case, I agree with the DJ that there was no malice in the victim's delayed reporting of the Digital Penetration Allegation. The victim explained the delay in the following terms:[47]

> … I was really embarrassed and felt disgusted on what had happened to me and I do not want to embarrassed myself further by telling this to others. This was one of the reason I did not tell this or share this to anyone. I don't even want to think about what had happened to me. However, as the matter is in court, I think I should tell the whole truth to the police and the court. As such, I decided to open up to my mother and eventually to the police and the prosecutor.

Given the victim's young age and relative immaturity, it is reasonable to accept that her visceral feelings of embarrassment and disgust led to her blocking out her recollection of the incident and not speaking further of it. In her own words, she did not "even want to think about what had happened" to her. This credibly explains her delay in reporting the Digital Penetration Allegation. The DJ was

47 Conviction GD at [304].

therefore entitled to find that the victim's overall credibility was not undermined.

50 In relation to the victim's Rubbing Allegation, I note that this aspect of her evidence only emerged during her oral testimony at trial.[48] It also appears that the effect of the victim's belated disclosure of the Rubbing Allegation on her overall credibility (if any) was not considered in detail by the DJ. However, I am of the view that the victim's delay in raising the Rubbing Allegation did not undermine her overall credibility.

51 When asked why she did not previously disclose the Rubbing Allegation, the victim explained that "I didn't think I would need to … say that part because I've said that [the appellant] fingered me. So, I presumed that when I said fingered, I didn't need to bring up the part about [the appellant] rubbing my clitoris".[49] The victim added that she "didn't think [she] need [*sic*] to be that specific about what [she was] saying …"[50] The victim also added that she "didn't wanted [*sic*] to go in that much details [*sic*] about it".[51]

52 I accept that the victim's explanations were fair and reasonable. She explained, among other things, that she felt that there was no need to specifically disclose "that much" of the "details" of the Rubbing Allegation, especially since she had, at that time, already disclosed the Digital Penetration Allegation to the police. These were perfectly valid explanations, and I see no reason why they should be doubted.

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48 Conviction GD at [180].

49 NEs (27 June 2022), p 79 at lines 13–19 (ROA at p 534)

50 NEs (27 June 2022), p 79 at line 24 to p 80 at line 2 (ROA at p 534–535).

51 NEs (27 June 2022), p 65 at lines 26–28 (ROA at p 520).

53 For the reasons above, I conclude that the DJ did not err in finding that the victim's overall credibility was unaffected by her unreliable evidence regarding the Digital Penetration Allegation. I also consider that the victim's overall credibility was unaffected by her belated disclosure of the Rubbing Allegation.

***Whether the victim's out-of-court discussions with the other witnesses undermined her credibility***

54 The appellant submits that the victim "tampered" with several witnesses' testimonies and lied about it, and that this undermined her credibility.[52] I do not accept this submission. I note that the DJ had found the risk of contamination of evidence to be low. In her assessment, the "descriptions" given by the witnesses of how the victim was molested were far from identical, which ruled out any collusion or contamination.[53] I do not consider that there was any sinister motive on the victim's part when she engaged in the out-of-court discussions with the other witnesses.

55 First, I do not agree with the appellant's submission that the victim attempted to "tamper" with Ms D's testimony by asking her not to bring up the Digital Penetration Allegation[54] which purportedly undermined the victim's credibility.[55] While the victim ought not to have communicated with the other witnesses like Ms D, I agree with the DJ that the victim did not *intend* to tamper with their testimonies. The victim's conversation with Ms D happened a month

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52 AWS at [125].

53 Conviction GD at [229] and [235].

54 AWS at [108].

55 AWS at [125].

before the trial,[56] when the victim still felt embarrassed and disgusted about the Digital Penetration Allegation.[57] It is therefore reasonable that the victim asked Ms D not to bring up the incident in court.

56 Second, the appellant submits that the victim lied about having discussed the proceedings and the OM Offence with Ms E, and that her lie affects her credibility.[58] This submission is without merit. The evidence provided by the appellant in this connection is speculative and does not show that the victim had intended to tamper with Ms E's evidence and had lied about it.

57 Third, the appellant submits that the victim was already aware of certain details of Ms NH's evidence in court, which allowed the victim to "hedge" her answers in court about what Ms NH heard from the victim during their call after the OM Offence.[59] Once again, there is no merit in this submission. As the Prosecution correctly highlighted, there is no direct evidence that the victim and Ms NH had discussed Ms NH's evidence before the victim testified in court.[60] Any assertion to that effect is speculative.

