

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

**[2025] SGHC 219**

Criminal Case No 38 of 2025

Between

Public Prosecutor

And

Fok Jin Jin Dhanabalan

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**GROUND OF DECISION**

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[Criminal Law — Offences — Rape]

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**Public Prosecutor**  
**v**  
**Fok Jin Jin Dhanabalan**

**[2025] SGHC 219**

General Division of the High Court — Criminal Case No 38 of 2025  
Valerie Thean J  
2, 3, 7–8, 21–25 July, 1, 4, 5 August, 22 September 2025

6 November 2025

**Valerie Thean J:**

**Introduction**

1 On 30 January 2021, after a night out to celebrate her birthday, the complainant (“C”) and her friend (“E”) accepted a lift home from the accused and his friend, Lee Kit, with whom they were not previously acquainted. The accused drove C and E to C’s condominium complex, where Lee Kit and he accompanied C and E up to C’s apartment and into her bedroom.

2 In the early hours of 31 January 2021, C telephoned the police to report that she had been raped. The accused subsequently claimed trial to the following charge:<sup>1</sup>

That you, ..., sometime between 11.50pm on 30 January 2021 and 12.10am on 31 January 2021, at [C’s Unit], did commit

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<sup>1</sup> Arraigned Charge dated 21 April 2025.

rape on [C], *to wit*, by penetrating her vagina with your penis without her consent, and you have thereby committed an offence under s 375(1)(a) punishable under s 375(2) of the Penal Code (Cap 224, 2008 Rev Ed) [the “PC”].

[emphasis in original in italics]

3 It was not disputed that the accused penetrated C’s vagina with his penis. The key issue in this case was whether C had consented. I convicted the accused as charged on 22 September 2025, furnishing brief oral grounds at the time. These are my full grounds of decision.

### **The Prosecution’s case**

#### ***Events leading to C accepting a lift home***

4 On the evening of 30 January 2021, C celebrated her birthday with six friends (whom I shall refer to as “E”, “F”, “G”, “H”, “J” and “K”),<sup>2</sup> first by having dinner and alcoholic beverages at Margarita’s, a restaurant in Dempsey, followed by having additional alcoholic beverages at The Pit, a bar in Holland Village.<sup>3</sup> As they were leaving The Pit, C, E, F, G and K made plans to continue the night at K’s apartment, while H and J headed home instead.<sup>4</sup> From The Pit, they walked up a slope towards the junction of Lorong Liput and Lorong Mambong (the “Junction”).<sup>5</sup> Shortly thereafter, H and J successfully booked a private hire vehicle and left Holland Village and,<sup>6</sup> not long after, F, G and K were able to do so as well.<sup>7</sup> C and E were to follow on similarly, but C

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<sup>2</sup> Notes of Evidence (“NE”) 22 July 2025 at p 5 line 31 to p 6 line 10.

<sup>3</sup> Prosecution’s Closing Submissions dated 8 September 2025 (“PCS”) at para 8.

<sup>4</sup> NE 22 July 2025 at p 10 lines 21–25.

<sup>5</sup> PCS at para 9.

<sup>6</sup> NE 2 July 2025 at p 18 lines 17–18.

<sup>7</sup> NE 2 July 2025 at p 18 lines 18–20.

encountered difficulty in booking a vehicle, and E was very intoxicated.<sup>8</sup> C then went into Guardian Health & Beauty (“Guardian”), a pharmacy, to seek help from staff with booking a car but was unsuccessful in booking a car.<sup>9</sup>

5 C and E ended up waiting at a bus stop adjacent to the Holland Village Mass Rapid Transit (“MRT”) station. Their inebriation continued to worsen, and C continued to attempt to book a vehicle.<sup>10</sup> Despite help from a passerby named Phue Pwint (“Phue”), C remained unable to book a car.<sup>11</sup> A taxi stopped but the driver would not take them because they were drunk. While Phue was there, C vomited into her bag. E vomited on the ground,<sup>12</sup> and also fell off the bench.<sup>13</sup> Lee Kit and the accused approached C and E after E fell. Phue left when her bus arrived.<sup>14</sup> The men then offered C and E a lift, and C accepted.

***Events leading to the accused and Lee Kit offering C and E a lift home***

6 It was undisputed that, around the same time that C, E, and G were walking past the Junction,<sup>15</sup> the accused and Lee Kit were standing around some bollards at the Junction.<sup>16</sup> The two men were former schoolmates who had recently reconnected as they lived in the same neighbourhood in Teban Gardens. That evening, they had first shopped for car accessories and had dinner

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<sup>8</sup> PCS at para 10.

<sup>9</sup> NE 22 July 2025 at p 15 lines 22–26.

<sup>10</sup> NE 22 July 2025 at p 16 lines 11–14.

<sup>11</sup> NE 22 July 2025 at p 16 lines 14–18.

<sup>12</sup> NE 22 July 2025 at p 16 lines 25–28; NE 2 July 2025 at p 19 line 32 to p 20 line 1.

<sup>13</sup> PCS at para 12(n).

<sup>14</sup> NE 22 July 2025 at p 16 lines 19–21.

<sup>15</sup> Exhibit P44 (timestamps 22:32:05 to 22:33:05).

<sup>16</sup> Exhibit P43; NE 1 August 2025 at p 7 line 28 to p 8 line 14.

at a hawker centre.<sup>17</sup> After dinner, they decided to go to Holland Village as they had spent time there together in an earlier period of their lives.<sup>18</sup> The accused parked his car in an open space carpark along Holland Road.<sup>19</sup> Then, the two men walked to Holland Village and chatted while standing around some bollards located at the Junction.<sup>20</sup> At around 10.12pm, Lee Kit went to 7-Eleven to buy some cans of beer and then rejoined the accused at the bollards.<sup>21</sup> At this time, a friend of Lee Kit's came by and the two started talking at the bollards.<sup>22</sup> At around 10.32 pm, the accused picked up a phone call and walked away from the bollards.<sup>23</sup>

7 The Prosecution's case was that, at around 10.32pm, the accused had noticed C as she walked towards the Junction and that, from 10.32pm onwards, the accused followed C and E to Guardian and around Holland Village.<sup>24</sup> This culminated in the accused and Lee Kit approaching C and E at the bus stop, where an offer was made to send C and E home. The accused then drove Lee Kit, C and E to C's condominium complex.<sup>25</sup> C's physical condition continued to deteriorate on account of the alcohol she had consumed.<sup>26</sup> In this regard, the Prosecution pointed to the fact that C had vomited and subsequently fallen

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<sup>17</sup> Statement of Agreed Facts dated 24 June 2025 ("SOAF") at para 4.

<sup>18</sup> NE 1 August 2025 at p 6 line 31 to p 7 line 17.

<sup>19</sup> NE 1 August 2025 at p 7 lines 18–25.

<sup>20</sup> NE 1 August 2025 at p 7 line 28 to p 8 line 2.

<sup>21</sup> Exhibit P41 (timestamp 22:10:30).

<sup>22</sup> NE 7 July 2025 at p 40 lines 6–8.

<sup>23</sup> NE 7 July 2025 at p 40 lines 9–17.

<sup>24</sup> PCS at para 35.

<sup>25</sup> PCS at para 12(q).

<sup>26</sup> PCS at para 53(c).

asleep while she was in the accused's car.<sup>27</sup> The Prosecution also referred to the audio captured by the accused's in-car camera which showed that, while C and E were asleep, the accused and Lee Kit discussed how they would tell the security officer to let them into the condominium complex to drop the two women off.<sup>28</sup> The Prosecution's case was that, at least by the time the accused had taken a photograph of C asleep in his car at 11.41pm,<sup>29</sup> C no longer retained the capacity to consent due to the substantial amount of alcohol that C had consumed that night.<sup>30</sup>

***Events after the accused, Lee Kit, C and E arrived at C's Unit***

8 Upon arriving at C's condominium complex at around 11.42pm,<sup>31</sup> all four individuals entered C's Unit. According to the Prosecution, all four individuals then went to C's bedroom and placed E onto C's bed. C also lay down on the bed, and both C and E were asleep. In C's bedroom, between 11.50pm on 30 January 2021 and 12.10am on 31 January 2021, the accused penetrated C with his penis while Lee Kit digitally penetrated C.<sup>32</sup> The Prosecution's case was that C did not consent to these acts of penetration.

