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

[2025] SGHC 157

Magistrate's Appeal No 9127 of 2024/01

Between

JDA

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9127 of 2024/02

Between

Public Prosecutor

… *Appellant*

And

JDA

… *Respondent*

JUDGMENT

[Criminal Law — Offences — Outrage of modesty]
[Criminal Procedure and Sentencing — Appeal]

[Criminal Procedure and Sentencing — Sentencing]
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JDA
v
Public Prosecutor and another appeal

[2025] SGHC 157

General Division of the High Court — Magistrate's Appeal No 9127 of 2024
Dedar Singh Gill J
29 April 2025

11 August 2025 Judgment reserved.

Dedar Singh Gill J:

1 HC/MA 9127/2024/01 is an appeal by the accused, whose name has been redacted as "JDA", against his conviction and sentence. The accused was convicted on four charges of outrage of modesty and sentenced to 34 months' imprisonment and six weeks' imprisonment in lieu of caning. HC/MA 9127/2024/02 is an appeal by the Prosecution against sentence. Having carefully reviewed the decision of the learned District Judge in the court below (the "DJ"), as well as the evidence and the parties' arguments, I allow the accused's appeal in part and dismiss the Prosecution's appeal. In so doing, I acquit the accused of three of the charges and reduce his sentence in respect of the remaining charge.

2 In her grounds of decision, the DJ noted that it was important to "assess the evidence as a whole, and to not lose sight of the forest for the trees". But it is equally important, if not more so, to not lose sight of the trees for the forest,

for there can be no forest if there are no trees. Taking a broad view of the evidence cannot be at the expense of the imperative requirement that there must be sufficient evidence in any given case to prove, *beyond a reasonable doubt*, *each* charge distinctly on its own merits.

Background facts

3 I summarise the salient background facts, which can be found in *Public Prosecutor v JDA* [2024] SGDC 224 (the "GD").[1]

4 The accused is the stepfather of the complainant. He married the complainant's mother ("PW1") in October 2003 and they divorced in January 2020.[2]

5 At the commencement of the trial in November 2023, the accused was 49 years old and the complainant was 27 years old.[3]

6 The complainant's biological family consisted of herself, PW1, her biological father ("PW3"), her twin brother ("PW6") and her older brother.[4] PW1 and the accused have nine children together.[5] One of them is PW4, the complainant's stepsister who purported to have witnessed the acts underlying one of the charges.[6]

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1 Record of proceedings ("ROP") at pp 574–634.

2 GD at [7] (ROP at p 579).

3 GD at [6]–[7] (ROP at p 579).

4 GD at [6] (ROP at p 579).

5 GD at [8] (ROP at pp 579–580).

6 GD at [8(a)], [44]–[45] (ROP at pp 579–580, 590–591).

7 The complainant lived together with her biological family and step-family, including the accused, in three different properties from 2005 to 2016:

(a) Between 15 March 2005 and 14 March 2009, they stayed in a property along Green Road (the "Green Road address").[7] Sometime after 15 March 2005, renovations were done to the Green Road address, following which the complainant shared a bedroom with her grandmother (*ie*, PW1's mother) which was connected to the master bedroom by a connecting door.[8]

(b) Between 15 March 2009 and 15 August 2010, they resided in a property along Blue Road.[9]

(c) Between 16 August 2010 and sometime before 30 November 2016, they lived in an address along Yellow Road (the "Yellow Road unit").[10] This was a two-storey unit in a block of flats.

8 The words "Green", "Blue" and "Yellow" have been used as substitutes so as not to identify the exact locations of the properties where the complainant and the accused resided.

9 The complainant alleged that the accused had sexually assaulted her on a number of occasions during the period of time they were residing in the three properties.[11] Specifically, she alleged four incidents wherein the accused

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7 GD at [11] (ROP at p 580).

8 GD at [12] (ROP at p 580).

9 GD at [13] (ROP at p 581).

10 GD at [14] (ROP at p 581).

11 GD at [18] (ROP at p 582).

outraged her modesty. The four incidents correspond to the four proceeded charges (see [17] below).

10 The first incident allegedly happened at the Green Road address.[12] According to the complainant, when she was in primary three or four, the accused entered her bedroom one night *via* the connecting door to the master bedroom while she was sleeping on the top bunk of a double decker bed. He then proceeded to touch her on her breast area with his hands, softly and in a circular motion, over her clothes. She moved, after which he stopped and left.

11 The second incident allegedly also happened at the Green Road address. She was around the same age.[13] According to the complainant, she was sleeping in her bedroom at night when the accused came into the bedroom, woke her up, and signalled for her to follow him. She then followed him to the master bedroom, where the accused asked her to remove her pants and panties and lie down on the bed. She proceeded to pull down her pants and panties and lie down on the bed, following which the accused rubbed his penis on her vagina in an up and down motion. The complainant felt pressure and a pushing force on her vagina, which she surmised was an attempt by the accused to put his penis into her vagina. The accused then used his fingers to rub the complainant's vagina up and down, before asking her to pull up her pants and panties and leave the room, which she did.

12 The third incident was alleged to have happened when the complainant was in secondary one or two.[14] According to the complainant, who usually made

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12 GD at [24] (ROP at p 584).

13 GD at [26] (ROP at p 585).

14 GD at [28] (ROP at pp 585–586).

her way home from school by herself, she saw the accused's car at the pick-up point in school one day after school and thought that her mother, PW1, might have asked the accused to pick her up. She then got into the car, sat in the front passenger seat, and fell asleep on the way home. When she was sleeping, she felt touches on her breast over her uniform which were soft and in a circular motion. She also felt a touch on the middle of her thigh directly on her skin. She moved and opened her eyes, and realised that the car was already parked at the carpark of Blue Road. The accused stopped what he was doing, and the complainant got out of the car and went home.

13 Finally, the fourth and final incident was alleged to have happened at the Yellow Road unit.[15] According to the complainant, while her bedroom was on the second floor of the unit, she was asked by PW1 to sleep on the ground floor with PW1 and her step-siblings so that she could help to take care of them. The accused would usually sleep in the living room and there were a few nights on which he would come into the ground floor bedroom and touch the complainant on her private areas, such as her breast and thighs. On the last incident this happened, the accused came into the bedroom and touched the complainant on her breast softly and in a circular motion. The complainant also felt touches on the skin of her thigh. She opened her eyes and saw the accused squatting down in front of her. She then moved and the accused stopped what he was doing and left the room.

14 The next morning, PW4 (*ie*, the complainant's stepsister and the accused's biological daughter), who was sleeping beside the complainant, told the complainant that she had seen what happened.[16] Sometime later, PW6 (*ie*,

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15 GD at [19]–[20] (ROP at pp 582–583).

16 GD at [21] (ROP at p 583).

the complainant's twin brother), PW1 (*ie*, the complainant's mother) and PW3 (*ie*, the complainant's biological father) all came to know about the incident.

15 It was not disputed that, sometime in 2015, the same year in which the fourth incident was alleged to have taken place, PW3 confronted the accused about an act of molest he heard the accused had committed against the complainant.[17] The accused kept silent during this meeting.[18]

16 The complainant lodged a police report against the accused on 20 May 2021.[19]

17 The accused faced and claimed trial to the following four charges:[20]

(a) In DAC-916738-2022 (the "first charge"), the accused was alleged to have, on one day, sometime between 15 March 2005 and 2006, in the Green Road address, used criminal force to the complainant, intending to outrage her modesty, by touching her chest over her clothes, thereby committing an offence punishable under s 354 of the Penal Code (Cap 224, 1985 Rev Ed) (the "1985 PC").[21] The complainant was then between eight and ten years old.

(b) For DAC-916739-2022 (the "second charge"), the accused was alleged to have, on one day, sometime between 15 March 2005 and 2006, in the Green Road address, used criminal force to the

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17 GD at [37], [70] (ROP at pp 588, 597–598).

18 GD at [39], [70] (ROP at pp 589, 597–598).

19 GD at [9] (ROP at p 580).

20 GD at [1] (ROP at pp 577–578).

21 ROP at p 6.

complainant, intending to outrage her modesty, by touching her vagina with his fingers, and making contact between his penis and her vagina, thereby committing an offence punishable under s 354 of the 1985 PC.[22] The complainant was then between eight and ten years old.

(c) In respect of DAC-916740-2022 (the "third charge"), the accused was alleged to have, on one day, sometime between 15 March 2009 and 15 August 2010, at the carpark of Blue Road, in a motorcar, used criminal force to the complainant, a female who was then under 14 years old, intending to outrage her modesty, by touching her bare thigh and her breast over her clothes, thereby committing an offence punishable under s 354(2) of the Penal Code (Cap 224, 2008 Rev Ed) (the "2008 PC").[23] The complainant was then between 12 and 13 years old.

(d) For DAC-916741-2022 (the "fourth charge"), the accused was alleged to have, on a day, sometime in 2015, at the Yellow Road unit, used criminal force to the complainant, intending to outrage her modesty, by touching her thigh and her breasts, thereby committing an offence under s 354(1) of the 2008 PC.[24] The complainant was then 19 years old.

18 At trial, the accused denied that any of the incidents underlying the charges took place.

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22 ROP at p 7.

23 ROP at p 8.

24 ROP at p 9.

19 In relation to the first and second charges, the accused denied that he ever touched the complainant's chest or vagina while staying at the Green Road address.[25]

20 As for the third charge, the accused testified that he had only ever picked the complainant up from her secondary school once.[26] His account of this incident diverged from the complainant's account. According to the accused, the location of his workplace was near the complainant's secondary school. He happened to see the complainant waiting at the bus stop opposite the school while driving along the main road outside the school. He stopped his car and signalled for the complainant to get in. He then sent her home to Blue Road. On his account, nothing unusual happened during the car ride and he denied touching the complainant's chest or thigh while at the carpark of Blue Road.

21 Regarding the fourth charge, the accused could not remember if the complainant would sometimes sleep in the ground floor bedroom and denied that he ever touched her breasts or thigh at the Yellow Road unit.[27] He did not deny that there was an occasion on which PW3 confronted him over an allegation that he had molested the complainant.[28] However, while he was shocked and disappointed over the allegation, he did not say anything as he did not want to "tarnish both family relations".[29] He also did not think it was a serious allegation.

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25 GD at [65] (ROP at p 596).

26 GD at [67] (ROP at pp 596–597).

27 GD at [69] (ROP at p 597).

28 GD at [70] (ROP at pp 597–598).

29 Notes of evidence for 4 March 2024 ("Day 7 NE") at p 39 lines 5–7 (ROP at p 428).

Decision below

22 In the trial below, the Defence sought to impeach the credibility of the complainant and cross-examined her on a number of inconsistencies between her statements to the police and her testimony at trial, pursuant to s 147(1) of the Evidence Act 1983 (2020 Rev Ed).[30]

23 In relation to the first and second charges, these inconsistencies pertained to:

(a) the number of incidents which took place at the Green Road address;[31]

(b) whether there was an attempt by the accused to use his penis to penetrate the complainant's vagina in relation to the second charge;[32]

(c) whether the accused moved his finger in and out of the complainant's vagina or rubbed the complainant's vagina up and down in relation to the second charge;[33]

(d) whether the complainant's eyes were open and she saw the accused touching her during the incident underlying the first charge;[34]

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30 Day 4 NE at p 47 lines 21–29 (ROP at p 245).

31 Day 4 NE at p 57 lines 7–12 (ROP at p 255); Notes of evidence for 10 November 2023 ("Day 5 NE") at p 4 lines 2–7 (ROP at p 264)

32 Day 5 NE at p 7 line 29 to p 9 line 23 (ROP at pp 267–268).

33 Day 5 NE at p 8 line 24 to p 9 line 14 (ROP at pp 268–269).

34 Day 5 NE at p 10 lines 17–26 (ROP at p 270).

(e) where the complainant's grandmother was during the incidents,[35]

(f) why an incident mentioned in one of the complainant's earlier statements was not mentioned in her evidence at trial;[36] and

(g) whether the complainant herself or the accused pulled down and/or removed the complainant's pants and panties during the incident underlying the second charge.[37]

24 For the third charge, the inconsistencies mainly related to the sequence of the accused's touches (*ie*, whether the accused touched the complainant's breast or thigh first) as well as whether the accused touched the complainant's upper arm.[38]

25 As for the fourth charge, the inconsistency was whether the accused touched the complainant on her skin or over her shorts.[39]

26 These inconsistencies largely formed the basis on which the Defence sought to persuade the DJ that the Prosecution had failed to make out the charges.[40]

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35 Day 5 NE at p 12 lines 6–22 (ROP at p 272).

36 Day 5 NE at p 13 line 24 to p 14 line 6 (ROP at pp 273–274).

37 Day 5 NE at p 14 line 21 to p 15 line 11 (ROP at pp 274–275).

38 Day 5 NE at p 19 lines 15–28 (ROP at p 279).

39 Day 5 NE at p 20 lines 19–22 (ROP at p 280).

40 Defence's closing submissions for trial dated 30 April 2024 ("DCS") at paras 67–118, 122–164, 167–176, 178–193, 201–213 (ROP at pp 1366–1397).

27 For the fourth charge and the events surrounding the fourth charge, the Defence also submitted that the complainant's evidence was inconsistent with the evidence of PW1, PW3, PW4 and PW6.[41]

28 The DJ found, however, that these inconsistencies did not detract from the complainant being an unusually convincing witness.

29 The DJ found that the complainant's evidence was largely consistent and credible. She noted that the complainant was not forceful in giving her answers and even gave up trying to give an explanation at times. However, the DJ was of the view that the complainant's lack of forcefulness "cohered with the general background she painted of a young victim who suffered alone and in silence throughout a long history of sexual assault" (GD at [78]).[42]

30 The DJ noted that the greatest challenge to the complainant's evidence came from the external inconsistencies between her evidence in court and her statements to the police (GD at [81]).[43] The most significant of these inconsistencies was the number of incidents which occurred at the Green Road address. However, the DJ did not think that this was fatal to the credibility of the complainant's evidence as a whole (GD at [85]).[44]

31 The DJ was of the view that, given the amount of time which had lapsed between the occurrence of the incidents at the Green Road address and the complainant's filing of her police report, as well as the complainant's young age at the time of the incidents, it was perfectly reasonable for her not to remember

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41 DCS at paras 214–229 (ROP at pp 1397–1401).