58 While the victim ought not to have disregarded court directions not to communicate with the other witnesses, I do not discern any sinister motive on the victim's part. I am therefore satisfied that the victim's overall credibility remains unaffected.

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56 AWS at [106]; NEs (3 June 2022), p 91 at lines 20–28 (ROA at p 402).

57 Conviction GD at [43]; [302]–[308].

58 AWS at [113] and [117].

59 AWS at [124].

60 RWS at [62].

***Whether the DJ erred in her other findings***

59 Among other arguments, the appellant raises three further submissions which I examine in turn below.

60 First, the appellant submits that the DJ erred in relying on Dr Woo's evidence because: (a) Dr Woo was engaged only to determine the victim's fitness to testify; (b) Dr Woo's assessment of PTSD stemmed from a one-hour interview with the victim and was based on the victim's self-reported symptoms; and (c) Dr Woo was not presented with all of the relevant evidence.[61]

61 In my judgment, the DJ's reliance on Dr Woo's evidence does not displace her main findings regarding the OM Offence. In any event, I do not think that the DJ erred in relying on Dr Woo's evidence.

62 First, Dr Woo testified that in addition to determining whether the victim was fit to testify, Dr Woo was also "trying to assess the impact of the alleged incident on [the victim] which is why [she] asked [the victim] about her symptoms".[62] Dr Woo also analysed the victim's reported symptoms and had relied on the Diagnostic and Statistical Manual of Mental Disorders (American Psychiatric Publishing, 5th Ed, 2013) ("DSM-5") to arrive at her diagnosis of PTSD.[63] This is unlike the facts of *Public Prosecutor v Ridhaudin Ridhwan bin Bakri and others* [2020] 4 SLR 790 where the expert psychiatrist did not elaborate on "the specific signs and symptoms suggestive of PTSD observed in the Complainant", which was the reason why the court in that case rejected the expert's evidence (at [26]).

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61 AWS at [128].

62 NEs (25 January 2023), p 23 at lines 19–25 (ROA at p 573).

63 NEs (25 January 2023), p 13 lines 3–29 (ROA at p 563).

63 Furthermore, Dr Woo's one-hour interview with the victim would not necessarily be less accurate or credible than if she had conducted a longer interview. Contrary to the appellant's submission, apart from the victim's account, Dr Woo had in fact relied on other sources of information in arriving at her opinions, including: (a) an interview with the victim's mother; (b) the Polcam footages; and (c) the accounts of other prosecution witnesses.[64]

64 The appellant relies on *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2018] 1 SLR 555 ("*Ariffan")* to submit that if an expert witness is only provided with a "part of the evidence", then the expert's evidence would be inadmissible for being unreliable.[65] In my view, the appellant's reliance on *Ariffan* is misplaced. Unlike the expert psychologist in *Ariffan* who *did not* personally interview the witness and was given only a part of the evidence (which was a reason why the court in *Ariffan* found the psychologist's evidence unreliable at [98]), Dr Woo *did* interview the victim, her mother, and was also given the accounts of other prosecution witnesses.[66] Dr Woo therefore had adequate resources to reliably arrive at her opinion.

65 In any case, the DJ's reliance on Dr Woo's evidence did not prejudice the appellant since his counsel did cross-examine Dr Woo on her evidence, and the appellant elected not to adduce rebuttal expert evidence despite having had the opportunity to do so.[67]

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64 Conviction GD at [256].

65 AWS at [136]–[137].

66 Conviction GD at [257].

67 Conviction GD at [259]–[260].

66 Second, the appellant submits that he was consistent in his defence and that the DJ erred in finding that Mr K's evidence was corroborative of the appellant's guilt.[68] In my judgment, the DJ's reliance on Mr K's evidence does not detract from her main findings that the evidence given by the victim regarding the OM Offence was unusually convincing.