9 Lee Kit left the apartment first at about 12.08am. He went to the carpark, purchased a drink from a vending machine, and waited for the accused.<sup>33</sup> At about 12.13am, the accused also went to the carpark and the two men left the

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<sup>27</sup> NE 4 August 2025 at p 109 lines 18–21.

<sup>28</sup> Exhibit P64 at p 6 (timestamps 11:38:25 and 11:38:30).

<sup>29</sup> Exhibit P32 at Annex C.

<sup>30</sup> PCS at para 29.

<sup>31</sup> PCS at para 14.

<sup>32</sup> PCS at para 16.

<sup>33</sup> NE 7 July 2025 at p 71 lines 14–28.

condominium complex in the accused's car.<sup>34</sup> However, upon arriving at Teban Gardens, the accused realised that he had left his personal mobile phone in C's Unit.<sup>35</sup> Consequently, the accused hastily drove back to C's condominium complex with Lee Kit and arrived there at 12.31am.<sup>36</sup>

10 Meanwhile, sometime between 12.13am and 12.34am, C woke up with her legs hanging off the foot of the bed.<sup>37</sup> She felt like "[her] body was on fire".<sup>38</sup> C saw E on her bed and placed her fingers to E's nose to check if she was still breathing.<sup>39</sup> After ascertaining that E was asleep, C proceeded to telephone her mother to inform her that she had been raped.<sup>40</sup> During this telephone conversation, C's mother instructed her to call the police and, after searching on Google for the Singapore Police Force ("SPF") emergency hotline, C called the police.<sup>41</sup>

11 Shortly after calling the police, C heard a knock at her front door.<sup>42</sup> C assumed that this was the police and opened the door.<sup>43</sup> However, once C opened the door "a little bit" and saw a man with a white shirt with a red flash (it was not disputed that the accused wore a white shirt that had a blue and red

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<sup>34</sup> NE 7 July 2025 at p 72 lines 5–8.

<sup>35</sup> Exhibit P64 at p 13.

<sup>36</sup> NE 7 July 2025 at p 82 lines 4–13.

<sup>37</sup> NE 22 July 2025 at p 26 lines 8–10.

<sup>38</sup> NE 22 July 2025 at p 29 line 18.

<sup>39</sup> NE 22 July 2025 at p 26 lines 22–25.

<sup>40</sup> NE 22 July 2025 at p 26 lines 24–26.

<sup>41</sup> NE 22 July 2025 at p 26 lines 26–31; Exhibit P1.

<sup>42</sup> NE 22 July 2025 at p 27 line 4.

<sup>43</sup> NE 22 July 2025 at p 27 lines 5–7.

band over the chest area), C identified this as the accused and forcefully closed the door.<sup>44</sup> C then heard the accused ask for his phone.<sup>45</sup>

12 C testified that, at this juncture, she lost control of her emotions and threw her daughter's scooter, which was located in the living room, at the door.<sup>46</sup> C then screamed at the accused through the door.<sup>47</sup> Sometime later, C heard another knock at the door and a voice asking for the return of a phone.<sup>48</sup> C also did not open the door in this instance,<sup>49</sup> and the voice stopped.<sup>50</sup> Eventually, two SPF officers arrived and C allowed them into her Unit after they showed her their police badges.<sup>51</sup> Additional SPF officers also arrived and questioned both the accused and Lee Kit outside C's Unit.<sup>52</sup> Subsequently, the accused and Lee Kit were placed under arrest.<sup>53</sup>

### ***Summary of the Prosecution's case***

13 In sum, the Prosecution's case was founded on three planks:

- (a) That the accused stalked C and E around Holland Village;

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<sup>44</sup> NE 22 July 2025 at p 27 lines 7–10.

<sup>45</sup> NE 22 July 2025 at p 27 line 11.

<sup>46</sup> NE 22 July 2025 at p 27 lines 17–18.

<sup>47</sup> NE 22 July 2025 at p 27 lines 19–21.

<sup>48</sup> NE 22 July 2025 at p 27 line 27 to p 28 line 4.

<sup>49</sup> NE 22 July 2025 at p 28 lines 1–2.

<sup>50</sup> NE 22 July 2025 at p 28 line 6.

<sup>51</sup> NE 22 July 2025 at p 28 lines 7–10.

<sup>52</sup> PS10 at para 10.

<sup>53</sup> NE 7 July at p 86 lines 5–9; PS16 at para 5.

(b) That C did not retain the capacity to consent to the act of penetration which formed the basis of the charge; and

(c) That, even if C retained the capacity to consent to such act of penetration, C did not in fact consent to the same.<sup>54</sup>

14 The Prosecution acknowledged that the issue of the accused stalking C and E around Holland Village was not critical to the elements of the charge. Nonetheless, the Prosecution submitted that, if the accused was found to have stalked C after having identified her as being drunk, the court should infer that the accused followed C with nefarious intent and committed the offence with premeditation.<sup>55</sup> As “stalking” may be generally understood to refer to a pattern or repetition of behaviour and the stalking in this case, if any, would have been a single event of less than an hour, these Grounds of Decision use instead, “observing”, “following” or “tailing”, as the case may be.

### **The Defence’s Case**

15 The Defence disputed the three planks of the Prosecution’s case summarised at [13]. In particular, the Defence’s case centred on the following three points:

(a) Lee Kit and the accused had not followed C and E from 10.32pm onwards. According to the accused, the first time he saw C and E was at the bus stop,<sup>56</sup> where he had parked his car to try out his new car accessories.

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<sup>54</sup> PCS at para 24.

<sup>55</sup> PCS at para 25.

<sup>56</sup> Defence Closing Submissions filed 12 September 2025 (“DCS”) at para 68.

- (b) C was capable of consenting to the accused's act of penetrating her vagina with his penis as described in the charge; and
- (c) C did in fact consent to the same.

The Defence's version of events is set out in the following paragraphs.

***A coincidental meeting at the bus stop***

16 At the Junction, the accused had not noticed C or E. He went to Guardian to buy ointment for his pregnant wife.<sup>57</sup> Upon arriving at Guardian, the accused did not enter as there were some customers inside.<sup>58</sup> Instead, the accused called Lee Kit and told Lee Kit to meet him at Exit C of Holland Village MRT station in order to go home.<sup>59</sup> After meeting there, both men entered the MRT station intending to walk through the station's underpass to return to where they had parked which was adjacent to Exit A of the station.<sup>60</sup> However, while in the underpass, the accused had an urge to urinate and decided to use the toilet in the MRT station instead.<sup>61</sup> After using the toilet, the accused and Lee Kit then exited the station through Exit A.<sup>62</sup>

17 Exit A was adjacent to both the open space carpark where the accused parked his car and the bus stop where C and E were sitting. As Lee Kit was still drinking a can of beer and smoking cigarettes, the accused decided to try using

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<sup>57</sup> NE 1 August 2025 at p 8 lines 18–22; NE 1 August 2025 at p 104 lines 20–28.

<sup>58</sup> NE 1 August 2025 at p 9 lines 5–6.

<sup>59</sup> NE 1 August 2025 at p 9 lines 7–19.

<sup>60</sup> NE 1 August 2025 at p 9 line 29 to p 10 line 4.

<sup>61</sup> NE 1 August 2025 at p 10 lines 5–8.

<sup>62</sup> NE 1 August 2025 at p 10 lines 21–27.

the car accessories he had purchased earlier.<sup>63</sup> The accused moved his car to what he termed “the brightest spot” in the carpark, which was a handicap parking lot located behind the bus stop.<sup>64</sup>

18 The accused noticed C and E because “they were talking very loudly”.<sup>65</sup> From this handicap parking lot, the accused noticed that E’s mobile phone had fallen to the floor, and the accused approached E to inform her of this.<sup>66</sup> The accused then returned to the handicap parking lot and used a tyre shine on his car while talking to Lee Kit.<sup>67</sup> After some time, the accused saw E fall off a bench at the bus stop and heard a Malay passerby call for help.<sup>68</sup> Lee Kit went forward to assist E, and the accused followed behind him.<sup>69</sup>

19 At the bus stop, the accused and Lee Kit moved E up from the floor and back onto the bench.<sup>70</sup> The accused spoke to C, and C said that she had called for a taxi which was on its way.<sup>71</sup> The accused and Lee Kit then waited with C and E for a taxi to arrive, but none arrived to fetch C and E.<sup>72</sup> After some time, Lee Kit asked C where she lived and, upon hearing her response, told the

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<sup>63</sup> NE 1 August 2025 at p 11 line 31 to p 12 line 3.