42 ROP at p 600.

43 ROP at p 602.

44 ROP at p 603.

the details of all the incidents or exactly how many incidents there were (GD at [86]).[45] Moreover, the DJ felt that there was "little value in nitpicking over differences between the account in [the complainant's] statement ... and her evidence in court" (GD at [87]).[46]

32 The DJ also found that many of the other inconsistencies raised by the Defence were not material (see GD at [89]).[47] For example:

(a) The complainant's differing accounts of where her grandmother was during the incident underlying the second charge was more a problem with recollection rather than an inconsistency (GD at [89(b)]).

(b) Given that the incident underlying the third charge was supposed to have taken place more than ten years ago, it was not unreasonable for the complainant to have gotten the sequence of touches wrong and forgotten that the accused had also touched her arm. Moreover, she never wavered from her evidence that she had been touched on both her breast and her thigh (GD at [89(c)]).

(c) Notwithstanding the inconsistencies in the complainant's statements and testimony in court as to whether the accused had attempted to use his penis to penetrate her vagina during the incident underlying the second charge, the core of the evidence, as well as what was alleged in the charge, was that the accused

45 ROP at p 603.

46 ROP at p 604.

47 ROP at pp 605–608.

made contact between his penis and the complainant's vagina (GD at [89(d)]).

(d) The complainant's testimony in court for the fourth charge that the accused had touched her thigh on her bare skin, which was different from her earlier account that it was over her clothes, was corroborated by PW4's evidence (GD at [89(f)]).

33 In the circumstances, the DJ did not find the inconsistencies raised by the defence material enough to impeach the accused's credibility as a whole, or to throw into doubt the evidence relating to the charges (GD at [90]).[48]

34 For the fourth charge, the DJ found the complainant's evidence to be externally consistent with the other aspects of the evidence, including the evidence of PW3, PW4 and PW6 (see GD at [91]–[98]).[49] Crucially, the complainant's evidence was directly corroborated by the eyewitness account of PW4 (GD at [92]).[50] Given that there was nothing to indicate any possible reason as to why PW4 would give false evidence against her own father, the DJ could find no reason to doubt PW4's evidence as being objective (GD at [93]).[51]

35 On the whole, the DJ found that the complainant's evidence met the standard of being "unusually convincing", and that her evidence for the fourth charge was in any event also corroborated by evidence from PW4 (GD at [130]).[52]

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48 ROP at p 608.

49 ROP at pp 608–611.

50 ROP at p 608.

51 ROP at p 609.

52 ROP at p 620.

36 On the other hand, the DJ found the accused to not be a credible witness. In particular, the DJ was dissatisfied with the accused's evidence regarding his relationship with the complainant, namely that he thought the complainant was his niece and only found out that she was PW1's daughter when police investigations commenced (see GD at [100]).[53] The DJ felt that this was an attempt by the accused to distance himself from the complainant, and that he was not being forthright with the court on this point (GD at [101]).[54]

37 The DJ was also not satisfied with the accused's evidence regarding the confrontation between him and PW3 (see GD at [102]–[105]).[55] The DJ did not find the accused's explanation for his silence during that encounter to be reasonable, as she "would have expected an innocent person who had been suddenly accused of such a serious allegation as having molested his own stepdaughter to deny it outright, whether or not details were provided" (GD at [103]). In the DJ's view, the accused's failure to defend himself when confronted with an allegation of molest was "telling".

38 From the way the accused answered or refused to answer questions in cross-examination, the DJ had "little faith in his credibility as a witness" (GD at [106]).[56]

39 As such, the DJ found that the Prosecution had proven all four charges against him beyond a reasonable doubt (GD at [131]).[57]

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53 ROP at p 611.

54 ROP at p 612.

55 ROP at pp 612–613.

56 ROP at p 613.

57 ROP at p 620.

40 Turning to sentence, the DJ applied the framework laid down in *Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580 ("*Kunasekaran*") for the charges under s 354 of the 1985 PC (*ie*, the first and second charges) and the charge under s 354(1) of the 2008 PC (*ie*, the fourth charge), and the framework laid down in *GBR v Public Prosecutor* [2018] 3 SLR 1048 ("*GBR*") for the charge under s 354(2) of the 2008 PC (*ie*, the third charge).

41 The DJ considered the offence-specific factors which applied, such as the abuse of trust, vulnerability of the victim, harm caused and the absence of premeditation (see GD at [148]–[151]).[58] In view of this, the DJ placed the offences underlying the four charges in the following bands of the applicable sentencing frameworks (see GD at [153]–[156]):[59]

(a) For the first charge: between the middle to high end of Band 2 in the *Kunasekaran* framework;

(b) For the second charge: within the high end of Band 3 of the *Kunasekaran* framework;

(c) For the third charge: within the lower end of Band 2 of the *GBR* framework;

(d) For the fourth charge: within Band 2 of the *Kunasekaran* framework.

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58 ROP at pp 629–630.

59 ROP at pp 630–632.

42 The DJ found no significant offender-specific aggravating and mitigating factors, and hence there was no reason to adjust the starting points for the respective charges (GD at [157]).[60]

43 In the round, the DJ imposed the following sentences on the accused (GD at [163]):[61]

(a) 12 months' imprisonment for the first charge;

(b) 18 months' imprisonment for the second charge;

(c) 16 months' imprisonment for the third charge; and

(d) ten months' imprisonment and six weeks' imprisonment in lieu of three strokes of the cane for the fourth charge.

44 The sentences for the second and third charges were ordered to run consecutively, resulting in a global sentence of 34 months' imprisonment and six weeks' imprisonment in lieu of caning (GD at [161]–[163]).[62]

The parties' cases on appeal

The Defence's case

45 The Defence submits that the DJ wrongly disregarded significant inconsistencies in the complainant's evidence and adopted "broad-brush approaches" instead of undertaking a granular examination and critical assessment of the evidence.[63] In so doing, the DJ erred in accepting the

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60 ROP at p 632.

61 ROP at p 58.

62 ROP at pp 633–634.

63 Defence's written submissions dated 17 April 2025 ("DWS") at para 4.

complainant's evidence and finding that her evidence was unusually convincing.[64] As such, the DJ's decision to convict the accused was against the weight of the evidence and should be overturned.

46 In relation to the first and second charges, the Defence makes the following points:[65]

(a) The complainant changed her evidence about how she was allegedly molested.[66]

(b) The complainant's changing allegation of penile penetration was a material inconsistency.[67]

(c) The complainant's changing evidence on the number of incidents at the Green Road address was a material inconsistency.[68] In relation to this, the DJ erred by finding that it was reasonable for the complainant to not remember the number of incidents because they happened 15 years ago.[69]

(d) The complainant's evidence of how the alleged molest underlying the second charge happened contains material inconsistencies.[70] These included inconsistent evidence relating to the touching or rubbing of the complainant's vagina,[71] the

64 DWS at para 5.

65 DWS at para 238.

66 DWS at paras 29–38.

67 DWS at paras 39–47.

68 DWS at paras 48–69.

69 DWS at paras 67–69.

70 DWS at paras 70–89.

71 DWS at paras 79–83.

removing of the complainant's panties,[72] and whether the complainant knew that the accused's penis was "half-erect".[73]

(e) The DJ erred by assessing the complainant's evidence in a manner unfairly prejudicial to the accused.[74] In particular, the DJ was "overly generous in forgiving inconsistencies in [the complainant's] evidence".[75] By failing to assess the internal and external inconsistency of the complainant's evidence and instead focusing on whether the complainant had reason to lie, the DJ prejudiced the accused by presupposing that the complainant was inherently credible and would tell the truth if she had no reason to lie.[76]

(f) The DJ erred by finding that the complainant's evidence was consistent on the basis that the "first incident" described in her first statement to the police was "largely similar" to the particulars of the second charge.[77]

(g) The DJ failed to take into account the complainant's refusal to answer questions during impeachment and erred by finding that she was more credible because she "gave up" trying to answer.[78]

(h) The DJ failed to give weight to how the Prosecution repeatedly tried to lead impermissible evidence from the complainant

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72 DWS at paras 84–85.

73 DWS at paras 86–89.

74 DWS at paras 90–105.

75 DWS at para 96.

76 DWS at para 105.

77 DWS at paras 106–127.

78 DWS at paras 128–144.

regarding the number of incidents that took place at the Green Road address.[79]

(i) The DJ erred by finding that the complainant was entitled to testify about "logical assumptions" because that is commonly done in normal conversations.[80]

(j) The DJ erred by failing to appreciate that the embellishments in the complainant's evidence showed that she was not a candid witness.[81] In particular, the complainant embellished evidence about being chased out of the Yellow Road unit,[82] and sleeping in PW1's room (*ie*, the ground floor bedroom) every day at the Yellow Road unit.[83] The complainant also gave inexplicably wrong evidence about her step-siblings.[84]

47 The Defence also submits that the allegation in the first charge was not mentioned in the complainant's first statement to the police, and that this raises the question of why the complainant's evidence had changed.[85] The DJ inferred against the weight of the evidence that the complainant must have mentioned the details underlying the first charge during an unrecorded interview.[86] In any

79 DWS at paras 145–158.

80 DWS at paras 159–170.

81 DWS at paras 171–194.

82 DWS at paras 173–175.

83 DWS at paras 176–180.

84 DWS at paras 181–194.

85 DWS at paras 195–202.

86 DWS at para 203.

event, the DJ failed to appreciate the inconsistency between the unrecorded interview inference and the complainant's evidence.[87]

48 In relation to the third charge, the Defence's case is that the DJ erred in finding that there was no material inconsistency between the complainant's evidence at trial and her statements to the police and that it was not unreasonable for her to get the sequence of events wrong and to omit mentioning at trial that the accused had touched her arm.[88] The DJ erred by focusing only on whether the complainant echoed the particulars of the third charge without considering the details of her evidence.[89] In addition, the DJ erred in finding that the complainant was molested while asleep,[90] and by giving the complainant the benefit of the doubt and assuming that the differences in her evidence were due to faulty recollection.[91]

49 For the fourth charge, the Defence submits that the DJ erred by failing to adopt a granular examination of the evidence.[92] In this regard, the DJ failed to take the complainant's inconsistent evidence into account.[93] The Defence also argues that the DJ erred by finding that the complainant's evidence was externally consistent with other evidence, including evidence from the other Prosecution witnesses.[94] In addition, the Defence says that the DJ erred in finding that the complainant's evidence was independently corroborated by

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87 DWS at paras 218–221.

88 DWS at para 240.

89 DWS at paras 265–270.

90 DWS at paras 271–272.

91 DWS at paras 273–278.

92 DWS at para 281.

93 DWS at paras 282–297.

94 DWS at paras 297–332.

PW3's evidence,[95] the evidence does not suggest that PW3's letter (which he used as a reference when confronting the accused) related to the fourth charge,[96] and the DJ erred in finding that the inconsistencies in PW6's evidence were "minor details".[97]

50 As a more general point, the Defence says that the DJ erred in finding that the accused was not credible.[98]

51 The Defence also submits that, in any event, the DJ imposed a sentence which was manifestly excessive.[99]

The Prosecution's case

52 The Prosecution submits that the Defence's appeal should be dismissed. As regards conviction, the Prosecution contends that:

(a) The DJ was justified in holding that the inconsistencies raised did not undermine the complainant's credibility as they were either immaterial or reasonably explained;[100]

(b) The DJ was correct to find that the complainant's evidence on the fourth charge was consistent and corroborated by an eyewitness account (*ie*, PW4's account);[101]

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95 DWS at paras 333–338.

96 DWS at paras 339–345.

97 DWS at paras 346–349.

98 DWS at paras 350–395.

99 DWS at paras 396–466.

100 Prosecution's written submissions dated 21 April 2025 ("PWS") at paras 47–67.

101 PWS at paras 68–85.

(c) The DJ's assessment of the complainant's demeanour and credibility was correct;[102]

(d) The DJ was correct in finding that the accused lacked credibility and that his silence (when confronted by PW3) showed his guilt.[103]

53 As regards sentence, the Prosecution argues that the sentence imposed by the DJ was manifestly inadequate.[104] Its main grounds of appeal against sentence are as follows:[105]

(a) The DJ failed to accord sufficient weight to the principles of deterrence and retribution.[106]

(b) The DJ failed to accord sufficient weight to the relevant aggravating factors in her application of the relevant sentencing frameworks.[107] In particular, the DJ erred by:

(i) Finding that there was no premeditation in the manner in which the accused sexually assaulted the complainant;[108]

(ii) Failing to accord due weight to the background of sustained sexual abuse that the complainant was subject to by the accused;[109] and

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102 PWS at paras 86–88.

103 PWS at paras 89–100.

104 PWS at paras 101–147.

105 PWS at para 112.

106 PWS at paras 114–120.

107 PWS at paras 121–142.

108 PWS at paras 122–126.

109 PWS at paras 127–130.

(iii) Failing to properly consider the precedents for the second and third charges.[110]

(c) The DJ failed to ensure that the overall sentence duly accounted for the accused's criminality and the resultant harm to the complainant.[111]

Issues to be determined

54 Broadly speaking, the issues that arise for my consideration can be distilled into the following:

(a) Whether the complainant's evidence in relation to the first, second and third charges was unusually convincing;

(b) Whether the complainant's evidence in relation to the fourth charge was corroborated by other evidence;

(c) If I am satisfied that the convictions are safe, whether the DJ erred in sentencing.

The relevant principles

55 Before I delve into the issues proper, I consider the following principles to be of relevance for the determination of this appeal. These principles relate to three broad areas: (a) the presumption of innocence and the Prosecution's burden of proof; (b) the threshold for appellate intervention; and (c) the unusually convincing standard.

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110 PWS at paras 131–142.