67 In any event, the DJ was entitled to find that the evidence given by the appellant was materially inconsistent[69] and that the evidence of Mr K, an independent witness who had testified for the defence, was corroborative of the appellant's guilt.[70] In this respect, I note that when assessing the totality of the evidence, the court's evaluative task is not just internal to the Prosecution's case but is also comparative in nature. By this stage of the inquiry, regard may be had to the weaknesses in the case mounted by the defence (*Haji Muhammad Faisal* at [69] citing *GCK* at [144]). In the present case, it was a significant part of the appellant's case that at the material time, he walked in and out of the Pet Shop once or twice to speak to Mr K who was purportedly repairing the claw machine outside the Pet Shop, while the victim remained inside the Pet Shop. However, the appellant's evidence was plainly refuted by Mr K, who testified that he was inside the Pet Shop throughout, and the claw machine was usually only repaired and refilled late at night to avoid disturbing anyone.[71] Thus, considering this material inconsistency, the DJ was entitled to find that Mr K's evidence was corroborative of the appellant's guilt.

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68 AWS at [169].

69 Conviction GD at [335]–[360].

70 Conviction GD at [377]–[378].

71 NEs (21 February 2023), p 111 lines 9–32 (ROA at p 1152); p 114 lines 17–25 (ROA at p 1155); AWS at [175].

68 Lastly, the appellant further submits that the manner in which the OM Offence was alleged to have been committed was implausible, for the following reasons: (a) the Pet Shop door was unlocked, and any customer could have walked in; and (b) Mr K was outside the Pet Shop at the material time.[72] I am not persuaded by these submissions.

69 While the Pet Shop door may have been unlocked, the appellant testified that the Pet Shop door would always be closed as the Pet Shop was air-conditioned even though the Pet Shop is open for business.[73] I thus agree with the DJ that it is not implausible that the OM Offence was committed in the Pet Shop since the closed doors to the Pet Shop could have provided "cover" for the appellant to commit the OM Offence, and could also have muted any calls for help by the victim. Further, as mentioned above at [67], Mr K testified that he was not outside the Pet Shop at the material time. The appellant's submissions are therefore unmeritorious.

***Conclusion on the appeal against conviction***

70 In conclusion, the DJ's decision to convict the appellant cannot be said to be plainly wrong or against the weight of the evidence. She had correctly found that the Prosecution had proven the OM Charge beyond a reasonable doubt. I therefore dismiss the appellant's appeal against conviction.

**The DJ's decision on sentence**

71 I turn now to the appellant's appeal and the Prosecution's cross-appeal against sentence. In their submissions below, the appellant sought a global

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72 AWS at [188]–[190].

73 NEs (20 February 2023), p 18 at lines 6–8 (ROA at p 955).

sentence of not more than 21 months' imprisonment, while the Prosecution sought a minimum term of seven years' PD.

72 The DJ applied the sentencing framework that was set out in *Sim Yeow Kee v Public Prosecutor and another appeal* [2016] 5 SLR 936 ("*Sim Yeow Kee*") in considering whether to impose CT or PD. The DJ found that the technical requirements for both CT and PD were met in the present case.

73 The DJ found that the appellant had a long history of offending, and he specifically targeted young and adolescent females. The DJ also found that the appellant had a troubling lack of remorse, with his corrective training and preventive detention suitability report (the "CTPD report") opining that he has a moderate-high risk level of reoffending. However, the DJ found that while there was a limited prospect of rehabilitation, the option for reformation should not be foreclosed, as the appellant was willing to engage in his church activities as a positive source of support and protection that would mitigate his risk of reoffending.[74]

74 The DJ declined to impose seven years' PD also because it would have been unduly disproportionate, having regard to the likely regular imprisonment term of 42 months which she would have imposed for the appellant's underlying offences. She was of the view that the respective indicative imprisonment terms for the OM Offence, the VCH Offence and the Customs Offence would be 31 months, seven months and four months, after taking into account the totality principle in sentencing.[75] Further, the DJ highlighted case law suggesting that PD would be imposed only after a prior term of CT and lengthy imprisonment

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74 Sentencing Judgment at [79].

75 Sentencing Judgment at [66].

terms had failed to deter the offender from reoffending.[76] As such, the DJ imposed a sentence of five years' CT.