<sup>64</sup> NE 1 August 2025 at p 11 lines 24–30.

<sup>65</sup> NE 1 August 2025 at p 10 line 27 to p 11 line 3.

<sup>66</sup> NE 1 August 2025 at p 12 lines 14–31.

<sup>67</sup> NE 1 August 2025 at p 14 line 14.

<sup>68</sup> NE 1 August 2025 at p 14 line 15–30.

<sup>69</sup> NE 1 August 2025 at p 14 line 31 to p 15 line 6.

<sup>70</sup> NE 1 August 2025 at p 15 lines 7–13.

<sup>71</sup> NE 1 August 2025 at p 15 lines 16–18.

<sup>72</sup> NE 1 August 2025 at p 15 line 21 to p 17 line 32.

accused that C’s condominium complex was close to the accused’s home.<sup>73</sup> Lee Kit then suggested that the accused “send them back”, to which C agreed.<sup>74</sup>

***C had the capacity to consent***

20 On the issue of consent, the Defence submitted that there was insufficient evidence to conclude that C was incapable of giving consent.<sup>75</sup> In this regard, the Defence submitted that it was unclear how much alcohol C had consumed,<sup>76</sup> and that C’s conduct subsequent to meeting the accused militated against such a finding.<sup>77</sup>

***C did in fact consent***

21 As for whether C had factually consented, the accused testified at trial that C had consented to sexual intercourse and provided his own account of what transpired in C’s bedroom. In short, after he had placed E onto C’s bed, he sat on the bed to take a breather.<sup>78</sup> C was also on the bed, to the right of the accused and,<sup>79</sup> at this moment, C stroked his thigh.<sup>80</sup> The accused then responded by kissing C on the lips,<sup>81</sup> and C kissed back.<sup>82</sup> While kissing,<sup>83</sup> the

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<sup>73</sup> NE 1 August 2025 at p 18 lines 1–11.

<sup>74</sup> NE 1 August 2025 at p 18 lines 12–15.

<sup>75</sup> DCS at para 31.

<sup>76</sup> DCS at para 34.

<sup>77</sup> DCS at paras 37–43.

<sup>78</sup> NE 1 August 2025 at p 25 lines 5–32.

<sup>79</sup> NE 1 August 2025 at p 26 lines 23–24.

<sup>80</sup> NE 1 August 2025 at p 26 lines 16–20.

<sup>81</sup> NE 1 August 2025 at p 26 lines 21–22.

<sup>82</sup> NE 1 August 2025 at p 26 line 31 to p 27 line 1.

<sup>83</sup> NE 1 August 2025 at p 26 lines 14–16.

accused “fingered [C’s] vagina” and,<sup>84</sup> subsequently, the accused took off his shorts and boxers.<sup>85</sup> At this juncture, C was lying down on the bed with her face up and the accused penetrated her with his penis.<sup>86</sup>

22 Upon being penetrated, C moaned and, after one to three minutes, the accused withdrew his penis, lay down beside C with her back against his front, and touched her vagina while kissing her neck.<sup>87</sup> Thereafter, C went into a “doggy” position and the accused penetrated her, which resulted in more moaning.<sup>88</sup> After one to three minutes, the accused stopped and went to the toilet.<sup>89</sup> The accused did so as it occurred to him that his wife would be calling him at “any moment soon”.<sup>90</sup> The accused masturbated in the toilet,<sup>91</sup> but stopped before he could ejaculate because it again occurred to him that his wife would call him.<sup>92</sup> According to the accused, he did not ejaculate at all while in C’s Unit.<sup>93</sup> After dressing up in the toilet, the accused informed C that he was leaving.<sup>94</sup> C then led the accused to the main door and, before the accused could say “bye”, closed the door “a bit harder”.<sup>95</sup>

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<sup>84</sup> NE 1 August 2025 at p 27 lines 2–3.

<sup>85</sup> NE 1 August 2025 at p 27 lines 17–18.

<sup>86</sup> NE 1 August 2025 at p 27 lines 19–24.

<sup>87</sup> NE 1 August 2025 at p 27 line 32 to p 28 line 16.

<sup>88</sup> NE 1 August 2025 at p 28 lines 20–28.

<sup>89</sup> NE 1 August 2025 at p 29 lines 15–18.

<sup>90</sup> NE 1 August 2025 at p 29 lines 21–22.

<sup>91</sup> NE 1 August 2025 at p 29 lines 29–30.

<sup>92</sup> NE 1 August 2025 at p 29 line 31 to p 30 line 2.

<sup>93</sup> NE 1 August 2025 at p 29 lines 19–20 and 29–32.

<sup>94</sup> NE 1 August 2025 at p 30 lines 1–16.

<sup>95</sup> NE 1 August 2025 at p 30 lines 17–23.

### **The issue of C’s consent**

23 The sole issue at hand was that of consent, which I analysed in two components:

- (a) First, was C able to consent to the act of penetration underlying the charge? If she was incapable of doing so, the second question fell away.
- (b) Second, did C consent, as a factual matter? While this was relevant only if C had the capacity to consent, it was also an independent ground that was determinative of the matter. I considered the issue whether the accused followed C at Holland Village in this context, because it furnished insight on whether the accused intended to seek or sought consent.

### ***The applicable legal principles on consent for sexual offences***

24 The applicable legal principles relevant to the two issues were not disputed.<sup>96</sup> In *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 (“*Pram Nair*”), the Court of Appeal set out the following guidance at [96]:

- (a) Under s 90(b) of the PC (the provision in the PC governing the validity of consent), a person who is unable to understand the nature and consequence of that to which that person has allegedly given his consent has no capacity to consent.
- (b) The fact that a complainant has drunk a substantial amount of alcohol, appears disinhibited, or behaves differently than usual, does not

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<sup>96</sup> DCS at paras 32 and 44–45; PCS at paras 43–45.

indicate lack of capacity to consent. Consent to sexual activity, even when made while intoxicated, is still consent as long as there is a voluntary and conscious acceptance of what is being done.

(c) A complainant who is unconscious obviously has no capacity to consent. But a complainant may have crossed the line into incapacity well before becoming unconscious, and whether that is the case is evidently a fact-sensitive inquiry.

(d) Capacity to consent requires the capacity to make decisions or choices. A person, though having limited awareness of what is happening, may have such impaired understanding or knowledge as to lack the ability to make any decisions, much less the particular decision whether to have sexual intercourse or engage in any sexual act.

(e) Expert evidence, such as that showing the complainant's blood alcohol level, may assist the court in determining whether the complainant had the capacity to consent.

25 I analysed the facts in the light of these principles.

### **Was C capable of giving consent?**

#### ***C's state prior to entering the bedroom***

26 Closed circuit television camera ("CCTV") footage at Holland Village reflected C behaving unsteadily at the Junction and at Guardian. In the Holland Village MRT station, C was seen walking with an unsteady gait at times,<sup>97</sup> and

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<sup>97</sup> Exhibit P39 at timestamp 22:58:55–22:59:16.

coming close to falling down on at least one occasion.<sup>98</sup> At the bus stop, Phue, the passerby who sought to help C before her bus arrived, testified that C's speech was slurred and that she saw C vomit into her bag.<sup>99</sup> Notwithstanding this, C was able to repeat to her the numberplate of the vehicle Phue had ordered after a few attempts.<sup>100</sup>

27 C also made the decision for E and her to accept a lift from the accused. In her inebriated state, she concluded that accepting the ride was the only way E and she could get home.<sup>101</sup> While in the accused's car, the accused and Lee Kit attempted to make casual conversation with C. This conversation was starkly one sided for it entailed the two men posing questions to C, who responded with brief replies and no questions of her own.<sup>102</sup> I reproduce a portion of this below:<sup>103</sup>

Lee Kit ["Lee"]: You all working in Singapore?