111 PWS at paras 143–146.

The presumption of innocence and the Prosecution's burden of proof

56 The presumption of innocence is the bedrock of our criminal law. Apart from a few legislative exceptions, the Prosecution always bears the legal burden of proving beyond a reasonable doubt that the accused has committed the acts for which he is charged. The corollary of the presumption of innocence and the Prosecution's burden of proof is that a trial judge should *not* supplement gaps in the Prosecution's case, and that the Prosecution's theory of guilt must be supported by reference to the evidence alone and not mere conjecture. This is neatly encapsulated in *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 (at [59]–[60]), where V K Rajah JA explained that the principle that the Prosecution bears the burden of proving its case beyond reasonable doubt embodies two important societal values:

> 59 First, it "provides concrete substance for the presumption of innocence": *Winship* at 363. It is axiomatic that the presumption of innocence is a central and fundamental moral assumption in criminal law. *It cannot be assumed that an individual is guilty by mere dint of the fact that he has been accused of an offence*, unless and until the Prosecution adduces sufficient evidence to displace this presumption of innocence. That threshold below which society will not condone a conviction or allow for the presumption of innocence to be displaced is the line between reasonable doubt and mere doubt. Adherence to this presumption also means that *the trial judge should not supplement gaps in the Prosecution's case. If indeed gaps in the evidence should prevail so that the trial judge feels it is necessary to fill them to satisfy himself that the Prosecution's burden of proof has been met, then the accused simply cannot be found legally guilty.* In short, the presumption of innocence has not been displaced.
>
> 60 Second, the principle of reasonable doubt connotes and conveys the gravity and weightiness that society equates with punishment. It would be wrong to visit the indignity and pain of punishment upon a person (and his family) unless and until the Prosecution is able to dispel all reasonable doubts that the evidence (or lack thereof) may throw up. Therefore, it is critical that trial judges appreciate that inasmuch as fanciful conspiracy theories, often pleaded by the Defence, will not suffice to establish reasonable doubt, *the Prosecution's theory*

> *of guilt must be supportable by reference to the evidence alone and not mere conjecture that seeks to explain away gaps in the evidence. Suspicion and conjecture can never replace proof.*
>
> [emphasis added]

57 To put it in slightly different terms, the starting assumption is always that an accused person is innocent, not the other way round. Therefore, if the Prosecution cannot cross the threshold of proof beyond reasonable doubt on the basis of its own evidence, then the ball has simply not left the Prosecution's court and the default position, that the accused person is innocent, remains.

The threshold for appellate intervention in an appeal against conviction

58 In addition to the presumption of innocence and the heavy burden which lies on the Prosecution to make out its case, I also bear in mind the principle that an appellate court should be slow to overturn a trial judge's findings of fact. This has been elucidated by Rajah JA in *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [16] (and re-affirmed by the Court of Appeal in *Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 at [31]):

> (a) Where a finding of fact hinges on the trial judge's assessment of the credibility and veracity of witnesses based on their demeanour, the appellate court will interfere only if the finding of fact can be shown to be *plainly wrong* or *against the weight of the evidence*: see *PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [32] and *Yap Giau Beng Terence v PP* [1998] 2 SLR(R) 855 ("*Yap Giau Beng Terrence*") at [24]. An appellate court may also intervene, if, after taking into account all the advantages available to the trial judge, it concludes that the verdict is wrong in law and is therefore unreasonable: *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR(R) 45 ("*Jagatheesan*") at [43].
>
> (b) Where the finding of fact by the trial judge is based on the inferences drawn from the internal consistency (or lack thereof) in the content of the witnesses' testimony or the external consistency between the content of their testimony and the extrinsic evidence, an appellate court is in as good a

> position as the trial court to assess the veracity of the witness's evidence. The real tests are *how consistent the story is within itself, how it stands the test of cross-examination, and how it fits in with the rest of the evidence and the circumstances of the case*: see *Jagatheesan* at [40]. If a decision is inconsistent with the material objective evidence on record, appellate intervention will usually be warranted.
>
> (c) An appellate court is as competent as any trial judge to draw any necessary inferences of fact from the circumstances of the case: see *Yap Giau Beng Terence* at [24].
>
> [emphasis added]

59 The upshot of this is that my role is not to look at the evidence *de novo*, save where inferences of fact fall to be drawn. Rather, my role is to examine the trial judge's reasoning and to see whether her findings of fact were "plainly wrong" or "against the weight of the evidence". In that vein, a certain degree of latitude is afforded to the trial judge. Turning to the present case, the main plank of the Defence's case is that the DJ's decision to convict the accused was *against the weight of the evidence*.[112] I will therefore have to assess where the weight of the evidence lies.

The unusually convincing standard

60 As the DJ's convictions for three of the charges in the present case were based solely on the uncorroborated evidence of the complainant, there is yet another principle which illuminates the deciding of this appeal. When a conviction is based solely on the *uncorroborated evidence* of a witness, that witness's evidence must be "unusually convincing" in order for a conviction to be sustained (*GII v Public Prosecutor* [2025] 3 SLR 578 ("*GII*") at [25], relying on *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 ("*GCK*") at [87]). This is because it may be unsafe to convict an accused person on the basis

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112 DWS at para 5.

of a witness's uncorroborated evidence unless such evidence is unusually convincing (*GII* at [25], citing *XP v Public Prosecutor* [2008] 4 SLR(R) 686 at [27]–[28]).

61 As to what an unusually convincing testimony consists of, I can do no more than to reproduce the Court of Appeal's remarks in *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [115]:

> … it is clear that a witness's testimony may only be found to be "unusually *convincing*" by weighing the *demeanour* of the witness alongside both the *internal and external consistencies* found in the witness' testimony. Given the inherent epistemic constraints of an appellate court as a finder of fact, this inquiry will *necessarily* be focussed on the internal and external consistency of the witness's testimony. However, this is *not* to say that a witness's credibility is *necessarily* determined *solely* in terms of his or her demeanour. As Rajah JA observed in *XP* ([111] *supra* at [71]–[72]):
>
> > I freely and readily acknowledge that a trial judge is usually much better placed than an appellate judge to assess a witness's credibility, having observed the witness testifying and being cross-examined on the stand. ***However, demeanour is not invariably determinative; contrary evidence by other witnesses must be given due weight, and if the witness fails to recall or satisfactorily explain material facts and assertions, his credible demeanour cannot overcome such deficiencies.*** As I explained in *PP v Wang Ziyi Able* [2008] 2 SLR(R) 61 at [92]–[96], an appellate judge is as competent as any trial judge to draw necessary inferences of fact not supported by the primary or objective evidence on record from the circumstances of the case.
> >
> > *While an appellate court should be more restrained when dealing with the trial judge's assessment of a witness's credibility, there is a difference between an assessment of a witness's credibility based on his demeanour, and one based on inferences drawn from the internal consistency in the content of the witness's testimony or the external consistency between the content of the witness's evidence and the extrinsic evidence. In the latter two situations, the trial judge's advantage in having studied the witness is not critical because the appellate court has access to the same material and is*

> *accordingly in an equal position to assess the veracity of the witness's evidence* (see *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR(R) 45 ('*Jagatheesan*') at [40], citing *PP v Choo Thiam Hock* [1994] 2 SLR(R) 702 at [11]).
>
> [emphasis in original]

62 In other words, a large part of the assessment on whether a witness's evidence is unusually convincing would hinge on its internal and external consistency. It is in this respect that the Defence says the complainant's evidence falls short. I turn now to assess the complainant's evidence in relation to each of the charges.

Whether the complainant's evidence in relation to the first, second and third charges was unusually convincing

The first and second charges

63 Given that the first and second charges pertain to incidents which allegedly happened at the Green Road address, I will discuss the evidence for the first two charges together.

64 I start by setting out the evidence given by the complainant at different junctures.

The complainant's evidence

65 In the complainant's first statement to the police (the "First Statement"), which was recorded on 21 May 2021, she said as follows:[113]

> 5 I recall there was this one incident where my stepfather [*ie*, the accused] did something to me while we stayed at this house [*ie*, the Green Road address]. It happened at night. I was alone in my room and asleep. Everyone else was at home, and

113 Exhibit D1 at p 2 (ROP at p 1325).

> my grandmother was in the living room watching TV. I was woken up by my stepfather. The room was still dark. He asked me to follow him and I did. We went to his bedroom trough [*sic*] the adjoint door. In his bedroom, the side lights were on and it was dim. There was no one else in the room. He asked me to take out my shorts and lie down on the bed. I complied. I still had my panties on. I lie down at the edge of the bed, facing up, with my legs dangling at the side of the bed. My stepfather was standing at the edge of the bed facing me, where my legs were. After that, my stepfather removed my panties down to my thigh area. My stepfather was wearing a shirt and a pair of boxers. He removed his boxers and exposed his penis. *He came near me and I felt that his penis touched my vaginal area. His penis was half erected. He tried to penetrate my vagina using his penis but he could not. Thereafter, he used one finger to penetrate my vagina. He moved his finger in and out a few times before he removed his finger.* After that, he wore back my panties for me and asked me to wear my shorts back. I did, and he wore his own boxers back at the same time. He then sent me to the adjoint door and I returned to my room and went back to sleep. He did not say anything to me.
>
> 6 A few weeks later, the same thing happened again. It was also during night time when I was alone in the room. I was asleep on my bed and my stepfather woke me up. Again, he brought me into his bedroom through the adjoint door, and asked me to lie down on the bed. Similarly, there was no one else in the room. He asked me to remove my shorts and I did. This time, he did not remove his boxers and he was fully clothed. *He removed my panties to my thigh area, and penetrated my vagina using one of his fingers. He also did the same act of moving his fingers in and out a few times before he stopped.* He then wore my panties back for me, and asked me to wear my shorts. He then walked me to the door and went back to the room and I slept. I did not tell anyone about these 2 incidents.
>
> 7 *Nothing else happened while we stayed at [Green] Road.*
> …
>
> [emphasis added]

66 In other words, the complainant described two incidents which happened at the Green Road address. The first involved the accused attempting to penetrate her vagina using his "half erected" penis, as well as digital penetration of her vagina. The second involved digital penetration only. In

addition, the complainant expressly indicated that these were the only two incidents which occurred at the Green Road address.

67 In her second statement to the police (the "Second Statement"), which was taken on 17 August 2022, the complainant's evidence regarding the details of the incidents mentioned in the First Statement changed slightly:[114]

> Q8: In your first statement to the Police, you informed the Police that [the accused] had penetrated his fingers into your vagina on 2 occasions while at [the Green Road address]. Are you sure that there was penetration and why?
>
> A8: I [tried] to recall the details because it was many years ago. *I cannot be sure there was penetration*, but I am sure that he had touched my vagina with his fingers.
>
> Q9: In your first statement to the Police, you also mentioned that he tried to penetrate your vagina with his penis, but he failed to do so. Are you sure that there was an attempt to penetrate and why?
>
> A9: Similar to my previous answer, the incident had been some years and I tried to recall the details. *I cannot be sure that he tried to penetrate* but I am sure he did rub his penis on my vagina.
>
> [emphasis added]

68 As can be seen from the above extract, the changes related mainly to whether there was penetration or attempted penetration by the accused's penis and fingers during the two incidents. However, the complainant did not waiver from the allegation that there was, at the very least, contact between the accused's penis and fingers with her vagina during the incidents.

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114 Exhibit D2 (ROP at p 1330).

69 The third statement to the police (the "Third Statement"), recorded on 5 April 2023, was where there was a more substantive change in the complainant's evidence:[115]

> Q1) Can you still recall what happened with regards to this report that you have lodged?
>
> A1) I can recall but it is hazy for the incidents at [Green] Road. For the incidents at [redacted], it's more clear [to] me.
>
> Q2) Can you still recall what happened in the incidents at [Green] Road?
>
> A2) He molested me. I call him Uncle in Teochew and his name is [the accused's name].
>
> Q3) Can you tell me how he molested you?
>
> A3) He touched my chest area. That's all I can remember. There was also another incident in my mother's room which was connected to my room shared with my grandmother.
>
> Q4) Can you tell me more about this incident?
>
> A4) He would come into my room when I'm sleeping. At this point of time, my grandmother is at the living room watching television. I was sleeping on the upper deck of the double decker bed. He would enter the room and then approached me. *He would then touch my chest area in rubbing motion for a few seconds.* I woke up because of his touching. After that, he would stop and leave the room. I would then open my eyes and I saw his side view leaving the room. After that, I would cry a bit and went back to sleep. There was no conversation. I was scared and I wanted to tell someone but I didn't have anyone that I could tell. My grandmother didn't like him and I couldn't tell her. Furthermore, she's so old, I didn't want to agitate her or make her worry. I'm not close to my mother so I couldn't tell her then too. I'm not sure where was my dad at that point of time and furthermore, my mother didn't like me going (sic) close to my dad and thus, I couldn't do so too.
>
> Q5) Do you know roughly what time did this happened?
>
> A5) At night. I'm not sure of the timing. After dinner time. I don't know where the rest of the family [*sic*] at this point of time. The house was very big.

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115 Exhibit D3 (ROP at p 1331).

> ***Q6) Was there any reasons why it was not mention in your initial statements?***
>
> ***A6) I'm not so sure. I might have mentioned this but I'm not sure why was it not inside my statement. I'm very sure this had happened and this is clear in my memory.***
>
> Q7) Anything else you wish to add about [this] incident?
>
> A7) That's all. Mostly ***this is the first episode at [Green] Road followed by the second incident which I mentioned in my previous statement***.
>
> [emphasis in original omitted; emphasis added in italics and bold italics]

70 As can be seen from the extract which I have reproduced above, the complainant's evidence in the Third Statement is that the first incident which occurred at the Green Road address involved the accused touching her chest, and this was followed by "the second incident which [she] mentioned in [her] previous statement". It bears noting that the complainant had not, in the First Statement and the Second Statement, mentioned any incident which involved the accused touching her chest. It is also not clear which incident the complainant was referring to as the second incident which happened at the Green Road address.

71 During her examination-in-chief at trial, the complainant maintained that one of the incidents which happened at the Green Road address involved the accused touching her breast area,[116] over her clothes and in soft, circular motions.[117] She also said that another incident involved the accused rubbing his penis up and down her vagina, attempting to put his penis into her vagina (*ie*, attempting to penetrate the complainant's vagina with his penis), and then

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116 Notes of evidence for 3 November 2023 ("Day 2 NE") at p 17 lines 4–20 (ROP at p 120).