## The parties' cases in the appeal and cross-appeal against sentence

### *The appellant's case*

75 The appellant contends that the sentence of five years' CT was manifestly excessive. He submits that the DJ had erred in applying the principle of escalation to justify an uplift in his sentence,[77] because there was a de-escalation in his offending behaviour when compared to his relevant antecedents.[78]

76 The appellant further submits that five years' CT would be an unduly disproportionate sentence,[79] and that the CTPD report cannot justify a CT or PD sentence because the report was significantly premised on the appellant's denial of guilt and failure to accept responsibility for the OM offence, which the appellant says is inconsistent with his right to appeal against conviction.[80]

### *The Prosecution's case*

77 The Prosecution provides three main reasons for its cross-appeal against sentence:

(a) First, the operative sentencing consideration in this case should be the protection of the public, and not the reformation of the appellant,

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76 Sentencing Judgment at [80]–[83].

77 AWS at [243].

78 AWS at [246]–[247].

79 AWS at [257].

80 AWS at [260].

considering his long history of offending and the nature of his current offences.[81]

(b) Second, undue weight was given to the principle of proportionality, which ought to play a more attenuated role where PD is concerned. Seven years' PD would not be unduly disproportionate to the imprisonment term that should otherwise have been imposed on the appellant.[82]

(c) Third, in deciding that PD should not be imposed, the DJ gave undue weight to the fact that the appellant had not served a prior term of CT.[83]

**My decision on the appeal and cross-appeal against sentence**

78 Three main issues arise for my determination in the appeal and cross-appeal against sentence:

(a) First, whether the sentence imposed by the DJ was manifestly excessive.

(b) Second, whether the DJ erred in finding that the appellant has potential for reform thus warranting the imposition of CT.

(c) Third, whether the DJ erred in finding that the imposition of PD on the appellant would be unduly disproportionate.

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81 RWS at [121].

82 RWS at [122].

83 RWS at [123].

79 The applicable law on PD is set out in s 304(2) of the Criminal Procedure Code 2010 (2020 Rev Ed):

> **Where a person 30 years of age or above —**
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> (a) is convicted before the General Division of the High Court or a District Court of an offence punishable with imprisonment for 2 years or more, and has been convicted in Singapore or elsewhere at least 3 times since he or she reached 16 years of age for offences punishable with such a sentence, and was on at least 2 of those occasions sentenced to imprisonment or corrective training; or
>
> (b) is convicted at one trial before the General Division of the High Court or a District Court of 3 or more distinct offences punishable with imprisonment for 2 years or more, and has been convicted and sentenced in Singapore or elsewhere to imprisonment for at least one month since he or she reached 16 years of age for an offence punishable with imprisonment for 2 years or more,
>
> then, if the court is satisfied that it is expedient for the protection of the public that the person should be detained in custody for a substantial period of time, followed by a period of supervision if released before the expiry of his or her sentence, the court, unless it has special reasons for not doing so, must sentence him or her to preventive detention for a period of 7 to 20 years in lieu of any sentence of imprisonment, or any sentence of imprisonment and fine.

80 The sentencing framework for imposing CT as set out in *Sim Yeow Kee* applies to PD as well (*Ow Gan Wee v Public Prosecutor* [2023] SGHC 135 at [4]):

> (a) At the first stage of the inquiry, the court should ascertain whether the offender satisfied the technical requirements for CT/PD to be imposed.
>
> (b) If the technical requirements were fulfilled, the court should proceed to the second stage to consider whether it was expedient with a view to the offender's reformation and the prevention of crime that he be sentenced to CT/PD. CT/PD may be excluded if it would result in a

term of imprisonment that would be unduly disproportionate. To balance the various considerations, at this stage of the inquiry, the court should consider (a) the likely imprisonment term that it would actually impose if it decided not to sentence the offender to CT/PD; (b) whether the Mandatory Aftercare Scheme was available and whether it could benefit the offender; and (c) whether a sentence of CT/PD would be unduly disproportionate as compared to the likely imprisonment term that would otherwise have been imposed.

***The sentence imposed by the DJ was not manifestly excessive***

81 I am unable to agree with the appellant's submissions that the sentence of five years' CT was manifestly excessive. I will address the appellant's submissions in turn below.