[C]: (*unclear reply*)

Lee: Sorry? Are you working in Singapore?

C: (*affirmative response*)

Lee: I see. In which company? Oh you are all ... (*broken off*) I see. Oh. For College?

C: [E] (*unclear*).

Lee: How come she drink so much?

Accused ["Accd"]: Party, party.

Lee: Party. Are you okay? I think you...

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<sup>98</sup> Exhibit P39 at timestamp 22:51:09.

<sup>99</sup> NE 7 July 2025 at p 17 line 24; NE 7 July 2025 at p 17 lines 14–15.

<sup>100</sup> NE 7 July 2025 at p 17 lines 25–26,

<sup>101</sup> NE 22 July 2025 at p 18 line 29 to p 19 line 2.

<sup>102</sup> Exhibit P64 at pp 1–8.

<sup>103</sup> Exhibit P64 at p 4.

C: I'm (*unclear reply*)  
[Emphasis in original in italics]

28 Although there was initially some ambiguity as to whether C had vomited in the accused's car,<sup>104</sup> this was resolved when the accused agreed under cross-examination that C had indeed vomited in his car.<sup>105</sup>

29 At 11.41pm, the accused took a photograph of C and E. Both looked as if they had passed out in the backseat of the accused's car.<sup>106</sup> The Prosecution took the position that, by the time of this photograph,<sup>107</sup> C no longer retained the capacity to consent owing to the substantial amount of alcohol that C had consumed that night.<sup>108</sup>

30 Nevertheless, after the photograph was taken, C remained able to state her address,<sup>109</sup> identify her block, and show her access card to the security guard upon their arrival at the condominium.<sup>110</sup> She also helped E walk to the lift lobby.<sup>111</sup> Although CCTV footage showed her quite drunk and taking almost a minute to locate her access card at the access gate to the lift lobby,<sup>112</sup> it was not disputed that she opened the door to her condominium unit to let the two men in. To sum up, her behaviour was erratic. In my view, contrary to the Prosecution's assertion, it was equivocal whether she lacked the capacity to

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<sup>104</sup> NE 23 July 2025 at p 18 lines 1–10.

<sup>105</sup> NE 4 August 2025 at p 109 lines 18–19.

<sup>106</sup> Exhibit P32 at Annex C.

<sup>107</sup> Exhibit P32 at Annex C.

<sup>108</sup> PCS at para 29.

<sup>109</sup> Exhibit P64 at p 2 (timestamp 11:26:58).

<sup>110</sup> Exhibit P64 at p 6 (timestamps 11:39:30 and 11:39:34).

<sup>111</sup> Exhibit P34 (timestamp 11:42:44).

<sup>112</sup> Exhibit P45 at timestamp 23:49:52–23:50:53.

consent after the photograph was taken. However, the evidence up to this point did set the stage for the conclusion that, *subsequently, in her bedroom*, she lacked such capacity.

31 In assessing her capacity to consent while in her bedroom, three aspects were pertinent: the amount of alcohol she consumed; its effect on her; and the evidence as to the events which transpired in the bedroom.

***Evidence of the amount of alcohol consumed by C***

32 There were two separate periods during which C consumed alcohol on the evening of 30 January 2021, first at the restaurant, Margarita’s, and then at the bar, The Pit.

***At Margarita’s***

33 According to C, she drank some Margarita cocktails and a shot of Tequila at Margarita’s.<sup>113</sup> Though C was unable to recall exactly how many glasses of Margaritas she consumed, she maintained that she had at least one.<sup>114</sup> This was corroborated by evidence led from C’s friends at trial. E testified that C “had some drinks at Margarita’s”, and that “[t]he table also potentially ordered a round of shots of tequila”.<sup>115</sup> Similarly, F testified that the group had “two rounds of drinks”,<sup>116</sup> while G testified that “most of us were having Margaritas”.<sup>117</sup>

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<sup>113</sup> NE 22 July 2025 at p 7 lines 2–4.

<sup>114</sup> NE 23 July 2025 at p 2 lines 9–26.

<sup>115</sup> NE 2 July 2025 at p 12 lines 15–21.

<sup>116</sup> NE 21 July 2025 at p 3 lines 4–6.

<sup>117</sup> NE 24 July 2025 at p 43 lines 2–4.

*At The Pit*

34 The CCTV footage recovered from The Pit showed C consuming three glasses of Margaritas and two shot glasses of Tequila between 8.56pm and 10.04pm.<sup>118</sup>

35 It was clear that C had consumed a substantial amount of alcohol. The issue was what effect this would have had on her cognition and ability to consent. The Prosecution’s position was that, based on the CCTV footage, she had drunk at least eight standard drinks (“SDs”) at The Pit. Expert evidence was adduced in respect of the effect of the eight SDs she had consumed at The Pit.

*The expert evidence*

36 Professor Teo Eng Swee (“Prof Teo”), a forensic pathologist from the Health Sciences Authority based his conclusions on the CCTV footage, and the assumption that each Margarita contained two SDs while each Tequila shot contained one SD.<sup>119</sup> Prof Teo estimated C’s BAC to be 205mg/100ml around the time she finished drinking at The Pit.<sup>120</sup>

37 It was Prof Teo’s evidence that C would have felt the effects of her alcohol consumption most keenly around the time of her sexual contact with the accused (between 11.50pm on 30 January 2021 and 12.10am on 31 January 2021);<sup>121</sup>

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<sup>118</sup> Exhibit P40 at timestamps 20:36:15 to 20:45:10 (first margarita), 20:45:40 to 21:04:40 (second margarita), 21:11:50 to 21:22:00 (third margarita), 21:43:50 (first tequila shot) and 21:44:20 (second tequila shot). The timestamps are approximately 20 minutes behind real time, as stated in NE 21 July 2025 at p 38 lines 29–31.

<sup>119</sup> Exhibit P29 at para 10.

<sup>120</sup> NE 21 July 2025 at p 37 lines 7–23.

<sup>121</sup> NE 21 July 2025 at p 38 line 29 to p 39 line 4.

- Q: So based on that, the Court has heard evidence that [the bar's] clock is about 20 minutes slow (indistinct). So if [C's] last drink was at about 10.00pm, when would she likely feel the peak of her BAC---of this BAC?
- A: So the CCTV, the last tequila shot was 9.44. It's 20 minutes slow. Is that right?
- Q: That's right.
- A: So the last shot would have been---the last drink would have been 10.00pm. So probably her peak alcohol would have been in the region of 11.00pm, midnight, 1.00am, around that time. That's very rough too, Your Honour.

38 At trial, the Prosecution also led expert evidence from Dr Soh Keng Chuan ("Dr Soh"), a consultant psychiatrist based at the Institute of Mental Health,<sup>122</sup> and adduced a report prepared by him dated 2 February 2024.<sup>123</sup>

39 Based on Prof Teo's estimated BAC of 205mg/100ml, Dr Soh opined in his report that C would have "at the minimum" experienced impairment of concentration, judgment and orientation, and could have possibly experienced incoherent thoughts, confusion, lethargy, stupor and even coma.<sup>124</sup> At trial, Dr Soh opined that it was "quite unlikely" that someone with a BAC of 205mg/100ml could consent to sexual contact:<sup>125</sup>

- Q: Let me ask it differently. Does it make it more or less---if her blood alcohol is at---in the vicinity of 200 milligrams per 100ml. At that level, what is the, I guess, likelihood of---or likelihood that she lacks the capacity to consent?
- A: It's quite unlikely that someone at that blood alcohol concentration, together with her description of wa---how she appreciated things that was going on at that time,

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<sup>122</sup> NE 25 July 2025 at p 19 lines 11–16.

<sup>123</sup> Exhibit P7.

<sup>124</sup> Exhibit P7 at para 89.

<sup>125</sup> NE 25 July 2025 at p 23 lines 16–22.

it's quite unlikely to me that someone in that position would be able to give consent for a sexual act.

40 The expert evidence from Prof Teo and Dr Soh lent *some* support to the Prosecution's submission that C was unable to give consent due to the substantial amount of alcohol that she had consumed. Nonetheless, I declined the Prosecution's invitation to place "significant weight" on Prof Teo's opinion.<sup>126</sup> I found that the expert evidence was not definitive, due to the multiple assumptions made in the calculations used.