117 Day 2 NE at p 19 lines 9–16 (ROP at p 122).

rubbing his fingers up and down her vagina.[118] The complainant said that she was sure the accused had tried to put his penis into her vagina because she "felt, like, pressure against [her] vagina" and she "felt, like, [a] pushing force".[119]

72 In the course of cross-examination, the complainant was asked, amongst other things, what she meant by "the second incident which [she] mentioned in [her] previous statement" in the Third Statement, to which she responded that she did not remember.[120] When she was confronted with her omission to mention the incident in which the accused had allegedly touched her chest in the First Statement, the complainant had this to say:[121]

> … There's a lot of, like, incidents that happened that---okay. So, when I was young, I didn't had anybody. I didn't had my dad, I didn't had my mum. I only had myself and then having to go through what I went through, I'm believe that not a lot of people went through. I'm not the only one but I'm not the---I'm not--- I'm, like, it was really, really painful for me to go through everything alone. My mum abusing me, having to take care of the family by myself, especially at a young age and then when he came into my life – him, as in [the accused] – and then for him to, like, molest or touch, whichever you call it or, like, sexual harass, abuse, I don't know what's the correct word, but I had nobody to tell and then it happened so many time, there were so many incidents. I just kept it to myself and it happened all at a young age. I cannot expect---I mean, nobody would expect me to remember every single detail. *Maybe whatever that is written on [the Third Statement] or [the First Statement] or [the Second Statement], the statements are all different, correct.* But I know that all these happened. Whether it's two incident, three incident or one incident, I know that all these happened. So, *I don't really have an explanation for any of my different statements* but this is what I want to say. …
>
> [emphasis added]

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118 Day 2 NE at p 22 lines 9–32 (ROP at p 125).

119 Day 2 NE at p 22 lines 29–31 (ROP at p 125).

120 Day 4 NE at p 56 line 27 to p 57 line 6 (ROP at pp 254–255); Day 5 NE p 3 lines 14–25 (ROP at p 263).

121 Day 5 NE at p 4 lines 12–31 (ROP at p 264).

My views on the complainant's evidence

73 It is clear from the extracts cited above (at [65]–[72]) that there are two glaring inconsistencies in the complainant's evidence. These relate to: (a) the number of incidents of molest or sexual assault which took place at the Green Road address; and (b) the acts which took place during each incident.

74 Indeed, the DJ acknowledged that the external inconsistencies between the complainant's evidence in court and her statements to the police were the "greatest challenge" to her evidence, and that the inconsistency relating to the two aspects mentioned in [73] above was "the most significant inconsistency" (GD at [81]–[82]).[122] However, the DJ was of the view that this was not fatal to the credibility of the complainant's evidence as a whole, and that adequate allowance had to be given to the "human fallibility in retention and recollection" (GD at [85], citing *Public Prosecutor v Singh Kalpanath* [1995] 3 SLR(R) 158 at [60]).

75 Given that the incidents were supposed to have taken place 15 years prior to the time the police report was first lodged and statements recorded from the complainant, and she was only about nine to ten years of age at the time of the incidents, the DJ found that it was perfectly reasonable for the complainant not to remember the details of all the incidents, or even exactly how many incidents there were (GD at [86]).[123] Hence, the DJ accepted the complainant's explanation that there had been many incidents when she was young and that she was not able to recall every single one.

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122 ROP at p 602.

123 ROP at p 603.

76 Furthermore, the DJ stated she bore in mind that the first incident described in the First Statement was largely similar to the incident set out in the second charge and, hence, there was "no dramatic change in the facts, just the question of how many times this had happened" (GD at [86]).[124]

77 With respect, I am unable to agree with the DJ's reasoning and conclusions. I can accept that adequate *allowance* should be given to human fallibility in recollection and retention, especially in cases involving sexual assault of minors (see, *eg*, *Toh Lam Seng v PP and another appeal* [2025] SGHC 116 at [27], referring to *Tay Wee Kiat v Public Prosecutor and another appeal* [2018] 4 SLR 1315 at [21]). However, as I indicated to the Prosecution during the hearing of this appeal, that argument can only have a certain mileage. An allowance is not a blank cheque. It cannot operate to excuse any and every inconsistency in a witness's testimony, especially when that inconsistency is so material that it casts a reasonable doubt on whether that testimony can prove what it is intended to prove.

78 In the present instance, I find that the vacillations in the complainant's evidence across her three statements and at trial render me unable to find that she was an unusually convincing witness in relation to the first and second charges.

79 In the First Statement, the complainant specifically described two discrete incidents which allegedly took place at the Green Road address, the first involving attempted penile-vaginal and digital-vaginal penetration, and the second involving digital-vaginal penetration. She purported to give details surrounding these two incidents, including the fact that the accused's penis was

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124 ROP at pp 603–604.

"half erected" when he attempted to penetrate her, a detail which she later conceded she would not have known at the time of the incident and did not have any memory of.[125] She also said in no uncertain terms that "[n]othing else happened" at the Green Road address in the First Statement.

80 These allegations were, in a sense, watered down in the Second Statement, as the complainant became unsure if there was indeed attempted penetration, though she later testified at trial that she was certain that there was attempted penetration.[126] However, the complainant's allegation that there was contact between the complainant's penis and fingers with her vagina during the two incidents remained the same.

81 It bears mentioning that while the complainant had, at this juncture (*ie*, during the recording of the Second Statement), expressed some doubts as to her ability to recall the details of the incidents, she did not waver from the fact that there were two discrete incidents at the Green Road address, and that one of them involved penile-vaginal and digital-vaginal contact, while the other involved digital-vaginal contact only.

82 In the Third Statement, the complainant appeared to have substituted one of the incidents with a completely different one, as this involved the accused touching her chest as opposed to any contact with her vagina. This was not just a watering down of previous allegations or a slight change in detail which left the core of the allegation intact. It was a complete change in the nature of the allegation. Moreover, it was not the complainant's evidence that this was an incident in addition to the incidents which she previously mentioned in the First

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125 Day 4 NE at p 9 lines 26–31 (ROP at p 207) and p 23 lines 23–25 (ROP at p 221).

126 Day 4 NE at p 22 lines 11–17 (ROP at p 220).

and Second Statements. Instead, she essentially maintained that there were only two incidents which took place at the Green Road address, with one of them being an incident involving the accused touching her chest.

83 In this regard, I refer to "Q6" and "A6" in the Third Statement (as can be seen at [69] above), where it was brought to the complainant's attention that the chest-touching incident was not mentioned in the First Statement. Her response was that she "might have mentioned it" but was "not sure" as to why it was not recorded in the First Statement. Notably, at "A7", the complainant once again indicated that there were only two incidents which took place at the Green Road address. To put it simply, the complainant was, at this juncture, already confronted with this inconsistency between the Third Statement and the First Statement. However, her explanation was not the same as that given in trial, namely that there were multiple incidents and her memory was "hazy". She was sure that the chest-touching incident happened, not as an additional incident, but as one of the two incidents which occurred at the Green Road address.

84 I am unable to see how this was not a dramatic change in the facts. If the complainant had mentioned, at the outset in the First Statement, that there were a number of incidents at the Green Road address and that she could only remember two, then perhaps her later recollection of the details of another incident in a subsequent statement would not be inconsistent with the First Statement. That, however, was not the case.

85 The DJ rejected the Defence's attempt to draw a comparison between the complainant's account in the First Statement to her account in court in relation to the first two charges. The DJ reasoned that "it was not [the complainant's] evidence that these related to the same incidents at all" (GD at

[87]).[127] The DJ also noted that the complainant's position was that "she could not remember the details of each incident, and there had been many such incidents".

86 To the contrary, however, if it was the complainant's own evidence throughout the three statements that there were only two incidents at the Green Road address, then the logical conclusion to be drawn is that these two incidents must have been the same two incidents. True it may be that the complainant did not explicitly say as much in her statements, but the statements indicate that, in her mind, there were only two incidents.

87 It is even more perplexing when one considers the circumstances in which the chest-touching incident first arose in the Third Statement. The Third Statement was recorded *after* the accused was charged (in the first charge) with committing that act.[128] In other words, the first time the complainant alleged that the accused had touched her chest on one occasion at the Green Road address surfaced only after the charge containing that very incident was drafted. This is of relevance because, as the Defence rightly notes, it is fundamentally a question of why the complainant's evidence changed in between the Second and Third Statements.[129]

88 Neither of the investigation officers called to testify could adequately explain the basis on which the charge was drafted.[130] The investigation was initially overseen by PW7, who testified that he was not involved in preparing

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127 ROP at p 604.

128 DWS at para 212; Notes of evidence for 21 November 2023 ("Day 6 NE") at p 36 lines 27–31 (ROP at p 372).

129 DWS at para 202.

130 DWS at para 214.

the charges.[131] This was, however, contradicted by PW8, the investigation officer who took over from PW7. PW8 testified that she drafted the charges based on the directions of PW7, who also happened to be her supervisor.[132] In fact, she specifically confirmed that the details pertaining to the chest-touching incident in the first charge were based on guidance provided by PW7.[133] PW8 also denied that the complainant was told what the accused was charged with when the Third Statement was recorded.[134] However, she agreed with the Defence's suggestions that the details in the charges must have come from the complainant and that the complainant must have had interviews with the police, other than those which formed the basis of the First, Second and Third Statements, that were unrecorded.[135]

89 The DJ accepted that the complainant must have mentioned to the police about an incident where the accused had touched her chest (GD at [120]).[136] I do not think that the DJ was justified in doing so. Neither of the investigation officers who testified at trial said that they had themselves conducted any unrecorded interviews with the complainant. In fact, PW7 testified that, besides the recording of the Second Statement, he could not recall any other engagement with the complainant.[137] PW8 also confirmed that she did not have any interview with the complainant before the charges were drafted.[138] Hence, there was no evidence of any unrecorded interview which the complainant might have had

131 Day 6 NE at p 27 lines 22–24 (ROP at p 363).

132 Day 6 NE at p 36 lines 10–23 (ROP at p 372).

133 Day 6 NE at p 38 line 28 to p 39 line 2 (ROP at pp 374–375).

134 Day 6 NE at p 36 lines 27–31 (ROP at p 372).

135 Day 6 NE at p 43 lines 4–12 (ROP at p 379).

136 ROP at p 617.

137 Day 6 NE at p 26 lines 25–29 (ROP at p 362).

138 Day 6 NE at p 43 lines 13–17 (ROP at p 379).

with the police. In such circumstances, there would be no evidential foundation for the first charge in any of the complainant's statements. The First and Second Statements certainly do not support the charge. And as the Third Statement came after the charge, no reliance can be placed on it to form the basis for the charge as well. To do so would be to put the cart before the horse.

90 To compound this unsatisfactory state of affairs, the complainant's position that there had been many such incidents and she could not remember all of their details was only a position which she adopted *after* she was confronted with the inconsistencies in her statements and her testimony at trial.

91 It is pertinent to have regard to the fact that this assertion of the complainant (*ie*, that there were so many incidents at the Green Road address and as such she could not remember all the details) surfaced for the first time only in the midst of impeachment proceedings. When the complainant was initially confronted with the inconsistencies in her evidence on the number of incidents at the Green Road address and asked whether there were two or three incidents, she said that she could not remember and followed up by saying that she could not continue with the impeachment proceedings.[139] As the DJ recorded in the GD (at [78]),[140] the complainant "broke down" in the course of giving evidence.

92 It was only when the impeachment proceedings resumed the next day, and the complainant was asked once again if there were a total of three or two incidents, that she gave the answer reproduced at [72] above (*ie*, that there were

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139 Day 4 NE at p 56 line 27 to p 57 line 13 (ROP at pp 254–255).

140 ROP at p 600.

"so many incidents" that she could not remember all the details).[141] Before this point in time, the complainant was consistent in saying that there were only two incidents at the Green Road address.

93 This explanation of the inconsistencies in the complainant's statements as regards the number of incidents (*ie*, that she could not remember all the details because there were "so many incidents" at the Green Road address) was certainly not the explanation she gave in the Third Statement as to why the chest-touching incident was not mentioned in the First Statement (*ie*, that she might have mentioned it but was not sure why it was not included in the First Statement). Hence, on one level, even the complainant's explanation on the inconsistencies in her statements was inconsistent.

94 A further point worth noting is that the complainant's response at "A7" in the Third Statement was unclear as to which incident she was referring to as the "second incident". At trial, the complainant was given an opportunity to clarify which incident she was referring to in the Third Statement. However, she stated that she could not remember what she was referring to when she said that.[142]

95 If the complainant was referring to the incident in which only digital-vaginal contact took place, then there would be no incident underlying the second charge at all in the Third Statement. In such circumstances, one cannot simply employ a mix-and-match approach to the evidence by finding support for each charge in each of the statements. That obscures the underlying inquiry, which is whether the complainant's evidence in relation to the first and second

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141 Day 5 NE at p 4 lines 6–8 (ROP at p 264).

142 Day 5 NE at p 3 lines 14–25 (ROP at p 263).

charges, *as a whole*, was broadly consistent across all of her statements and at trial.

96 Finally, it did not help the Prosecution's case that the complainant was not able to save her credit during impeachment proceedings. Her answers to many of the questions on the inconsistencies in her evidence were either that she had no explanation or that she did not know. In my view, this was a point which was not adequately dealt with in the GD.

97 In the premises, I cannot but conclude that the DJ's decision to convict the accused on the first and second charges was against the weight of the evidence. The inconsistencies between the complainant's evidence at trial and in her three statements to the police as regards the number of incidents which took place at the Green Road address and the nature of the alleged acts of molest in those incidents cast substantial doubt on the reliability of her evidence. As mentioned above (at [76]), the DJ was of the view that there was "no dramatic change in the facts" because the first incident which the complainant described in the First Statement was "largely similar" to the incident underlying the second charge (GD at [86]).[143] As I see it, however, it matters not that the complainant's evidence, at some stages, was consistent with the particulars of the first and second charges. Her evidence in relation to the first and second charges has been tainted by these inconsistencies and, as such, cannot be used to sustain convictions on those two charges.

98 Moreover, I do not think it is sufficient to say that it is "perfectly reasonable for [the complainant] not to remember the details of all the incidents, or even exactly how many incidents there were" given the passage of time

143 ROP at p 603.

between the incidents and the lodging of the police report (see GD at [86]).[144] As the Defence pointed out, this was a question of why the complainant's memory was so markedly different in the two-year period between the First Statement and the trial.[145] In my view, that the complainant had changed her position a number of times, and in material respects, within the span of a few years (*ie*, two years between the recording of the First Statement and her testimony at trial) is something that has inevitably infected the reliability of her evidence for the first and second charges.