82 First, I am not persuaded by the appellant's submission that there was "de-escalation" in his offending behaviour which would militate against the operation of the principle of escalation.[84]

83 The principle of escalation is generally invoked to cumulatively increase sentences for subsequent offending conduct, which reflects the fact that prior sentences and their severity have failed to stop the offender from criminality. To determine whether the principle of escalation ought to apply, a sentencing court will look at the accused's antecedent history and the index offence to ascertain whether a cycle of offending exists. If so, an escalation of sentence may be warranted where the accused's antecedents disclose a cavalier disregard for the law (*Public Prosecutor v Low Ji Qing* [2019] 5 SLR 769 ("*Low Ji Qing*")

[84] AWS at [243]–[246] .

at [58]–[62]; *Public Prosecutor v Muhammad Sufian bin Hussain* [2025] SGHC 45 at [32]–[33]). The High Court has emphasised that an index offence need not be of equivalent severity as the prior offence before a heavier sentence might be imposed by virtue of re-offending. What is essential is for the sentencing court to compare the gravity of the antecedent and the index offence(s), and consider how this should affect the sentence for the index offence (*Low Ji Qing* at [75]).

84 In my view, the DJ correctly considered the principle of escalation in this case, given the appellant's pattern of reoffending by committing violent offences and sexual offences. What is particularly troubling is that the appellant blatantly persisted in targeting underaged female victims whom he had met from his Pet Shop, subjecting them to sexual assault in a disturbingly consistent manner. Equally pertinent is the appellant's marked propensity to resort to violence without restraint, as evinced from his violence-related antecedents that spanned over 30 years starting from 1992.[85] Accordingly, even though the OM Offence and VCH Offence are of lesser gravity than the appellant's previous related or similar antecedents, they do not in my view represent any real "de-escalation" in his offending behaviour. Rather, his continued proclivity to commit similar offences demonstrates that he remains undeterred by previous sentences of imprisonment and caning and continues to have a cavalier disregard for the law.

85 Second, I am unconvinced by the appellant's argument that the CTPD report cannot be relied upon because it was "significantly premised" on the appellant's denial of guilt for the OM Offence.[86] This submission glosses over the fact that the relevant portion of the CTPD report also took into account the

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85 Sentencing Judgment at [49].

86 AWS at [260]–[261].

appellant's complete denial of his previous conviction on 1 February 2007 for committing rape of a 14-year-old victim (the "Rape Offence"). While I accept that the appellant's right to appeal his conviction for the OM Offence does not in itself suggest that he lacks remorse, the appellant has failed to address how he had "*completely denied*" his previous conviction for the Rape Offence.[87] I elaborate on this point further below at [91]–[94].

86 In the premises, I am of the view that the DJ's decision to impose five years' CT on the appellant was not an unduly disproportionate or manifestly excessive sentence.

***The appellant does not have the potential for reform***

87 I agree with the Prosecution's submission that the DJ erred in finding that the appellant could be reformed by the imposition of five years' CT.[88] The appellant's long history of offending and the nature of his antecedents clearly suggest that reformation is not a realistic prospect.

88 I reproduce the DJ's tabulation of the appellant's relevant antecedents below:[89]

| **Date of conviction** | **Charges** | **Sentence** |
|---|---|---|
| 9 April 1987 | Theft in dwelling under s 380 of the Penal Code | One year probation |

[87] CTPD report at p 8 (ROA at p 2303).

[88] RWS at [125].

[89] Sentencing Judgment at [8].

| | | |
|---|---|---|
| 4 May 1989 | Robbery with common intention under s 392 read with s 34 of the Penal Code | Reformative training |
| 30 November 1989 | Theft under s 379 of the Penal Code – (two charges) | Reformative training |
| 12 June 1992 | Rioting under s 147 of the Penal Code | Six months' imprisonment |
| 3 July 1992 | Drug possession under s 8(*a*) of the Misuse of Drugs Act (three charges) | Fine of $2000 each (paid in full) |
| 24 May 1993 | i) Voluntarily causing hurt by dangerous weapons or means under s 324 of the Penal Code; ii) Voluntarily causing hurt by dangerous weapons or means | Nine months' imprisonment and six months' imprisonment |
| 21 September 1993 | i) Robbery under s 392 of the Penal Code<br><br>ii) Snatch theft under s 356 of the Penal Code (with one other charge taken into consideration)<br><br>iii) Voluntarily causing hurt under s 323 of the Penal Code (with one other charge taken into consideration) | 42 months' imprisonment and 12 strokes of the cane; 18 months' imprisonment; and two months' imprisonment |

| | | |
|---|---|---|
| 26 May 1997 | Detention order under s 30(*a*) of the Criminal Law (Temporary Provisions) Act | |
| 4 February 2003 | Voluntarily causing hurt under s 323 of the Penal Code | 12 month's imprisonment |
| 3 September 2004 | Affray under s 160 of the Penal Code | One year imprisonment |
| 1 February 2007 | Rape under s 376(1) of the Penal Code (*ie*. the Rape Offence) | 16 years' imprisonment and 10 strokes of the cane |
| 1 April 2008 | Carnal connection with a female below 16 years of age under s 140(1)(*i*) of the Women's Charter – (two charges proceeded with and another two charges taken into consideration.) (the "Carnal Connection Offences") | Two years and six months' imprisonment on each proceeded charge |