41 Prof Teo's two reports dated 9 November 2021 ("First Report") and 29 November 2022 ("Second Report")<sup>127</sup> had suggested three methods of calculating C's BAC level. The Prosecution relied solely on the Back Calculation Method. This was likely the most accurate of the three and involved the use of the Widmark equation.<sup>128</sup> In order to calculate an expected BAC, the Widmark equation required three numerical inputs:

- (a) The amount of ethanol consumed in millilitres, with one SD taken to contain 13 millilitres of ethanol;<sup>129</sup>
- (b) The weight of the individual in kilograms; and
- (c) The selected Widmark factor.<sup>130</sup>

42 As acknowledged by Prof Teo himself in his First Report, there was a range of Widmark factors for males and females and the numerical value of the

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<sup>126</sup> PCS at para 51.

<sup>127</sup> Exhibit P29 and Exhibit P30.

<sup>128</sup> PCS at para 50.

<sup>129</sup> Exhibit P29 at para 33(f).

<sup>130</sup> Exhibit P29 at para 33(b).

Widmark factor varied according to the medical literature being used.<sup>131</sup> According to Prof Teo, this was due to the Widmark factor being dependent on the amount of water contained in one's body.<sup>132</sup> Thus, and as acknowledged by Prof Teo, the Widmark factor of 0.55 L/kg utilised in his First Report was itself an average,<sup>133</sup> which may not accurately reflect C's physical condition. This estimate used an average rate of the elimination of ethanol by the body after ingestion, which Prof Teo placed at 15mg/100ml per hour.<sup>134</sup> Prof Teo acknowledged in his First Report that the rate of elimination of ethanol from the body after ingestion spanned "a wide range", not only from person to person but also from time to time for the same person.<sup>135</sup> While Prof Teo did use the "traditional average" rate of elimination of 15mg/100ml per hour in his estimation of C's BAC, he also noted that the elimination rate, even for non-regular alcohol drinkers, could vary from 10 mg/100ml per hour to 40 mg/100ml per hour.<sup>136</sup>

43 As for Dr Soh, his report listed Prof Teo's First and Second Reports as forming part of his overall analysis.<sup>137</sup> It followed, therefore, that I approached his evidence with caution also.

44 Taken together, though the expert evidence before me was not conclusive, it did explain how C *could* lack the capacity to consent. Nevertheless, alcohol affects different persons in a spectrum of different ways.

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<sup>131</sup> Exhibit P29 at para 33(c).

<sup>132</sup> NE 21 July 2025 at p 53 lines 23–25.

<sup>133</sup> NE 21 July 2025 at p 18 lines 16–20.

<sup>134</sup> Exhibit P29 at para 24.

<sup>135</sup> Exhibit P29 at para 24.

<sup>136</sup> NE 21 July 2025 at p 42 line 25 to p 43 line 7.

<sup>137</sup> Exhibit P7 at paras 8(a) and 8(b).

The issue was how it affected C. In my view, the question of whether C lacked the capacity to consent was better answered – and in this case, sufficiently so – with a consideration of the eye-witness account provided by Lee Kit and the audio recording in the in-car camera unit of the accused’s car.

### ***Lee Kit’s evidence***

45 Prior to trial, Lee Kit had pleaded guilty to one charge under s 354(1) of the PC for outraging the modesty of C in C’s Unit between 30 January and 31 January 2021.<sup>138</sup> He was sentenced to 20 months’ imprisonment and four strokes of the cane,<sup>139</sup> and had been released on remission by the time the trial commenced.<sup>140</sup>

46 According to Lee Kit, once C was on the bed, she did not respond to stimuli such as the accused moving her legs onto the bed<sup>141</sup> or the accused kissing her.<sup>142</sup> It was also Lee Kit’s evidence that, when the accused was penetrating C, C was not alert,<sup>143</sup> did not say any words,<sup>144</sup> and only made slight movements.<sup>145</sup> When asked to specify what sort of movement C made, Lee Kit answered:<sup>146</sup>

A: Like, it’s not very---not those---not that---not those kind of movement that is very participating in sex but just,

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<sup>138</sup> NE 9 July 2025 at p 4 line 18 to p 5 line 3.

<sup>139</sup> NE 7 July 2025 at p 86 lines 10–17.

<sup>140</sup> NE 7 July 2025 at p 86 lines 18–22.

<sup>141</sup> NE 7 July 2025 at p 57 lines 1–8.

<sup>142</sup> NE 7 July 2025 at p 57 lines 22–24.

<sup>143</sup> NE 7 July 2025 at p 60 lines 20–23.

<sup>144</sup> NE 7 July 2025 at p 60 lines 27–28.

<sup>145</sup> NE 7 July 2025 at p 61 line 23 to p 63 line 9.

<sup>146</sup> NE 7 July 2025 at p 62 lines 1–6.

like, got some---I mean, while they are having sex, the body contact each other.

...

It may have some movement.

47 The bodily movement which Lee Kit spoke of appeared to be the result of the accused's own physical movements that were directed towards C's body, such as his thrusting movements when he penetrated C. When questioned further, Lee Kit clarified that this also included C clenching her hand,<sup>147</sup> though C did not lift her hand up at any point when the accused penetrated her.<sup>148</sup> Lee Kit's appraisal of C's condition was as follows:<sup>149</sup>

Q: ... To what extent would you say [C] was actively participating in the sexual intercourse?

A: I don't think is---I don't think she is fully participating.

48 Additionally, Lee Kit's evidence on C's condition when the accused penetrated her was also consistent with his evidence on C's condition when he digitally penetrated her himself. Lee Kit testified that, while he touched C's leg and vagina for 30 to 40 seconds,<sup>150</sup> C's eyes were closed and she neither said anything and nor reacted<sup>151</sup> though C swung her hand and her body again moved slightly after some time.<sup>152</sup>

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<sup>147</sup> NE 7 July 2025 at p 62 line 12 to p 63 line 9.

<sup>148</sup> NE 7 July 2025 at p 63 lines 10–11.

<sup>149</sup> NE 7 July 2025 at p 63 lines 12–14.

<sup>150</sup> NE 7 July 2025 at p 69 lines 14–15.

<sup>151</sup> NE 7 July 2025 at p 66 lines 13–19.

<sup>152</sup> NE 7 July 2025 at p 68 line 26 to p 69 line 15.

49 The Defence submitted that Lee Kit was not an honest witness,<sup>153</sup> and that his evidence was “tainted and unreliable”,<sup>154</sup> due to alleged inconsistencies in his testimony and the fact that Lee Kit’s charge was reduced before he pleaded guilty.<sup>155</sup>

50 Specifically, the Defence relied on four inconsistencies arising during cross-examination. The first three pertained to his account of what he meant during the conversation with the accused in the car after they left C’s Unit, as recorded by the in-car camera:

(a) First, when asked what he meant when he said “[t]he *ang moh* girl ok. The *ang moh* girl. *Cheebye* she *shiok* already, I think” [emphasis in original in italics],<sup>156</sup> Lee Kit initially stated that he was asking if C was “okay”, though he later agreed that this was not true.<sup>157</sup>

(b) Second, when asked what he meant when he said “[b]ut she sleep la, after that”,<sup>158</sup> Lee Kit initially refused to agree that he was asking if C had slept after he left C’s Unit, though he finally accepted this proposition.<sup>159</sup>

(c) Third, when asked what he meant when he said “[n]o la just say la, anything we...”,<sup>160</sup> Lee Kit initially denied that this was an attempt to

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<sup>153</sup> DCS at para 60.

<sup>154</sup> DCS at para 66.

<sup>155</sup> DCS at para 66.

<sup>156</sup> DCS at para 61; Exhibit P64 at p 9 (timestamp 12:11:14).

<sup>157</sup> NE 8 July 2025 p 12 line 11 to p 13 line 10.

<sup>158</sup> DCS at para 62; Exhibit P64 at p 9 (timestamp 12:11:18).

<sup>159</sup> NE 8 July 2025 at p 13 line 15 to p 15 line 26.