99 Indeed, the complainant herself admitted that she "might have ... confused ... all these incidents".[146] She also agreed with the Defence's suggestion that her memory was hazy, as can be seen in the following exchange:[147]

> Q So, my first question that I asked is just to recap what you've said that you cannot clearly remember what happened, okay? The second part of it is that the details keep changing because you cannot remember. Do you agree with me there?
>
> A I guess.
>
> Q And ... you have come to Court---you have bravely come to Court to give evidence about what has happened but even though you have tried your best, the fact of the matter is that everything is a bit hazy in your memory about what happened. Do you agree there?
>
> A Yes.
>
> Q And *your version of events has not been consistent because you genuinely cannot remember what may or what may not have happened in [the Green Road address]*. Do you agree with me there?

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144 ROP at p 603.

145 DWS at para 67.

146 Day 5 NE at p 14 lines 8–9 (ROP at p 274).

147 Day 5 NE at p 16 lines 5–22 (ROP at p 276).

> A *I guess.*
>
> Q And just to clarify, because you've used the phrase "I guess" a few times, when you say "I guess", you mean "yes", right?
>
> A Yes.
>
> [emphasis added]

100 The complainant also agreed that her memory about what happened at the Green Road address was "hazy and unclear", although she did not agree to the same for the incidents at Blue Road and the Yellow Road unit.[148]

101 Therefore, I do not think that the complainant was an unusually convincing witness in relation to the first and second charges and that the accused's conviction on those charges can be safely founded upon such evidence. The complainant may have remembered that incidents at the Green Road address had happened, but that is not enough to prove that the specific charges proceeded against the accused are made out and ground convictions on those charges. Accordingly, the accused's convictions on the first and second charges must be set aside.

The relevance of inconsistencies relating to facts surrounding the commission of an offence to the unusually convincing inquiry

102 Before moving on to the third charge, I address the issue of whether inconsistencies in a witness's evidence relating to facts surrounding the commission of an offence are relevant to determining whether that witness is an unusually convincing one. In holding that the inconsistencies in the complainant's evidence for the first and second charges in relation to whether there was attempted penetration was not material, the DJ noted that how much

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148 Day 5 NE at p 22 lines 8–25 (ROP at p 282).

force the accused had used or whether there was attempted penetration was "not directly relevant to the charge" (GD at [89(d)]).[149] The DJ focussed on the fact that the "core of [the complainant's] evidence" and what was alleged in the charge was that the accused had made contact between his penis and the complainant's vagina, and that this was something the complainant never changed her evidence on.

103 The Defence relies on *AOF* (at [120]) to argue that inconsistencies in a witness's evidence can be considered material even though they do not relate to the particulars of the charge.[150] On the other hand, the Prosecution submits, in reliance on *GII* (at [32]–[34]), a decision that was released after the GD, that it is the material set out in the charge that ought to be met, and that whether there are even greater allegations that come out in the course of the witness's evidence need not be a matter for a court to be concerned about.[151] While the DJ seemed to have touched on this issue only in relation to the attempted penile-vaginal penetration allegation, this also has implications on how other inconsistencies for the first, second and third charges which do not squarely impinge on the particulars of those charges ought to be dealt with.

104 To my mind, it is clear from *AOF* that evidence in relation to facts surrounding the charge (*ie*, non-charge particulars) are relevant to assessing whether a witness's evidence is unusually convincing. In other words, inconsistencies in such evidence cannot be ignored. However, whether those inconsistencies are so material as to lead to the conclusion that a witness is not unusually convincing is a separate question that can only be answered in light

149 ROP at p 607.

150 DWS at para 34(b); Minute sheet for hearing on 29 April 2025 ("Minute Sheet") at pp 4–5.

151 Minute Sheet at p 22.

of the particular circumstances of each case, including the totality of the witness's evidence and the witness's explanations for those inconsistencies.

105 In *AOF*, the complainant's evidence in relation to the first charge changed from stating in evidence-in-chief that the appellant put his finger on her vagina to stating in cross-examination that the appellant penetrated her vagina with his finger (see [120]). This was extraneous to the particulars in the charge, which only alleged that the appellant had voluntary carnal intercourse against the order of nature by having the complainant perform fellatio on him (see [5]). While the Court of Appeal did express that this was a "consequential inconsistency", it was not on account of this inconsistency alone that it did not find the complainant to be an unusually convincing witness. Hence, it is clear that inconsistencies in a witness's evidence pertaining to non-charge particulars, even where they relate to acts which are squarely outside those detailed in a charge, are relevant to assessing whether that witness is an unusually convincing one.

106 In *GII* (at [48]), Sundaresh Menon CJ was of the view that an inconsistency in relation to the extent of the intrusion of the appellant's fingers into the complainant's vagina and whether it extended to penetration was ultimately immaterial to the charge as it referred to only the touching of the complainant's vagina. I do not think, however, that His Honour intended to lay down any bright-line rule that an inconsistency which does not impinge upon a particular in the charge will *always* be immaterial.

107 Crucially, one should not read a court's pronouncements on whether an inconsistency is "material" or "immaterial" in vacuum, without having regard to what the court considered that inconsistency to be material or immaterial for. In *GII* (at [48]), after stating that the inconsistency was immaterial to the charge,

Menon CJ went on to say that "this affords no basis at all for concluding that every other part of the complainant's evidence was to be rejected". This is because the appellant had attempted to rely on this inconsistency as a basis for rejecting the complainant's account of the assault *as a whole*. There was, however, other evidence on record which consistently pointed to the assault having taken place. Such evidence included the complainant's police statement, an (almost) contemporaneous audio recording of a conversation which the complainant had with her mother and friends after the incident and a statutory declaration made by the complainant. Moreover, the complainant had a plausible explanation for omitting to mention details of the intrusion of the appellant's fingers into her vagina in the audio recording, namely that she wanted to present a less distressing account of the incident to her mother and friends (see [37(b)] and [42]).

108 Seen in this light, it was not the case that the court considered the inconsistency to be irrelevant in assessing whether the complainant's evidence was unusually convincing simply because it pertained to a non-charge particular. Rather, after taking into account the totality of the evidence, including the consistency in the complainant's evidence and her plausible explanation for the inconsistency, the court was of the view that the inconsistency was not so material that it would render the complainant's evidence not unusually convincing.

109 Indeed, I have difficulty accepting such a broad proposition, as put forward by the Prosecution, that a court only need concern itself with whether the material set out in the charge is met. Seeing as how the charges are drafted by the Prosecution and can be amended, this would make it all too easy for not insignificant inconsistencies in the evidence to be disregarded.

110 To quote Menon CJ (at [43] of *GII*), it is "important to consider how any alleged inconsistencies may give rise to a reasonable doubt as opposed to an insubstantial or theoretical or fanciful doubt". Embedded in that inquiry is a consideration of whether an inconsistency is "wholly tangential to the issues of the case" and "[points] at the most to possible errors in recalling insignificant details", or "[undermines] the core elements of the complainant's evidence" (see [39] of *GII*). To put it another way, whether inconsistencies in a complainant's evidence give rise to a reasonable doubt would depend on whether they go beyond possible errors in recalling insignificant details and, taken collectively, undermine the core elements of the complainant's evidence.

111 To summarise:

(a) Inconsistencies in a witness's evidence relating to facts surrounding the commission of the offence (*ie*, relating to non-charge particulars), are relevant to determining whether that witness is an unusually convincing one.

(b) The key question is whether those inconsistencies, taken collectively, give rise to a reasonable doubt in the Prosecution's case (*GII* at [43]).

(c) Whether the inconsistencies give rise to a reasonable doubt in the Prosecution's case would depend on whether they go beyond possible errors in recalling insignificant details and undermine the core elements of the witness's evidence (*GII* at [39]).

(d) In this regard, it is relevant to consider, amongst other things, the consistencies in the witness's evidence and the witness's explanations for the inconsistencies.

112 In the present case, it is clear that the inconsistencies in the complainant's evidence for the first and second charges, some of which related to the charge particulars and some of which went beyond the charge particulars, gave rise to a reasonable doubt in the Prosecution's case. They were certainly more than possible errors in recalling insignificant details and undermined the core elements of the complainant's evidence, such as the number of incidents and the nature of the acts which occurred during those incidents. The complainant's explanations were also unsatisfactory and fell short of assuaging doubts about the reliability of her evidence. Taken *together*, these rendered the complainant not an unusually convincing witness for the first and second charges.

The third charge

113 The third charge pertains to an incident that allegedly occurred in the complainant's car while it was in the carpark of Blue Road.

114 The inconsistencies in the complainant's evidence relate chiefly to the sequence of the accused's touches and, in particular, what touch woke the complainant up and what touch made her leave the car. I set out the complainant's evidence below.

The complainant's evidence

115 In the First Statement, the complainant's account of what happened in the car was as follows:[152]

> On the journey home, I fell asleep. I was awoken when I felt that someone was touching my right thigh. I knew that it was my stepfather touching me as there was no one else in the car. The car engine was turned off. I was wearing my school pinafore

152 Exhibit D1 at p 3 (ROP at p 1326).

> with a short-sleeved shirt and the skirt length ended slightly above my knee. *I felt him touching my thigh area that was not covered by the pinafore.* I moved slightly to signal to him that I was awake and knew what he was doing. However, he did not stop. *He went on to touch my right breast over my pinafore. I then felt his hand going into my right arm sleeve and touching my upper arm. That was where I decided to open my eyes and wake up.* When I opened my eyes, I saw that we were already parked at the carpark of our apartment. I did not tell anyone about this incident.
>
> [emphasis added]

116 To summarise, the sequence of touches was: (a) first, a touch on the complainant's bare thigh; (b) second, a touch on the complainant's right breast over her uniform; and (c) third, a touch on the complainant's upper arm. In addition, the touch on the complainant's upper arm made her decide to "open [her] eyes and wake up".

117 The complainant was not asked any follow-up questions about this incident in the Second and Third Statements. Subsequently, in her examination-in-chief, she testified to the following sequence of events:[153]

> … So he---when I was sleeping in the car, he---*I felt touches on my breast area, and then there were, like, touches on my thigh to in the middle of my thigh. He touched my breast*, like, circular motion in a, like, very soft touches just over my uniform, which is like a shirt, and then there's a pinafore. *Then after that, I just, like, moved a bit to, like, so called tell him that I know what he was doing, and then I opened my eyes a bit to see, like, where was---where was I*, and I realised that we already reached my house car park. …
>
> [emphasis added]

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153 Day 2 NE at p 28 lines 10–18 (ROP at p 131).

118 In cross-examination, the complainant was initially asked what woke her up. Her response was that the touches on her thigh woke her up, and that the touching did not continue after she woke up.[154]

119 The complainant was then asked follow-up questions on this at a later juncture, and her responses to the questions were as follows:[155]

> Q Did you see your stepfather touch your thigh?
>
> A Yes.
>
> Q Were your eyes already open at this time?
>
> A No, but it was, like, I was still peeking.
>
> Q So, you were originally asleep and then you were woken up by the touches on your thigh, correct? That's what you said?
>
> A Yes.
>
> Q And when you peeked, and he was still touching your thigh?
>
> A Okay, wait. So, *he touch my breast*, right, I was---I already---like *I was awake, but I didn't open my eyes*. I only peeked at the---at, like, what was happening. And then *after that, he touched my thighs*. And then after *that's when I, like, open my eyes all the way*, and during that peek, I was trying to see, like, where were we and, like---what like---where were we.
>
> Q Then once you opened your eyes all the way, that's when you realised you were in the car park?
>
> A Correct.
>
> Q Okay. Did you immediately exit the car?
>
> A Yes.
>
> *Q* *Apart from touching your thigh and your breasts, and your thigh, did your stepfather touch any other part of your body?*
>
> *A* *No.*

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154 Day 4 NE at p 28 lines 25–31 (ROP at p 226).

155 Day 4 NE at p 31 line 18 to p 32 line 3 (ROP at pp 229–230).

[emphasis added]

120 It would appear that, in the complainant's version of events at trial, the sequence of touches had changed. The touch on the complainant's breast now came before the touch on her thigh. In addition, the complainant was awake when the accused touched her breast and only "opened [her] eyes all the way" after the accused touched her thigh. It bears noting as well that the complainant was asked if there were any other touches, to which her answer was that there were none.[156] No mention was made of a touch on her upper arm, which was presented in the First Statement as the touch which woke the complainant up.

My views on the complainant's evidence

121 The DJ did not find the inconsistency between the complainant's evidence in the First Statement and at trial to be a material inconsistency (see GD at [89(c)]).[157] The DJ was of the view that, as the incident occurred more than ten years ago, getting the sequence of touches wrong and forgetting that the complainant also touched her on her arm was "not unreasonable". Ultimately, the complainant "never wavered from her evidence that she had been touched on both her breast and her thigh".

122 In light of my analysis above (at [102]–[111]) on the relevance of inconsistencies on non-charge particulars in a witness's evidence to the unusually convincing inquiry, I do not think that the DJ's conviction on the third charge can be upheld simply on the basis that the complainant's evidence was consistent in showing that she had been touched on her breast and thigh.

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156 Day 4 NE at p 32 lines 6–8 (ROP at p 230).

157 ROP at p 606.

123 I agree with the Defence that the inconsistencies in the complainant's evidence do not merely relate to the sequence of events, but also to the "chronological touchstones of the incident".[158] These touchstones were: (a) which touch woke the complainant up; (b) what happened after the complainant woke up; and (c) what made the complainant leave the car.

124 In relation to the first touchstone (*ie*, what touch woke the complainant up), the Defence submits that the complainant gave "wildly inconsistent evidence".[159] The Defence's case is that the complainant gave four different accounts of which touch woke her up, including three in the course of the trial itself:[160]

(a) Version 1 was in the First Statement, where the complainant said that she "was awoken when [she] felt someone was touching [her] right thigh".

(b) Version 2 was during the complainant's examination-in-chief, when she testified that she was awakened when she felt touches on her breast area over her uniform (see [117] above).

(c) Version 3 was during cross-examination, when the complainant testified that the touches on her thigh woke her up, and that there was no further touching after she woke up (see [118] above).