89 First, the appellant's long history of offending suggests that he has failed to reform or be deterred despite the various sentences imposed on him. Pertinently, the appellant committed the present OM Offence less than two years after his release from his lengthy imprisonment sentence for the Rape

Offence and Carnal Connection Offences.[90] The appellant also committed the VCH Offence after his trial for the OM Offence began and while he was on court bail. The appellant further reoffended by committing the Customs Offence while he was still on court bail and awaiting the verdict of his trial for the OM Offence.[91]

90 Second, the nature of the appellant's antecedents also suggests that he cannot be reformed. I highlight his two most recent antecedents, namely the Rape Offence and the Carnal Connection Offences:

(a) For the Rape Offence, the victim was a 14-year-old girl whom the appellant had befriended while he was working at the Pet Shop. The appellant made advances towards the victim but was rejected. He subsequently forced himself upon her and raped her on a hillock. The appellant used violence on the victim. A few days after the rape incident, the appellant brought the victim to a basement carpark where he applied force on her by pushing her against the wall and attempted to sexually assault her again. The appellant was convicted after trial of rape and sentenced to 16 years' imprisonment and 10 strokes of the cane.[92]

(b) For the Carnal Connection Offences, the appellant committed these against a 15-year-old girl on four occasions in December 2005 and about three months prior to the rape offence on 18 March 2006. The victim knew the appellant through her peers who met him at his Pet Shop. The victim trusted and confided in the appellant. Subsequently, the appellant took the victim to a park and engaged in sexual intercourse

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90 Sentencing Judgment at [78].

91 RWS at [132].

92 Sentencing Judgment at [34].

> with the victim. After the act of sexual intercourse, the appellant gave the victim a puppy from his Pet Shop. The second incident took place shortly after this, where the appellant drove the victim to a field to play with the puppy and had sexual intercourse with her inside the van.[93] The appellant was sentenced to two years and six months' imprisonment for each charge.[94]

As the DJ rightly noted, the Rape Offence, Carnal Connection Offences, and the present OM Offence bear disturbingly striking similarities. In each case, the appellant committed sexual violence against underaged female victims whom he had befriended from his Pet Shop.

91 The CTPD report strongly suggests that the appellant lacks remorse and accountability for his offences. This is an important factor in assessing whether the appellant is capable of reformation. In the CTPD report, Senior Principal Psychologist Mr Melvinder Singh ("SPP Singh") provided the following opinions about the appellant:[95]

> (a) he "completely denied committing his previous rape charge and his current [OM Offence]. In both cases, he blamed the victim for wrongly accusing him … and felt that he had been wrongly sentenced";
>
> (b) has a "tendency to deny and minimise his offences"; and
>
> (c) has "attitudes that were supportive of crime".

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93 Sentencing Judgment at [35].

94 RWS at [128(b)].

95 CTPD report at p 7–8 (ROA at p 2302–2303).

92 SPP Singh opined that the appellant's "denial and minimisation of his offences indicate entrenched pro-criminal attitudes where he is likely to engage in criminal activity when faced with significant obstacles in his life", and categorised the appellant with the following risk levels:[96]

(a) a moderate-high general risk of criminal reoffending;

(b) a high risk of reoffending with sexual offences; and

(c) a high risk of reoffending with violence offences.

93 While SPP Singh did opine that the appellant's previous employment at a church upon his last release from incarceration indicated some level of motivation to engage in a prosocial lifestyle, SPP Singh additionally opined that the appellant's employment at the church is currently *not sufficient* to serve as a protective factor, but can be developed further to mitigate the appellant's risk of reoffending.[97] In this connection, however, the appellant did not show how he might possibly develop this as a protective factor in any manner. As such, the DJ's reliance on this factor to show that the appellant could be reformed was somewhat misplaced, since there is no evidence to show that the appellant would be sufficiently motivated to develop this option further to mitigate his risk of reoffending.