<sup>160</sup> DCS at para 63; Exhibit P64 at p 10 (timestamp 12:13:24).

get the accused to “agree to a story to tell” (in the event they were caught by the police), though he eventually agreed that this was indeed his intention.<sup>161</sup> This contradicted his earlier claim that he wanted to tell the truth about him molesting C.<sup>162</sup>

51 The first two changes in Lee Kit’s position showed that Lee Kit first tried to minimise what he said about C but conceded the point as he was cross-examined. In my view, his first two answers reflected that he was in fact a largely truthful witness who was embarrassed about the manner in which he had talked about C. His third answer reflected an initial embarrassment about thinking about agreeing on a story with the accused. In fact, he had admitted to his complicity and pleaded guilty early. This was consistent with his earlier contention that he wanted to tell the truth, which was representative of his posture in court. More importantly, these three inconsistencies relate to what he meant in the conversation with the accused in the car. As such, they were not material inconsistencies in relation to his evidence about events as they unfolded in the bedroom. They did not relate to the core issues about the charge at hand, which were about *the accused’s actions* in C’s bedroom.

52 The fourth asserted inconsistency was that<sup>163</sup> Lee Kit had initially testified that, while in C’s bedroom, the accused had signalled to him to go over and molest C.<sup>164</sup> He later agreed that the accused only realised that he had sexual contact with C during their conversation in the car.<sup>165</sup> This was not an

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<sup>161</sup> NE 8 July 2025 at p 23 line 26 to p 27 line 26.

<sup>162</sup> NE 8 July 2025 at p 24 lines 12–15.

<sup>163</sup> DCS at para 64.

<sup>164</sup> NE 7 July 2025 at p 65 lines 16–31.

<sup>165</sup> NE 8 July 2025 at p 32 lines 15–19.

inconsistency. At trial, Lee Kit testified that, as he digitally penetrated C,<sup>166</sup> the accused was positioned close to the upper part of C's body and was kissing her.<sup>167</sup> Thus, Lee Kit's account on this specific point was internally consistent; the accused did not know that Lee Kit had sexual contact with C because, according to Lee Kit, the accused was preoccupied with kissing C for the duration of the said sexual contact.

53 As for Lee Kit's charge being reduced before he pleaded guilty, this had no bearing on the quality of his evidence. A court is entitled to rely on the fact that a co-accused person had already been convicted and completed serving his sentence to make a finding that he has no reason to lie about or exaggerate the accused's role in committing the offence (*Bachoo Mohan Singh v Public Prosecutor* [2009] 3 SLR(R) 1037 at [61], citing *Lee Soo Mei v Public Prosecutor* [2004] 2 SLR(R) 27 at [39]). In the present case, Lee Kit had served his sentence and was released on remission by the time the accused's trial had commenced.<sup>168</sup> Lee Kit had no interest in the outcome of the accused's trial and had no reason to perjure himself about what transpired.

54 Thus, I found Lee Kit to be a credible witness. His evidence was moreover strongly supported by the audio recording of the in-car camera.

***Conversation between Lee Kit and the accused after they left C's Unit***

55 The audio recording recovered from the accused's in-car camera was consistent with Lee Kit's evidence. As the accused and Lee Kit drove out of the

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<sup>166</sup> NE 7 July 2025 at p 66 lines 20–24; NE 7 July 2025 at p 68 lines 16–18.

<sup>167</sup> NE 7 July 2025 at p 70 lines 6–16.

<sup>168</sup> NE 7 July 2025 at p 86 lines 18–22.

condominium complex after they penetrated C, they discussed the events in C's bedroom.

56 The timestamp on the in-car camera footage indicated that the recording had commenced at around 12.10am. The following is an extract of the transcript of the conversation between Lee Kit and the accused occurring at about 12.11am:<sup>169</sup>

Lee: The *ang moh* girl ok. The *ang moh* girl. *Cheebye* she *shiok* already, I think.

Accd: *Shiok* already. *Gentel, Gentel, Gentel* (Malay for “tickle, tickle, tickle”) *shiok* already.

Lee: **But she sleep *la*, after that.**

Accd: No, she, she come out and send me sia.

Lee: **Huh?**

Accd: She come out and send me.

Lee: **She come out and send you? Serious?**

Accd: Ah.

Lee: (*laughter*) What you do?

Accd: **Wah *cheebye takut sia* (Malay for “scared”). Suddenly I just feel scared sia.**

Lee: Why? what you do?

Accd: Cause I do with her already what.

Lee: Then after that? After she wake up she send you, she send you out, ah?

Accd: Ah, she send me out.

Lee: *Cheebye*. But **she saw you, not?**

Accd: Huh?

Lee: **She saw you or not?**

Accd: Saw me ah.

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<sup>169</sup> Exhibit P64 at pp 9–10.

Lee: Huh?

Accd: She saw me.

Lee: Then?

Accd: *Cheebye* la. **scary sia, don't know why. Cheebye that time ah, never think ah. Cheebye. Do do do do do do.**  
 lucky I come inside the toilet.

[emphasis in original in italics; emphasis added in bold]

57 In my view, two things were apparent from this conversation. First, Lee Kit had expected C to be asleep after the accused penetrated her and was surprised that she was not. This could be seen from the part of the conversation where the accused told him that C had in fact sent him out of the condominium Unit. Moreover, the manner in which Lee Kit phrased his query to the accused (“Then after that? After she wake up ...”), in response to his statement that he had sexual intercourse with C (“Cause I do with her already what”), strongly suggested that he perceived C to be asleep *during* sexual intercourse. Secondly, both men feared that the accused had been seen and could be identified by C. This was yet another indication that they had earlier assumed C to be unconscious such that she would be unaware of whatever transpired in the bedroom and thus be unable to identify them.

58 The subsequent exchange between the accused and Lee Kit illustrated the same two points: first, that they were surprised that C was not unconscious after they penetrated her and, second, that they feared being identified upon realising that C was not comatose:<sup>170</sup>

Lee: Then after that she send you out somemore, *kanina*.  
**How come sia?**

Accd: **I takut (Malay for “scared”) that one only sia. Wait I don't know why suddenly my stomach ah like got butterfly like that, cheebye.**

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<sup>170</sup> Exhibit P64 at p 11.

Lee: Orh

Accd: **Some more got car plate some more. You and me come up, come down, everything have sia.**

...

Accd: *Cheebye* my stomach like got butterfly sia. Don't know why sia suddenly.

Lee: **But the girl *cheebye*, *mabuk mabuk* (Malay for "drunk") still awake ah?**

Accd: Ya.

[emphasis in original in italics; emphasis added in bold]

### ***Summation of evidence on C's ability to consent***

59 In *Pram Nair*, the Court of Appeal made clear that an unconscious person could not consent, referring (at [93]) to the following passage from *Ratanlal & Dhirajlal's Law of Crimes: A Commentary on the Indian Penal Code 1860 vol 2* (CK Thakker & M C Thakker eds) (Bharat Law House, 26th Ed, 2007):

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

60 I accepted Lee Kit's evidence that, in the bedroom, C was unconscious. This was also plain from the conversation between the two men in the car after the incident. Based on the totality of the evidence before me, I was satisfied that, for the whole duration that the accused was in C's bedroom with C, C did not have the capacity to consent to the sexual acts committed by the accused.

61 My conclusion on C's lack of capacity to consent would have been sufficient to dispose of the matter and find that the accused penetrated C without her consent. However, even if I was wrong on coming to such a landing on C's lack of capacity to consent, I would still have arrived at the same overall conclusion on C's lack of consent as the evidence showed that C did *not* in fact consent to the accused penetrating her.

**As a factual matter, did C consent?**

62 I turn to address the second question, whether C in fact consented to sexual intercourse with the accused.

***At Holland Village***

63 It was within this context that I considered the Prosecution's assertion that the accused had stalked C and E at Holland Village after identifying them as being drunk. The Prosecution submitted that if this were proved, the court should infer that the accused had done so with nefarious intent and committed the offence with premeditation.<sup>171</sup>

64 The series of events pertinent to this assertion started around 10.32pm.

***At the Junction***

65 The whereabouts of the accused, Lee Kit, C and E on 30 January 2021 up until around 10.32pm were undisputed. From 10.04pm till 10.32pm, the accused and Lee Kit stood around some bollards at the Junction, save for a period of time between 10.10pm and 10.12pm when Lee Kit left the Junction to

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<sup>171</sup> PCS at para 25.

buy beer from a nearby convenience store.<sup>172</sup> Meanwhile, from 10.27pm till 10.33pm, C and her friends walked up a slope towards the Junction.<sup>173</sup> At around 10.32pm, the accused walked away from the bollards leaving Lee Kit behind.<sup>174</sup> CCTV footage revealed that C and E passed the accused at this time and went into Guardian. The salient issue was whether the accused had walked away from the bollards towards Guardian because he saw C and E.