(d) Version 4 was also during cross-examination, when she gave a "compound version of events" and testified that the first touch was on

158 DWS at para 243.

159 DWS at para 247.

160 DWS at paras 246–247.

her breast when she was already awake but her eyes were closed (see [119] above).

125 I do not agree that the complainant's evidence in relation to this first chronological touchstone was as inconsistent as the Defence makes it out to be. In my view, the Defence misunderstands what the complainant meant by being awoken. The complainant had used the terms "awake" and/or "wake up" to describe, at various junctures, being awakened from her sleep (*ie*, being roused to awareness) and her eyes opening up respectively.

126 In the First Statement, for instance, the complainant's account was that the touch on her thigh roused her to awareness (if not, she would not have been able to perceive it), following which she moved to signal to the accused that she was *awake*. And it was a touch on her upper arm that caused her to open her eyes and *wake up*.

127 During examination-in-chief, it would appear that the complainant's account of what awakened her was that it was the touch on her breast. This is because she described the touch on her breast as coming before the touch on her thigh. She also said that after the touch on her breast, she moved a bit to let the accused know that she knew what he was doing, and then opened her eyes "a bit" to see where they were. It was not her testimony that she opened her eyes fully and "woke up" at this juncture.

128 Her initial response during cross-examination to the question of what woke her up, namely that the touches on her thigh woke her up, was therefore entirely consistent with what she said during her examination-in-chief. Her subsequent clarification then confirmed this account when she said that she was

awake, but did not open her eyes, when the accused touched her breast and then she only opened her eyes "all the way" after the accused touched her thighs.

129 Hence, the complainant's account of events was actually consistent within the trial itself and, in reality, there were only two different versions of events (*ie*, one in the First Statement and another at trial). Be that as it may, there were still significant inconsistencies between these two versions of events.

130 The broad contours of these two versions are the same. The complainant got into the accused's car, fell asleep, and was awakened when the accused touched her. She moved to signal to the accused that she knew what was happening. However, the accused continued to touch her until she finally decided to open her eyes fully, whereupon she realised that the car was parked at the carpark of Blue Road. There are, however, two key differences: (a) the sequence of these touches; and (b) the complainant's omission to mention the touch on her right upper arm in the second version of events at trial.

131 While the sequence of touches may not, in and of itself, cast doubt on the reliability of the complainant's evidence, the touches here were, on the complainant's own accounts, anchored on discrete chronological touchstones. These discrete chronological touchstones were presented as landmarks in the complainant's memory. It was her account that one of the touches had roused her from her sleep, and another had caused her to open her eyes and exit the car. Hence, these were not just mere errors in recalling insignificant details.

132 It is surely of significance that the complainant completely omitted any mention of a touch on her right upper arm during her testimony at trial. In the version of events as recorded in the First Statement, the complainant obviously

attached great importance to this touch when she said,[161] "I then felt [the accused's] hand going into my right arm sleeve and touching my upper arm. *That was where I decided to open my eyes and wake up*." [emphasis added] However, at trial, not only did the complainant initially answer counsel's question on whether the accused had touched her on any part of her body other than her breasts and thigh in the negative, she also specifically denied that the accused had touched her on her right upper arm when counsel questioned her on this:[162]

> Q About the incident in the car at [Blue Road], I had asked you whether your stepfather touched any other part of your body. You said no. I also asked you if he did anything else, and you said no, so let's clarify that. During this incident, *did your stepfather touch your arm*?
>
> A *Not that I know---not that I remember.*
>
> Q *Did your stepfather try to put his hand into your shirt sleeve*?
>
> A *No.*
>
> [emphasis added]

133 The alleged touch on the complainant's right upper arm, whilst not a particular of the third charge, was a significant detail because the complainant herself had presented it as such in the First Statement. Yet, just two years after the First Statement was recorded, the complainant did a complete about-turn with regard to that significant detail. Moreover, this was not a case where the complainant merely omitted to mention that detail in her testimony at trial. Her memory was refreshed when she was specifically questioned about it, and her response was a positive denial that the act which she earlier alleged to have taken place had indeed taken place.

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161 Exhibit D1 at p 3 (ROP at p 1326).

162 Day 4 NE at p 47 lines 9–16 (ROP p 45).

134 In such circumstances, I have significant doubts about the veracity of the complainant's evidence in relation to the third charge and I do not think that the accused can safely be convicted on the basis of such evidence. Accordingly, I set aside the accused's conviction on the third charge.

The application of the unusually convincing standard to the evidence in relation to each of the charges separately

135 At this juncture, I emphasise that, although I have found the complainant to not be an unusually convincing witness in respect of the first, second and third charges, I have not taken a broad-brush approach in relation to assessing her evidence across these three charges. In other words, I have not assessed the complainant's evidence as a whole across the charges and found that she has fallen short of being an unusually convincing witness in general. Rather, I have looked at her evidence for each of the first three charges separately and found that the complainant fell short of being an unusually convincing witness for each of them *separately*. Of course, I have assessed the evidence for the first and second charges together because they are deeply intertwined and virtually inseparable, seeing as the inconsistencies cut across both charges.

136 As the Court of Appeal stated in *AOF* (at [1]), "[t]he importance of granularly examining the facts ... cannot be overstated", and "the importance of such intense scrutiny needs no reiteration where sexual offences without any objective corroboration are in question". In that spirit, the evidence for each of the charges must be examined separately. The flipside of that is that it is perfectly in order to say that a witness's evidence is unusually convincing for one charge but not unusually convincing for another. That, however, is not the case here.

Whether the complainant's evidence in relation to the fourth charge was corroborated by other evidence

137 The fourth charge relates to an incident which allegedly took place in the Yellow Road unit. Unlike for the first, second and third charges, the DJ did not convict the accused on the basis of the complainant's evidence alone, as she found that the complainant's evidence was corroborated by other evidence (see GD at [91]–[98]). The presence of corroborating evidence, of course, does not mean that inconsistencies in the complainant's own evidence can be papered over. However, it dispenses with the need for the complainant to be an unusually convincing witness, as that standard only applies when a conviction is founded solely on the *uncorroborated* evidence of a witness.

138 As with the other three charges, I now proceed to lay out the complainant's evidence.

The complainant's evidence

139 In the First Statement, the complainant described "several incidents" at the Yellow Road unit on which the accused would touch her breasts and thighs. However, there was one incident she singled out. This is the incident underlying the fourth charge. I reproduce the relevant part of the First Statement here:[163]

> While at [the Yellow Road unit], there were several occasions where my stepfather touched me on my chest and breasts area when I was asleep. I could not recall the exact dates but they all occurred at night when we were all asleep. *I felt touches on my chest and breasts over my shirt, and also my thighs over my shorts.* I opened my eyes and I saw that the person touching me was my stepfather. The door was also opened. I never shouted or made any noises but I shifted myself or turned my body to signal to him that I was awake and I knew what he was doing. The touches lasted less than 5 minutes. *The last time that this happened was the incident that was witnessed by my stepsister,*

163 Exhibit D1 at p 3 (ROP at p 1326).

> *[PW4]. [PW4] asked me about it the next day. She asked me if my stepfather touched me, and I told her yes.* At that time, I only told her about the touchings that happened at the [Yellow Road unit] and not the previous incidents in the car or at [Green] Road. I did not tell anyone else about what happened. My stepfather also stopped coming into the room and stopped touching me after that.
>
> [emphasis added]

140 The complainant was not asked about this incident during the recording of the Second and Third Statements. During her examination-in-chief, she gave the following account:[164]

> … So there were a few nights my stepfather come in to the room when I was sleeping with my mum. So I'm sleeping nearest to the door. … So that---it happened a few nights when he came in and he touched me at my private areas, which is my breast and sometimes my thighs too. I didn't tell anybody about this until there was this one, like---the one that everybody---everybody knows about it, it's that he came in to the room, he---he was squatting, and then everyone was sleeping, so, like, he came in the room, *he touched me at my breast area*---breasts, yah, and then he---it was, like, soft touches on my breast, but I can still feel it, and *it's over my clothes.* And after that, *I felt touches on my thigh* too. So what I did was, like, I opened my eyes a little bit to see, like, who it was or what was happening, and I saw that it was my stepfather that was squatting down in front of me. So I moved myself a little bit to tell him, like, let him know that I know what's happening, and I know what he's doing, and that's when he stopped, and then he left the room. And then *the next morning, my stepsister, [PW4], she came to ask me about the night before, what had happened, like, did---she addressed me as, "Did---did daddy touch you?" And I say, "Yes." Then I say, "How do you know" He said---she say that she saw. …*
>
> [emphasis added]

The complainant also subsequently said in her examination-in-chief that the accused had touched her on the bare skin, and in the middle, of her thigh.[165]

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164 Day 2 NE at p 11 line 21 to p 12 line 10 (ROP at pp 114–115).

165 Day 2 NE at p 36 line 18 to p 37 line 25 (ROP at pp 139–140).

141 It can be seen that this account was almost fully consistent with the complainant's account in the First Statement. She described touches on her breasts and thigh, and also the aftermath of the incident, namely her stepsister, PW4, asking her the next morning if the accused had touched her. The only difference was that her account during examination-in-chief mentioned that the accused touched her on the bare skin of her thigh, whereas her account in the First Statement only mentioned that the accused would touch her on her thighs over her shorts.

142 During cross-examination, the complainant said that the accused touched her on the bottom half of the thigh", which she accepted meant "the bit directly above [her] knee to the middle of [her] thigh".[166] She was also asked to explain the inconsistency between her account in the First Statement and her account in examination-in-chief in relation to whether she was touched on the bare skin of her thigh or over her shorts:[167]

> Q So, the contradiction that I see is about whether you were touched on your thigh on your skin or was it on your thigh, over your shorts. Do you have any explanation for this difference in your evidence?
>
> A So, like, when I wear the shorts and then when you're sleep---*when you're sleeping, the shorts will, like, move around because you move around.* So, like, *he touched my thigh, on the skin.* I'm not sure why the statement here is "over my shorts". But---yah.
>
> Q So, for this particular contradiction, you remember that you were touched on your thigh, over your skin.
>
> A Yes.
>
> Q And not over your shorts.
>
> A Yes.
>
> Q But you don't know why your statement says this.

166 Day 4 NE at p 37 lines 5–19 (ROP at p 235).

167 Day 5 NE at p 20 line 19 – p 21 line 2 (ROP at pp 280-281)

> A Correct.
>
> [emphasis added]

My views on the complainant's evidence

143 I can accept that the complainant's explanation for this inconsistency was not very satisfactory, since the fact that her shorts would "move around" while she was sleeping does not answer the question of why she had said earlier that she was touched over her shorts. However, one cannot seriously expect the complainant to remember whether she was touched on the bare skin of her thigh or over her shorts close to a decade ago. I can do no better than to quote an extract on the ability of survivors of traumatic events to recall the details of such events from James Hopper & David Lisak, "Why Rape and Trauma Survivors Have Fragmented and Incomplete Memories" (*Time*, 9 December 2014) (cited in *GCK* at [113]):

> … It is not reasonable to expect a trauma survivor – whether a rape victim, a police officer or a soldier – to recall traumatic events the way they would recall their wedding day. They will remember some aspects of the experience in exquisitely painful detail. Indeed, they may spend decades trying to forget them. *They will remember other aspects not at all, or only in jumbled and confused fragments*. Such is the nature of terrifying experiences, and it is a nature that we cannot ignore.
>
> [emphasis added]

144 In any event, I agree with the DJ that the complainant's evidence that she was touched on her bare thigh was corroborated by the evidence of PW4 (see GD at [92]).[168]

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168 ROP at p 608.

PW4's evidence

145 PW4 gave evidence that she saw the accused touching the complainant's thigh and breast.[169] Her account of what happened in the aftermath of the incident also corroborated what the complainant said, namely that she went to ask the complainant the next morning whether she knew that the accused touched her.[170] The main plank of the Defence's case in relation to PW4's evidence, however, is that she could not have seen the accused touch the complainant's breast and thigh.[171]

146 During cross-examination, PW4 said that she was lying down and facing upwards on the bed,[172] while the complainant was sleeping on her side and facing away from PW4.[173] While she candidly admitted that, due to their respective sleeping positions, she would not have been able to see the complainant's breasts as well as the front of her thighs, PW4 was adamant that she did see the accused touching the complainant's breasts and on the bare skin of her thigh:[174]

> Q So … since you were sleeping lying down and facing up and [the complainant] was on her side, facing away from you, *you won't be able to see her breasts, right*?
>
> A *Yes*.
>
> Q You won't be able to see the front of her thighs, right? You may be able to see, like, the back of her thigh or the top of her thigh, but you can't see the front, right?

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169 Day 5 NE at p 44 line 16 to p 45 line 19 (ROP at pp 304–305).

170 Day 5 NE at p 46 lines 16–23 (ROP at p 306).

171 DWS at paras 305–311, 316–332.

172 Day 5 NE at p 54 lines 14–18 (ROP at p 314).

173 Day 5 NE at p 54 line 29 to p 55 line 1 (ROP at pp 314–315).

174 Day 5 NE at p 55 line 16 to p 56 line 28 (ROP at pp 315–316), p 58 lines 23–32 (ROP at p 58).

…

Q Yes?

A Yah.

Q Okay. *So, when you say that you saw [the accused] touch her breast, it's not possible for you to have seen that. Do you agree with me?*

A *No. But I did see.*

Q *It's also not possible for you to see [the accused] touch her thigh because the angle is just wrong. You won't be able to see, agree?*

A No. Her---I mean, *the thigh also got the back*, what.

Q So, is it your evidence that you saw [the accused] touch the back of [the complainant's] thigh?

A Isn't it the whole thing?

Q Okay. So, let me understand what you said, okay? I asked you whether it's your evidence that you saw [the accused] touch the back of [the complainant's] thigh. You said, "Isn't it the whole thing?" What do you mean by "isn't it the whole thing"?

A Like, the thigh.

Q Okay. … You said you saw [the accused] touch [the complainant's] thigh. Which part of the thigh did you see him touch?

A The thigh. It was just there.

Q Okay. … But assuming that you are facing forward, you have the front of your thigh, you have the side and then you have the back, which is underneath your backside. *Which part of the thigh did your---did you see [the accused] touch?*

A *The side*.

Q Was---*do you remember whether it's nearer the knee or nearer the backside*?

A *The backside*.