94 The CTPD report clearly suggests that the appellant is unremorseful for his offences. The exercise of his right to appeal his conviction for the OM Offence does not in itself suggest that he lacks remorse, but that being said, he has patently failed to accept any responsibility for his actions. Moreover, he has

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96 CTPD report at p 9–10 (ROA at p 2304–2305).

97 CTPD report at p 9 (ROA at p 2304).

failed to address how he had "*completely denied*" the Rape Offence, and has even sought to justify his present VCH Offence and minimise the gang violence that he was previously involved in.[98] The appellant's evident lack of remorse and insight into his offending conduct negate any real prospect for reformation. It is most telling that the appellant's submissions are bereft of any mention of remorse or regret over his actions. I see no basis whatsoever for his claim that he has potential for reform when he denies having committed any wrong to begin with, continues to blame the victim in the Rape Offence for wrongly accusing him, and even refuses to accept the legitimacy of his previous conviction for the Rape Offence. As such, CT is not a suitable sentencing option. In this regard, the High Court's comments in *G Ravichander v Public Prosecutor* [2002] 2 SLR(R) 665 (at [25]) are apposite:

> … **Those undergoing corrective training must first be capable of reform**, while those sent in for [PD] are hardened criminals. Sending hardened criminals through the [CT] regime would not only dilute the programme's aims but also endanger the reformative path of more promising prisoners. [Emphasis added in bold]

95 Moreover, there are no longer any qualitative differences between CT and regular imprisonment (*Sim Yeow Kee* at [80]–[83]). The only difference is quantitative – CT is generally longer than a term of regular imprisonment that would otherwise have been imposed for the offence (*Sim Yeow Kee* at [82]). With respect, as the appellant has already served multiple lengthy imprisonment sentences which have plainly failed to reform him, let alone to deter him from reoffending, the DJ erred in deciding to impose CT and not PD on the appellant.

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98 CTPD report at p 8 (ROA at p 2303).

***PD would not be an unduly disproportionate sentence***

96 I am of the view that PD is warranted and is not unduly disproportionate in the present case. I set out my reasons below.

97 In deciding whether to impose PD on an offender, the court needs to be satisfied that "it is expedient for the protection of the public that the person should be detained in custody for a substantial period of time". The overarching principle is the need to protect the public, as explained by the Court of Appeal in *Public Prosecutor v Rosli bin Yassin* [2013] 2 SLR 831 at [11]:

> … if the individual offender is such a habitual offender whose situation does not admit of the possibility of his or her reform, thus constituting a menace to the public (and this would include, but is not limited to, offences involving violence), a sentence of preventive detention would be imposed on him or her for a substantial period of time in order to protect the public.

98 In other words, PD is prescribed for habitual offenders and/or potential recidivists who are viewed as being beyond the reach of conventional sentencing. If the court forms the view that such a repeat offender by virtue of his propensity to offend may yet again do so if unchecked, this would be a compelling case for the imposition of a sentence of PD. This is to ensure that a dangerous offender ought not to be "afforded even the slightest opportunity to give sway to his criminal tendencies again" (*Public Prosecutor v Raffi Bin Jelan and another* [2004] SGHC 120 ("*Raffi*") at [25]).

99 The appellant meets the technical requirements for PD to be imposed. Hence, the only issue is whether it is expedient for the protection of the public that the appellant be sentenced to PD. In my judgment, there are ample reasons to show that it is expedient for PD to be imposed.

100 First, the appellant has spent most of his adult life imprisoned. He was sentenced to 16 years' imprisonment and 10 strokes of the cane for his Rape Offence, which has failed to deter and reform him. The appellant's complete denial of his Rape Offence and the present OM Offence, coupled with his justification of his violence-related antecedents, also evince his lack of remorse and consequent inability to be reformed.

101 Second, as SPP Singh opined in his CTPD report, the appellant has a high risk of reoffending with sexual offences and violence-related offences. More importantly, the similarities between the appellant's past sexual offences and the present OM Offence clearly reveal his propensity for committing sexual violence against underaged female victims. His predatory tendencies are a grave concern, as shared by SPP Singh in his CTPD report.[99]

102 Given the appellant's lack of remorse and high risk of sexual reoffending – particularly against underaged female victims – he constitutes a clear danger to society. It is therefore expedient for PD to be imposed in order to protect the public.