*At Guardian*

66 The Prosecution took the position that the accused noticed C at 10.32pm<sup>175</sup> and had decided to follow C and E from that point onwards.<sup>176</sup> The accused maintained that he had not noticed either C or E at that juncture.<sup>177</sup> He left the Junction to go to Guardian to purchase ointment for his wife.<sup>178</sup> He did not enter Guardian as there were customers inside.<sup>179</sup> The accused then called Lee Kit at 10.43pm and asked to meet up.<sup>180</sup>

67 When cross-examined about what he did between 10.32pm till 10.43pm, the accused testified that it took him “maybe about three to five minutes” to walk from the bollards to Guardian and that he went straight to Guardian after

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<sup>172</sup> Exhibit P43; NE 1 August 2025 at p 7 line 28 to p 8 line 14.

<sup>173</sup> Exhibit P44.

<sup>174</sup> Exhibit P43; NE 1 August 2025 at p 104 lines 15–19.

<sup>175</sup> PCS at para 33.

<sup>176</sup> PCS at para 34.

<sup>177</sup> NE 1 August 2025 at p 9 lines 20–25; NE 1 August 2025 at p 11 lines 10–15; NE 4 August 2025 at p 13 lines 14–30.

<sup>178</sup> NE 1 August 2025 at p 104 lines 22–25.

<sup>179</sup> NE 1 August 2025 at p 9 lines 5–6.

<sup>180</sup> NE 1 August 2025 at p 9 lines 17–19; Exhibit P32 at Annex B.

leaving the bollards.<sup>181</sup> This was not a credible answer regarding the use of nine minutes, as he also agreed that Guardian “could be” about 100 metres away from the bollards.<sup>182</sup> It was undisputed that the accused did not purchase anything from Guardian despite his reason for going there. It was the accused’s evidence that he did not enter the Guardian as “[t]he pharmacy counter was crowded”<sup>183</sup> and (in light of the COVID-19 pandemic) he wanted to avoid the crowd so as to avoid falling sick.<sup>184</sup> This was a rather odd answer as he had no qualms later sending two strangers home in his car and subsequently having sexual intercourse with one of them.<sup>185</sup>

*After Lee Kit met the accused outside Guardian*

68 It was undisputed that at around 10.43pm, the accused called Lee Kit,<sup>186</sup> and Lee Kit walked away from the bollards at the Junction around 10.44pm.<sup>187</sup> It was also undisputed that, at 10.50pm, the accused and Lee Kit descended the stairs and entered the MRT station behind C and E through Exit C.<sup>188</sup>

69 Lee Kit testified that, on the phone, the accused told him to meet at Guardian.<sup>189</sup> Lee Kit left the bollards and walked directly to Guardian.<sup>190</sup> At Guardian, the accused told him that he called him over to Guardian as he saw

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<sup>181</sup> NE 1 August 2025 at p 105 lines 13–17.

<sup>182</sup> NE 1 August 2025 at p 105 lines 26–32.

<sup>183</sup> NE 1 August 2025 at p 106 lines 1–6.

<sup>184</sup> NE 1 August 2025 at p 106 line 27 to p 107 line 4.

<sup>185</sup> NE 1 August 2025 at p 107 lines 20–28.

<sup>186</sup> Exhibit P32 at Annex B.

<sup>187</sup> Exhibit P43.

<sup>188</sup> Exhibit P39.

<sup>189</sup> NE 7 July 2025 at p 41 lines 1–8.

<sup>190</sup> NE 7 July 2025 at p 41 lines 9–15.

two women (C and E) who were “quite drunk” and wanted to find an opportunity to approach them.<sup>191</sup> According to Lee Kit, at this juncture, he told the accused not to bother as the two women looked “very drunk”.<sup>192</sup> When asked how he concluded that the two women were “very drunk”, Lee Kit testified that the two women could not walk properly and exhibited body language which suggested that they were drunk.<sup>193</sup>

70 The accused told him instead to wait and observe the two women and both men did so while standing outside Guardian.<sup>194</sup> Lee Kit testified that the two women exited Guardian and walked towards a taxi stand close to Cold Storage for a period of time before they turned back, passed Guardian, and walked towards the MRT station.<sup>195</sup> According to Lee Kit, it was at this juncture, after the two women passed Guardian, that the accused told him “[l]et’s go follow---follow them”, which prompted them to follow the two women into the station through Exit C.<sup>196</sup>

71 The accused’s evidence was that he told Lee Kit to meet him at the MRT entrance along Holland Road (Exit C),<sup>197</sup> and once Lee Kit arrived, both of them immediately entered the MRT station.<sup>198</sup> The accused did not dispute that the bollards at the Junction and Exit C were around 50 metres apart and he could

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<sup>191</sup> NE 7 July 2025 at p 41 lines 22–29.

<sup>192</sup> NE 7 July 2025 at p 42 lines 4–7.

<sup>193</sup> NE 7 July 2025 at p 42 lines 10–12.

<sup>194</sup> NE 7 July 2025 at p 43 lines 5–8.

<sup>195</sup> NE 7 July 2025 at p 42 line 16 to p 43 line 25.

<sup>196</sup> NE 7 July 2025 at p 43 lines 24–29.

<sup>197</sup> NE 1 August 2025 at p 9 lines 17–19

<sup>198</sup> NE 4 August 2025 at p 6 lines 18–21.

not offer a credible explanation as to why Lee Kit took six minutes to walk 50 metres.<sup>199</sup>

72 I accepted Lee Kit's account of events between 10.44pm to 10.50pm. This version fully explained the time period from the time the accused called him, to the time the two men entered the MRT station.

*Within the MRT station*

73 CCTV footage taken from multiple vantage points within the MRT station showed the accused, Lee Kit, C and E within the MRT station.<sup>200</sup> The physical whereabouts of C, E, the accused and Lee Kit within the MRT station were undisputed.<sup>201</sup> The accused's explanation was that the proximity was a coincidence.

74 In brief, the CCTV footage revealed C and E going down the stairs into the MRT station. The accused and Lee Kit were behind them. From the foot of the staircase, the two women walked through the underpass in the MRT station and the two men also did so. Then, the two women entered the female toilet in the MRT station. At this juncture, the two men stood in the underpass momentarily, and walked back through the underpass. At a point close to Exit A of the station, which was located along the length of the underpass, the two men stood around for approximately three minutes before the accused left Lee Kit and walked back to the toilet. The accused then entered the men's toilet. Subsequently, C led E out of the toilet and back through the underpass and the

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<sup>199</sup> NE 4 August 2025 at p 4 line 26 to p 8 line 32.

<sup>200</sup> Exhibit P39.

<sup>201</sup> Exhibit D (Agreed Chronology of Events on 30–31 January 2021).

accused also came out of the toilet and rejoined Lee Kit.<sup>202</sup> As the two women walked along the underpass and exited the station from Exit A, the two men followed suit.

75 The accused's account of what transpired was as follows. According to the accused, he entered the MRT station with the intent of returning to his car, which was parked at an open space carpark adjacent to Exit A.<sup>203</sup> Upon entering the MRT station, the accused wanted to use the toilet though, when he reached the toilet, he saw "a crowd outside" and thought the toilet was full.<sup>204</sup> Consequently, the accused walked away and stood around before returning to the toilet as his "bladder was full".<sup>205</sup> After he relieved himself, the accused exited the toilet, met Lee Kit in the underpass, and then exited the MRT station through Exit A. The accused maintained that he did not notice C or E while he was in the MRT station.<sup>206</sup>

76 The accused's explanation for his movements within the MRT station was not persuasive. First, the accused could not satisfactorily explain how he concluded that the male toilet was full.<sup>207</sup> The CCTV footage showed that the "crowd" which the accused allegedly apprehended as a queue was in fact a group of men standing in a circle close to the control room located opposite the toilet. Second, the accused could not satisfactorily explain why he decided to wait at a point in the underpass close to Exit A as opposed to somewhere closer

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<sup>202</sup> Exhibit D (Agreed Chronology of Events on 30–31 January 2021) at p 3.