Q So, *was it on top of [the complainant's] pants or on her actual backside portion---the thigh portion nearer the backside*?

A Yah. On her---on---yah. On her---*on her thigh itself*.

> Court: You mean to say on the skin?
>
> Witness: Yah.
>
> Court: So, it's either on the skin or on the pants. So, your evidence is?
>
> Witness: *On the skin.*
>
> …
>
> Q … So, you were lying on your back, look---and facing upward, right? [The complainant] was lying on her side, facing away and then [the accused] was kneeling down. How did---how could you see [the complainant's] breast? Because her breast would be facing away from you.
>
> A From what I remember, he had his hands at the, like, touching her breast. So, it's probably the side.
>
> Q When you say "probably", is this something you actually saw or you're guessing it's probably that?
>
> A I did see.
>
> [emphasis added]

My views on PW4's evidence

147 Admittedly, the way in which PW4 gave her evidence was not entirely satisfactory, as she had to be asked multiple follow-up questions at times in order for her answers to be clarified. However, when properly examined, I do not think that PW4's evidence is inconsistent with the complainant's evidence at trial. The fact is that PW4's evidence corroborated the complainant's evidence that the accused touched the complainant's breast and thigh. PW4's account of what happened the next morning is also consistent with the complainant's account of the same. Furthermore, there is no conceivable reason for PW4, who is the accused's biological daughter, to lie about witnessing such a shameful act that implicates her father in a crime.

148 The Defence relies on *AOF* at [129] and *AKD v Public Prosecutor* [2010] 4 SLR 1029 ("*AKD*") at [29]–[30] to suggest that "[w]hen the details of

an incident as described by a witness suggest that what the witness described is impossible or improbable, this casts significant doubt [on] the witness's evidence".[175] I agree with this proposition in principle, but I am of the view that the Defence has misapplied this proposition in the present case.

149 In both *AOF* and *AKD*, the court found that it was physically improbable or impossible for *the acts* described by the complainant to have taken place. For instance, in *AOF* (at [127]), the Court of Appeal found it improbable that the complainant was able to "overpower the Appellant's grip on her right hand or wrist, reach into her right skirt pocket, fish out her mobile phone and call her mother – all with the same right hand, whilst in the midst of a struggle". In *AKD* (at [17]), Lee Seiu Kin J found it improbable, amongst other things, that the appellant could be "squatting behind the complainant, with his crotch pressed against her back, and at the same time for both his hands to be manipulating the pipe which is located at the wall in the back of the cabinet [which was in front of the complainant]". Lee J was of the view that this was a feat "only a contortionist can achieve" and that the complainant did not satisfactorily explain how it was possible.

150 Here, the Defence is not alleging that the acts which PW4 allegedly saw the accused doing were physically improbable or impossible. The Defence is saying that it was improbable or impossible for PW4 to have seen what she says she had seen. As the Prosecution rightly points out, this is a bare assertion.[176] In this case, I do not think PW4's sleeping position on the bed *vis-à-vis* the complainant rendered it all that improbable, much less impossible, for her to have seen the accused touching the complainant. Even if one accepts that PW4's

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175 DWS at para 299.

176 PWS at para 73.

head was facing upwards and glued to that position throughout the incident, it cannot be doubted that PW4, like almost every other human being, has peripheral vision. This is to say nothing of the reality that PW4's head was not cast in concrete. If she had indeed sensed that there was movement in the room beside her, her instinctive reaction would in all probability have been to look in the direction of that movement.

151 I also agree with the DJ (at [93] of the GD) that even if PW4 did not directly see the accused touching the complainant's breast and thigh since the complainant was facing away from her, she at least would have seen the accused moving his hands near the complainant's thigh and breast areas.[177] This would still be directly corroborative of the complainant's evidence.

152 I am fortified in coming to this conclusion by the evidence of PW3 and PW6, to which I now turn.

PW3's evidence

153 PW3, the complainant's biological father, testified that he was told that the complainant was molested by the accused sometime in the first half of 2015.[178] He could not remember who told him, but remembered that he went to talk to the accused, together with PW1, about it.[179] Before doing so, he drafted a note for him to read from when he spoke to the accused. The note reads as follows:[180]

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177 ROP at p 609.

178 Notes of evidence for 8 November 2023 ("Day 3 NE") at p 9 lines 1–18 (ROP at p 165).

179 Day 3 NE at p 9 lines 19–28 (ROP at p 165).

180 Exhibit P7 (ROP at p 651); Day 3 NE at p 10 line 31 to p 11 line 27 (ROP at pp 166–167).

> [The accused's name]
>
> All of us are staying together in this house because I believe we are family. I don't expect much except being a normal family.
>
> …
>
> But the situation in this family is getting unbearable. All along I know of your issues and I chose to let it go hoping that you will realize the seriousness of your mistake and stop these sick action. It seem that my patience and kindness is not appreciated. *You dare to molest my daughter in my house.* I am giving you fair warning now. If there is another molestation or such sick act from you on any person in this house, you have been warned. From now on keep well away from my daughter and she is no more permitted to assist you in your laundry or any other matter.
>
> [PW3's name]
>
> *2015*
>
> [emphasis added]

154 According to PW3, this was the first time he was told that the accused had molested the complainant.[181] He confirmed that he also "more or less" put forward all the points in this note to the accused.[182]

155 We know for a fact that this meeting between the accused and PW3 did take place, because the accused admitted as much.[183] Hence, while PW3's evidence, in and of itself, has no probative value in so far as determining whether the incident underlying the fourth charge had indeed occurred, what we know for sure is that PW3 became aware of an allegation of molest against the accused and confronted the accused about it.

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181 Day 3 NE at p 14 lines 16–20 (ROP at p 170).

182 Day 3 NE at p 15 lines 18–23 (ROP at p 171).

183 Notes of evidence for 4 March 2024 ("Day 7 NE") at p 38 lines 7–25 (ROP at p 427).

PW6's evidence

156 PW6, the complainant's twin brother, testified that, in late 2015, PW4 told him she saw the accused touching the complainant's breast while she slept.[184] Two weeks later, he received a phone call from a mutual friend he had with the complainant, PW5, in which PW5 informed him that the complainant told her over the phone that she was molested by the accused.[185] PW6 said that he took half-day leave from his National Service ("NS") duties, went straight home, and confronted the complainant and PW4 about this incident.[186] PW6's NS leave records were adduced, and they showed that he had taken half-day leave on the afternoon of 14 September and 2 October 2015.[187] He could not remember on which of these two days he had taken half-day leave because of the incident.[188] PW6 also said that, after speaking to the complainant and PW4 about the incident, he told PW1 about it.[189]

My views on PW3's and PW6's evidence

157 I accept that there were some inconsistencies and/or gaps between PW3's and PW6's evidence on the one hand, and PW4's and the complainant's evidence on the other.

158 For instance, the complainant testified that the incident underlying the fourth charge happened around one month before she moved out of the Yellow

184 Day 6 NE at p 4 lines 10–13, p 4 line 24 to p 5 line 6 (ROP at pp 340–341).

185 Day 6 NE at p 5 lines 19–29 (ROP at p 341).

186 Day 6 NE at p 6 lines 5–8 (ROP at p 342).

187 Exhibit P8 (ROP at p 652); Day 6 NE at p 6 lines 12–30 (ROP at p 342).

188 Day 6 NE at p 15 lines 25–28 (ROP at p 351).

189 Day 6 NE at p 8 lines 11–17 (ROP at p 344).

Road unit in 2015.[190] It is not clear when exactly the complainant moved out, but this appeared to have occurred towards the end of 2015.[191] PW6's evidence was that he was alerted to an incident of molest sometime in September or October 2015. PW3's evidence, however, was that he was alerted to the same in the first half of 2015. The Defence submits that, as such, PW3 could not have been referring to the same incident of molest, if at all.[192]

159 In my view, this was at best a peripheral inconsistency. It could be that PW3's memory as to when he confronted the accused was faulty. Notably, the note which he drafted did not indicate when exactly in 2015 he confronted the accused. Moreover, PW3's evidence that the incident during which he confronted the accused occurred in the first half of 2015 would put it, at most, a few months before the dates pinpointed by PW6. This is not that great of an inconsistency.

160 Another instance of an inconsistency relates to how PW6 came to know of the incident underlying the fourth charge. PW6 testified that he had received a phone call from PW5, in which PW5 told him that the complainant told her over the phone about an incident of molest committed by the accused.[193] PW4's evidence, however, was that the complainant told PW6 about the incident, although she did not actually see the complainant telling PW6.[194] She only recalled that PW6 told her that he became aware of the incident from the complainant.

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190 Day 2 NE at p 16 lines 22–24 (ROP at p 119).

191 Day 6 NE at p 20 lines 12–17 (ROP at p 356).

192 DWS at paras 339–345.

193 Day 6 NE at p 5 lines 21–27 (ROP at p 341).

194 Day 5 NE at p 47 lines 11–20 (ROP at p 307).

161 In this regard, the Defence doubts PW6's evidence that he had received a phone call from PW5.[195] According to the Defence, the likelihood of PW5 calling the complainant in 2015 to tell her about this incident was low because they had supposedly lost touch in 2012 after leaving secondary school.[196]

162 In my view, nothing of significance turns on how PW6 became aware of the incident underlying the fourth charge. It remains the case that PW6 got wind of the incident and proceeded to ask both PW4 and the complainant about it. PW4 also testified that, after PW6 was alerted to the incident, PW1 came to know about it too, and arranged to meet her, PW6 and the complainant.[197] This corroborates what PW6 said about telling PW1 after he spoke to PW4 and the complainant about the incident.

163 In the premises, the DJ did not err in dismissing any inconsistencies in the evidence of PW3, PW4 and PW6 as being "minor details" that did not detract from the core evidence (GD at [95]).[198] It is worth noting that their evidence at trial was also broadly consistent with the complainant's account of the aftermath of this incident in the First Statement:[199]

> After I told [PW4] about what happened, [PW4] told my twin brother, [PW6], about what happened to me. [PW6] then told my mother [*ie*, PW1] about what happened at the [Yellow Road unit]. She asked me "are you sure this happened?". ...

164 To be clear, I am not suggesting that PW3's and PW6's evidence was directly corroborative of the complainant's evidence about the incident

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195 DWS at paras 346–349.

196 DWS at para 347(a).

197 Day 5 NE at p 47 lines 25–29 (ROP at p 307).

198 ROP at pp 609–610.

199 Exhibit D1 at p 3 (ROP at p 1326).

underlying the fourth charge. As they were not on hand to witness the incident, their evidence cannot be used to prove that the incident did indeed take place. However, it is surely of some significance that the complainant's and PW4's evidence about what happened during the aftermath of the incident was broadly consistent with PW3's and PW6's evidence of the same. I would have to put blinkers over my eyes to ignore the startling similarities in their respective accounts. Taking all this into consideration, I am convinced that the DJ's decision to convict the accused on the fourth charge was justified.

165 Accordingly, the accused's appeal against his conviction on the fourth charge must necessarily fail.

Whether the DJ erred in sentencing

166 As only the accused's conviction on the fourth charge has been upheld, the remainder of this judgment will only focus on the sentence for that charge.

The threshold for appellate intervention in an appeal against sentence

167 As summarised by the Court of Appeal in *Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("*UI*") at [12] (referring to *Tan Soon Swan v Public Prosecutor* [1985-1986] SLR(R) 976 and *Ong Ah Tiong v Public Prosecutor* [2004] 1 SLR(R) 587), an appellate court will not ordinarily disturb the sentence imposed by the trial court except where it is satisfied that:

(a) the trial judge erred with respect to the proper factual basis for sentencing;

(b) the trial judge failed to appreciate the materials placed before him;

(c) the sentence was wrong in principle; or

(d) the sentence was manifestly excessive or manifestly inadequate.

168 Here, the Prosecution contends that the sentences imposed by the DJ were manifestly inadequate, while the Defence says that the sentences were manifestly excessive.

169 The meanings of "manifestly excessive" and "manifestly inadequate" have been succinctly summarised by Yong Pung How CJ in *Public Prosecutor v Siew Boon Leong* [2005] 1 SLR(R) 611 (at [22]) (and cited in *UI* at [13]):

> When a sentence is said to be manifestly inadequate, or conversely, manifestly excessive, it means that the sentence is *unjustly* lenient or severe, as the case may be, and *requires substantial alterations rather than minute corrections* to remedy the injustice ...
>
> [emphasis added]

170 In line with this, it has also been stated in *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 (at [84]) (and referred to in *UI* at [13]), that a high threshold has to be met before an appellate court can intervene in a trial judge's sentences, and an appellate court should demonstrate a certain degree of deference to the sentencing judge's exercise of discretion in the sentencing process.

171 Hence, as with an appeal against conviction, a certain degree of latitude must be afforded to the DJ when reviewing her sentencing decision.

The sentencing framework in Kunasekaran

172 The relevant sentencing bands for an offence under s 354(1) of the PC (*ie*, the offence underlying the fourth charge) can be found in *Kunasekaran* (at [49]), and neatly summarised in the GD (at [135]):[200]

Band	**Description**	**Sentence**
1	Cases which do not present any, or at most one, of the aggravating factors.	Less than five months' imprisonment
2	Cases where there are two or more of the aggravating factors present.	Five to 15 months' imprisonment
3	Most serious instances of aggravated outrage of modesty by reason of the number of aggravating factors, including cases involving the exploitation of a particularly vulnerable victim, a serious abuse of a position of trust and/or the use of violence or force.	15 to 24 months' imprisonment

[200] ROP at pp 621–622.

173 The sentencing framework consists of the following steps (*Kunasekaran* at [46]):

(a) First, a consideration of the offence-specific aggravating factors.

(b) Secondly, placing the offence within the sentencing bands (as shown at [172] above) based on the offence-specific aggravating factors identified. This would furnish the indicative starting point.

(c) Lastly, a consideration of the offender-specific aggravating and mitigating factors and making adjustments to the indicative starting point on account of those factors.

174 The categories of offence-specific aggravating factors which determine the sentencing band under which an offence falls include the following (*Kunasekaran* at [48]):

(a) The degree of sexual exploitation.

(b) The circumstances of the offence, including: (i) the presence of premeditation; (ii) the use of force or violence; (iii) the abuse of a position of trust; (iv) the use of deception; (v) the presence of other aggravating acts accompanying the outrage of modesty; and (vi) the exploitation of a vulnerable victim.