103 Next, I agree with the Prosecution's submission that the DJ erred in finding that a sentence of seven years' PD would be unduly disproportionate, on account of the likely regular imprisonment term which would have been imposed for the appellant's underlying offences.

104 Where PD is contemplated, considerations of proportionality would not apply rigorously, and these considerations would have limited scope for displacing the imposition of PD where such a sentence would otherwise be

[99] CTPD report at p 10 (ROA at p 2305).

warranted (*Sim Yeow Kee* at [97]). This is logical since it is arguably the purpose of PD that a longer-than-proportionate period of imprisonment be imposed, to protect the public from the recalcitrant offender (see also *Public Prosecutor v Karnan s/o Arumugam* [2023] SGDC 33 at [118] which was upheld on appeal to the High Court). Indeed, as the High Court in *Raffi* emphasised, such recalcitrant offenders, "by reason of [their] past conduct and anticipated future conduct, will be viewed as having forfeited [their] right to be accorded the considerations and attributes peculiar to conventional sentencing" (at [24]).

105 In my assessment, a sentence of seven years' PD is not unduly disproportionate to the likely aggregate imprisonment term that would have been imposed for the appellant's underlying offences. I agree with the Prosecution's submission that the DJ's calibration of the likely aggregate imprisonment term was on the low side to begin with.[100] More importantly, the DJ gave insufficient consideration to the appellant's antecedents and also erred by further reducing the likely aggregate imprisonment term by three months on account of the totality principle.

106 Applying the relevant sentencing authorities and taking into account the appellant's antecedents and the nature of his present offences including reoffending while on bail, I consider that more substantial sentencing uplifts for the OM Offence and the VCH Offence are warranted, in line with the Prosecution's submissions. In my view, the likely aggregate imprisonment term should have been 59 months' imprisonment, without any reduction in sentence on account of the totality principle. A breakdown of the likely aggregate imprisonment term I would impose is as follows:

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100 RWS at [147].

| **Offence** | **The likely imprisonment term** |
|---|---|
| **OM Offence** | 40 months' imprisonment |
| **VCH Offence** | 14 months' imprisonment |
| **Customs Offence** | Five months' imprisonment |
| **Likely aggregate sentence: 59 months' imprisonment** | |

107 Finally, in so far as the DJ appears to have suggested that PD was inappropriate as the appellant had not undergone a prior stint of CT, I agree with the Prosecution's submission that if this had in fact operated on the DJ's mind, this approach is wrong in principle.[101]

108 There is no requirement in either legislation or case law that an offender must have previously served a stint of CT in order to be sentenced to PD. In *Public Prosecutor v Perumal s/o Suppiah* [2000] 2 SLR(R) 145, the respondent pleaded guilty and was convicted on a charge of voluntarily causing hurt with a dangerous weapon and a charge of drug consumption. The District Judge declined to impose PD because the longest sentence previously imposed on the respondent was a term of eight months. On appeal, the High Court held that this reasoning was erroneous, as the imposition of PD is not contingent on any prior minimum term for an offender's previous sentences and does not require the longest of any such previous sentences to correspond to the minimum period of PD (at [24]).

[101] RWS at [165].

109 As highlighted above at [95], there are no longer any qualitative differences between CT and regular imprisonment (*Sim Yeow Kee* at [80]–[83]). As the appellant has already served a lengthy imprisonment term for his past sexual offences (which is in substance no different from serving a sentence of CT), there is no reason why it would presumptively be necessary to sentence him to CT as if it were a precondition before PD could be imposed.

110 I consider the DJ's sentence of five years' CT to be manifestly inadequate. Correspondingly, I reject the appellant's sentencing submissions, which call for an even lower sentence of not more than 21 months' imprisonment. Taking into account the low-to-moderate severity of the appellant's present offences, a term of seven years' PD is therefore appropriate.

**Conclusion**

111 For the above reasons, I dismiss the appellant's appeal against his conviction and sentence and allow the Prosecution's cross-appeal against sentence. The appellant is sentenced to seven years' PD in place of five years' CT.

See Kee Oon
Judge of the Appellate Division

Chooi Jing Yen and Chen Yongxin (Chooi Jing Yen LLC) for the appellant in MA 9214/2024/01 and the respondent in MA 9214/2024/02;
Sarah Siaw and Emily Zhao (Attorney-General's Chambers) for the respondent in MA 9214/2024/01 and the appellant in MA 9214/2024/02.