(c) The harm caused to the victim.

The DJ's reasoning

175 The three main offence-specific aggravating factors which the DJ identified across all the charges were: (a) the abuse of a position of trust by the accused; (b) the exploitation of a vulnerable victim; and (c) the harm caused to

the complainant (see GD at [148]–[150]).[201] The DJ did not think that there was any premeditation as she did not think it could be inferred, from the fact that the accused managed to commit the offences over the course of ten years without being discovered alone, that the offences had been meticulously planned (GD at [151]).[202]

176 For the fourth charge, the DJ placed the offence within Band 2 of the *Kunasekaran* framework, and "slightly lower than for the 1st charge" (which she placed under the middle to high end of Band 2) (GD at [156]).[203] The DJ was of the view that the degree of sexual exploitation was not particularly high or egregious, although it involved an intrusion into the complainant's private parts. Moreover, the key difference between the fourth charge and the other charges was the complainant's age at the time of the offence. The complainant was 19 years old then. Taking all this into consideration, the DJ felt that a starting point of ten months' imprisonment would be appropriate.

177 The DJ found no significant offender-specific mitigating and aggravating factors to warrant a departure from the starting points (GD at [156]).[204]

178 In addition, the DJ also imposed a term of six weeks' imprisonment in lieu of the cane as she was of the view that the domestic context in which the offences were committed and the long history of sexual abuse spanning a decade (this was in the context of the DJ convicting the accused on all four charges)

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201 ROP at pp 629–630.

202 ROP at p 630.

203 ROP at p 632.

204 ROP at p 632.

placed the complainant within a vulnerable class of victims warranting a sufficiently deterrent and retributive sentence (GD at [159]).[205]

My views on the offence-specific aggravating factors

179 As I have upheld the DJ's decision to convict the accused for only one of the charges, I have to bear in mind that some of the factors that the DJ relied on are either no longer relevant or no longer carry the same force. I am also mindful of the fact that both the Prosecution and Defence have appealed against the DJ's sentence. Given these circumstances, the offence-specific aggravating factors identified by the DJ have to be considered in a different light. I also ought to consider other factors which are of significance.

180 I turn to discuss the key offence-specific aggravating factors that are the subject of dispute between the parties.

Absence of premeditation and significant opportunism

181 I disagree with the Prosecution that there was premeditation for the fourth charge. To begin with, there is no indicative evidence that the offence underlying the fourth charge was not committed "in the spur of the moment", as the Prosecution submits.[206] Even if the offence was not committed in the spur of the moment, this does not *ipso facto* mean that the offence was premeditated. In my view, premeditation necessarily involves some degree of planning and preparation *before* the commission of the act itself. For instance, in *GBR* (at [42]), See Kee Oon J (as he then was) found that there was a degree of premeditation on the part of the appellant as he had capitalised on the victim's

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205 ROP at pp 632–633.

206 PWS at para 126.

parents' domestic dispute the night before the offence and purported to offer her a more conducive space to study, knowing that they would be alone in his flat. In other words, the appellant had deliberately created the conditions and set the stage to make it easier for him to commit the offence.

182 I do not think the same can be said of the accused in the offence underlying the fourth charge. The offence underlying the fourth charge was committed in the property where the accused, the complainant and their families were already staying. The complainant was sleeping in the room where the accused touched her, not because the accused had deliberately isolated her and placed her there so that he could touch her but, because she usually slept there. The accused did not have to plan anything in order to commit the offence. Indeed, the Prosecution acknowledged as much in its submissions, where it says that "[m]olesting a child that [the accused] had ready access to, as she is his stepdaughter, and whom he knows to be isolated within the family, does not require meticulous planning".[207]

183 The Prosecution contends that there was some thought that went into ensuring that the offence would not be discovered and that nobody else would spot the accused touching the complainant.[208] However, as I indicated to the Prosecution during the hearing of this appeal, it must surely be in the nature of such offences that the ultimate objective of the offender would be to not get discovered. The bar for premeditation, which is an offence-specific *aggravating* factor, cannot be set that low.

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207 PWS at para 124.

208 Minute sheet at p 33.

184 The Prosecution cites the case of *Public Prosecutor v GFV* [2023] SGDC 147 ("*GFV*"), in which the District Court found (at [112]) that there was a significantly high level of premeditation by the accused because he "waited until he was alone with the Victim in the house or when the other members of his family were asleep before he committed the sexual assaults". I have doubts about whether such behaviour, which falls short of planning and preparation, can be said to evince a "significantly high level of premeditation". In any event, *GFV* is not binding on me and, even if the *outcome* in that case may have been affirmed on appeal, no written judgment or grounds of decision were issued. Hence, I decline to endorse this extract in *GFV*.

185 In the alternative, the Prosecution says that the steps taken by the accused demonstrated "significant opportunism".[209] It should be noted that this argument was not raised in the court below and, as such, was not considered by the DJ in sentencing the accused.[210]

186 The factor of "significant opportunism" was something which the Court of Appeal considered in *Muhammad Alif bin Ab Rahim v Public Prosecutor* [2021] SGCA 106 ("*Muhammad Alif*") (at [39]). In that case, the appellant, who was in a romantic relationship with the victim's friend's mother, pleaded guilty to raping and sexual assaulting the victim after he ran into her in public and suggested that they go for a chat. He was found to have taken advantage of the fact that the victim was acquainted with him and exhibited significant opportunism in his conduct (see [13(d)]).

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209 PWS at para 125.

210 Minute sheet at p 33.

187 In *Public Prosecutor v Muhammad Alif bin Ab Rahim* [2021] SGHC 115 (at [18]), which was affirmed on appeal in *Muhammad Alif*, See J alluded to the accused's significant opportunism as follows:

> ... the accused took advantage of the fact that the victim was acquainted with him. She had *trusted him enough to accompany him to a secluded area in the Park*, ostensibly to have a cola drink and chat. She was *unsuspecting of his intentions*. The accused's conduct thus demonstrated significant opportunism.
>
> [emphasis added]

188 It is therefore clear that, in *Muhammad Alif*, the appellant had exploited an opportunity that presented itself through a chance encounter with someone he knew and deliberately isolated that person so that he could sexually assault her. While this did not rise to the level of forethought required for premeditation to be found, the appellant there had evidently concocted a plan to isolate and assault the victim on the spur of the moment once he chanced upon her. I accept that the accused in the present case took advantage of his physical proximity to the complainant by virtue of being a part of the same household. However, in my view, this did not rise to the level of making such conduct an aggravating factor.

189 Hence, even if this factor was raised in the court below, I do not think the DJ would have been right to consider it as an aggravating factor in sentencing.

Abuse of a position of trust

190 The Defence submits that, despite the accused being the complainant's stepfather, there was no abuse of a position of trust as he did not exercise any

responsibility over the complainant and there was no trust reposed by the complainant in him.[211] I have great difficulty accepting this submission.

191 I do not think it can be said that there was no trust reposed in the accused. It is one thing to say that the complainant did not subjectively trust the accused. It is quite another to say that there was no trust reposed in the accused, even by virtue of his position in the household *vis-à-vis* the complainant. Even if the complainant was somewhat distant from the accused, the fact remains that they lived in the same household, and that the accused was married to the complainant's mother. He was in a position to exercise authority over the complainant, either directly or vicariously through the complainant's mother, and the complainant obviously deferred to that authority. This is borne out by the fact that the complainant was helping to take care of his children (*ie*, her step-siblings).

192 It is also worth bearing in mind the reason behind abuse of trust in an inter-familial context being of particular concern, as articulated in *GBR* (at [29(c)]):

> Deterrence is a particular concern where there is an abuse of trust in an *inter-familial context*, given the *difficulty in the detection* of the offences and the *considerable barriers faced by the victim in reporting* them: see *PP v NF* [2006] 4 SLR(R) 849 at [40].
>
> [emphasis added]

193 As such, the DJ was correct in considering that the accused abused his position of trust in relation to the complainant.

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211 DWS at paras 420–421.

The brazen nature of the accused's offending

194 To reiterate, the DJ found that the following offence-specific aggravating factors were present: (a) the abuse of a position of trust by the accused; (b) the exploitation of a vulnerable victim; and (c) the harm caused to the complainant. I have found that there was a clear abuse of trust by the accused (see [190]–[193] above). However, factor (b) will not be applicable to the fourth charge as the complainant was 19 years old at the time of the offence. Furthermore, factor (c) will necessarily take on less significance as I have convicted the accused on only one charge, as opposed to the DJ who convicted him on all four charges. It should be noted that the DJ had taken into account the "duration of the offending" in accepting that the complainant suffered "significant emotional and psychological harm" (GD at [150]).[212]

195 Be that as it may, I am of the view that another offence-specific aggravating factor, namely the brazen nature of the accused's offending, ought to taken into account in the accused's sentencing. While this is not prescribed in the *Kunasekaran* framework itself, the rubric of "circumstances of the offence" is "not limited to" the factors explicitly listed in the framework (see *GBR* at [29], affirmed in *Kunasekaran* at [45(a)(ii)]). As such, I am not precluded from recognising that this was an offence-specific aggravating factor on the facts of this case.

196 The accused was a man who had the audacity to enter the bedroom where his 19-year-old stepdaughter slept at night and commit the depraved act of touching her breasts and thigh, all while his 11-year-old daughter lay beside her. The shocking brazenness of the accused's conduct cannot be understated.

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212 ROP at p 630.

This, coupled with the resulting humiliation and indignity which the complainant had to endure from having her younger stepsister witness her bodily integrity being violated, is surely an aggravating circumstance which ought to be properly reflected in the accused's sentence.

My conclusion on the appeal against sentence

197 In the premises, I see no reason to disturb the DJ's sentence of 10 months imprisonment for the fourth charge. I stress once again that appellate intervention in a lower court's sentencing discretion is only warranted where *substantial* alterations, rather than minute corrections are necessitated (see [169] above).

198 However, I would have to depart from the DJ's decision to impose an imprisonment term in lieu of caning for the fourth charge.

199 The starting point is that a term of imprisonment should not be enhanced unless there are grounds to do so (*GBR* at [40], referring to *Amin bin Abdullah v Public Prosecutor* [2017] 5 SLR 904 ("*Amin bin Abdullah*") at [53] and [58]). In the context of an outrage of modesty offence, imprisonment in lieu of caning may be appropriate where there is a need for a sufficiently deterrent and retributive sentence (*Public Prosecutor v Tan Kok Leong* [2017] SGHC 188 ("*Tan Kok Leong*"), cited in *Amin bin Abdullah* at [73]). Examples of this would include cases where there are "*substantial* aggravating factors such as *violence* used or an exploitation of a *particularly vulnerable* class of victims" [emphasis added] (*GBR* at [40], cited in *Kunasekaran* at [67]). As Chan Seng Onn J noted in *Kunasekaran* (at [69]), *Tan Kok Leong*, which involved outrage of modesty committed by an aesthetic doctor against his unconscious patient, was a case where there was the exploitation of a *particularly vulnerable* victim and a *serious abuse* of a position of trust.

200 In the present case, as mentioned above (at [178]), the DJ imposed a term of imprisonment in lieu of caning on the basis that the complainant was part of a particularly vulnerable class of victims (GD at [159]):[213]

> The [complainant] was the Accused's stepdaughter and the offence had been committed in the domestic context and within her own home. By the time the offence in the 4th charge occurred, the [complainant] *had already suffered a history of sexual abuse spanning a decade, starting from when she was barely 10 years old.* In my view, these circumstances placed her in a particularly vulnerable class of victims warranting a sufficiently deterrent and retributive sentence to properly reflect the disapprobation the courts take to such offences.
>
> [emphasis added]

201 It is apparent that much of why the DJ considered the complainant to be part of a particularly vulnerable class of victims was due to her having found that the complainant had suffered sexual abuse at the hands of the accused over a long period of time, starting from when she was of a young age.

202 Having set aside the accused's convictions on the first, second and third charges, it has only been proven that the complainant suffered one incident of sexual abuse when she was 19 years old. In the premises, while I acknowledge that the complainant was certainly a vulnerable victim by virtue of having been sexually abused by her stepfather in her own home, I cannot conclude that she had met the threshold of being a *particularly* vulnerable victim. Neither can I conclude that there was a presence of *substantial* aggravating factors, such as a *serious* abuse of a position of trust, which went above and beyond the factors already taken into account in deciding the accused's imprisonment term.

203 Accordingly, I set aside the imprisonment term of six weeks in lieu of caning imposed by the DJ for the fourth charge.

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213 ROP at p 633.

Conclusion

204 In summary, I allow the accused's appeal against his conviction in HC/MA 9127/2024/01 in part. The accused's convictions in relation to the first, second and third charges are overturned while his conviction for the fourth charge is upheld.

205 I allow the accused's appeal against his sentence in HC/MA 9127/2024/01 in part and dismiss the Prosecution's appeal against sentence in HC/MA 9127/2024/02. In so doing, I uphold the term of 10 months' imprisonment imposed by the DJ for the fourth charge and set aside the imprisonment term in lieu of caning.

206 Accordingly, the accused is sentenced to 10 months' imprisonment.

207 This case has perhaps laid bare the tension between the need for a thorough and searching scrutiny of the evidence on the one hand and the need for a commonsensical approach that gives adequate recognition to human fallibilities and frailties on the other. A criminal conviction can only be founded on evidence that is reliable, and consistency is a key determinant of whether a witness's testimony is reliable. One must be careful, however, not to equate consistency with constancy. To give due recognition to human fallibility in retention and recollection necessarily entails giving *some* allowance to minor inconsistencies in evidence that will undoubtedly crop up, if not the tail might just end up wagging the dog. Ultimately, a watchful eye has to be kept on both the trees and the forest so that every conviction is nothing less than undeniably safe.

Dedar Singh Gill
Judge of the High Court

Tan Wee Kio Terence (Chen Weiqiao), Ong Hui Wen and Wang Shang Yew (Drew & Napier LLC) for the appellant in HC/MA 9127/2024/01 and the respondent in HC/MA 9127/2024/02; Sruthi Boppana and Gladys Lim (Attorney-General's Chambers) for the respondent in HC/MA 9127/2024/01 and the appellant in HC/MA 9127/2024/02.