<sup>203</sup> NE 1 August 2025 at p 9 line 30 to p 10 line 4.

<sup>204</sup> NE 1 August 2025 at p 10 lines 5–11.

<sup>205</sup> NE 1 August 2025 at p 10 lines 18–22.

<sup>206</sup> NE 4 August 2025 at p 13 line 22 to p 14 line 20.

<sup>207</sup> NE 4 August 2025 at p 19 lines 6–12.

to the toilet where he could monitor the alleged queue.<sup>208</sup> Third, the accused could not satisfactorily explain his conduct when he walked to the toilet for the second time. On this second occasion, the accused walked past the group of men and was able to enter the male toilet with ease. In my view, this clearly undermined the accused's alleged belief that there was a queue outside the male toilet at the material time. Further, I found that the CCTV footage undercut the accused's assertion that he had first noticed C and E only at the bus stop – the accused had looked directly at C during their descent into the MRT station through Exit C.<sup>209</sup> Conversely, Lee Kit's evidence was consistent with the CCTV footage from the MRT station and provided a cogent explanation for his and the accused's movements while in the MRT station. When shown the CCTV footage at trial, Lee Kit confirmed that he and the accused were indeed following the two women in the MRT station.<sup>210</sup> Lee Kit recalled that, after they entered the MRT station, he wanted to leave and turned right towards Exit A. However, the accused pulled him back and said "[w]ait, wait, wait. I want to go and see the girl again".<sup>211</sup> Thus, the two men continued to follow the two women along the underpass. According to Lee Kit, upon reaching the end of the underpass (adjacent to the gantry and public toilet), the accused told him that he wanted to follow the women and "see what they do at the toilet".<sup>212</sup> However, Lee Kit declined and waited instead.<sup>213</sup>

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<sup>208</sup> NE 4 August 2025 at p 17 lines 13–25.

<sup>209</sup> Exhibit P39 (timestamp 22:50:42); PCS at para 41.

<sup>210</sup> NE 7 July 2025 at p 44 lines 10–12.

<sup>211</sup> NE 7 July 2025 at p 44 lines 26–29.

<sup>212</sup> NE 7 July 2025 at p 45 lines 8–11.

<sup>213</sup> NE 7 July 2025 at p 45 lines 11–12.

77 Lee Kit confirmed that, subsequently, both he and the accused walked back up the underpass and stood close to Exit A for a few minutes in order to wait “to observe the two lady [*sic*]”.<sup>214</sup> Lee Kit testified that, at this juncture, the accused told him that, since the two women were taking some time to exit the toilet, he wanted to “go and take a look”.<sup>215</sup> Lee Kit declined again and stood in place to wait for the accused while the accused walked back to the toilet. For completeness, I observed that this aspect of Lee Kit’s evidence was fully consistent with CCTV footage of the accused the second time he walked to the toilet. Peculiarly, as the accused entered the male toilet, he turned to look *towards* the female toilet.<sup>216</sup> In a similar vein, when the accused exited the male toilet, instead of immediately walking back to where he had left Lee Kit, the accused first looked towards the MRT station control and the MRT gantries.<sup>217</sup> At trial, the accused did not give a credible explanation for his behaviour; he asserted that it was a “practice” of his to “look left to right”.<sup>218</sup>

78 Eventually, the two women exited the toilet, walked along the underpass and exited the station from Exit A. After the accused caught up with Lee Kit near Exit A, the two men followed suit. I was satisfied that the accused and Lee Kit were tailing C and E in the MRT station.

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<sup>214</sup> NE 7 July 2025 at p 45 lines 13–21.

<sup>215</sup> NE 7 July 2025 at p 45 lines 22–28.

<sup>216</sup> Exhibit P39.

<sup>217</sup> Exhibit P39.

<sup>218</sup> NE 4 August 2025 at p 27 line 22; NE 4 August 2025 at p 28 lines 27–28.

*At the carpark*

79 CCTV footage showed that, at around 11pm, C and E exited from Exit A of the MRT station, with the accused and Lee Kit following closely behind.<sup>219</sup> The footage also showed that, at around 11.01pm, C and E sat down at the bus stop, while the accused and Lee Kit went to the bicycle bay located next to Exit A. At around 11.02pm, the accused walked over to his car, got in, drove across the carpark, and parked his car at a handicap lot next to the bicycle bay facing the bus stop. It was undisputed that the accused and Lee Kit would remain adjacent to the bicycle bay from around 11.02pm. Phue started to assist C and E from 11.03 pm. Around 11.03 pm, the accused went to the bus stop, tapped E on the shoulder and walked away (the accused's evidence was that he did so to inform her that she had dropped her mobile telephone<sup>220</sup>). At around 11.22pm, after E fell off her seat, the two men approached the bus stop. Phue's bus arrived at around 11.24 pm, and three minutes later, the accused and Lee Kit escorted C and E to the accused's car. Again, the accused and Lee Kit each offered conflicting accounts as to why they waited at the bicycle bay for 20 minutes.

80 According to the accused, he had decided to move his car to the handicap lot to "go to a brighter spot" in order to use car accessories which he had purchased earlier that day.<sup>221</sup> I note in passing that this did not cohere with his evidence at [22], where he said his wife expected him home sometime after 10pm.<sup>222</sup> This would already have been more than an hour past the time. In this regard, the Prosecution's assertion, that there was no innocent reason for the

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<sup>219</sup> Exhibit P39.

<sup>220</sup> *Supra*, footnote 67.

<sup>221</sup> NE 4 August 2025 at p 30 lines 6–15.

<sup>222</sup> NE 1 August 2025 at p 78 lines 1–8.

accused to fiddle with his new car accessories in the carpark for around 20 minutes, had some force.<sup>223</sup>

81 I found that Lee Kit’s testimony provided a more plausible explanation for the accused’s motivations at the carpark. According to Lee Kit, after he and the accused exited the MRT station, they stood at the carpark and continued to observe C and E.<sup>224</sup> At this juncture, the accused told Lee Kit that he would drive his car over.<sup>225</sup> The accused then drove his car over and started “do[ing] some packing of his car”.<sup>226</sup> When asked if the accused was seriously tending to his car, Lee Kit stated, “[a]t that point, I don’t think so”.<sup>227</sup>

82 Lee Kit’s explanation on their decision to approach C and E at the bus stop was also more cogent. According to Lee Kit, he and the accused saw E fall off a bench at the bus stop. At that point, the accused said, “[l]et’s go. Can go approach them already”, and they ran over.<sup>228</sup> In contrast, the accused testified that he had approached C at the bus stop because E had fallen off a bench and a Malay passer-by had called for help.<sup>229</sup> However, when shown footage of the bus stop before his approach, the accused was unable to identify the moment that any passer-by called him over.<sup>230</sup> This supported Lee Kit’s testimony that no one called them over; they approached when they did because E fell over.<sup>231</sup>

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<sup>223</sup> PCS at para 40.

<sup>224</sup> NE 7 July 2025 at p 46 lines 4–8.

<sup>225</sup> NE 7 July 2025 at p 46 lines 7–14.

<sup>226</sup> NE 7 July 2025 at p 46 lines 11–14.

<sup>227</sup> NE 7 July 2025 at p 46 lines 15–16.

<sup>228</sup> NE 7 July 2025 at p 46 lines 23–26.

<sup>229</sup> NE 4 August 2025 at p 35 lines 24–32.

<sup>230</sup> NE 4 August 2025 at p 37 line 9 to p 38 line 8.

<sup>231</sup> NE 7 July 2025 at p 46 lines 27–28.

*Summation of my findings on the accused's behaviour*

83 It was clear that from the time when Lee Kit met the accused at Guardian, until the point at which the accused and Lee Kit approached C and E at the bus stop, the accused and Lee Kit had watched and followed C and E with the knowledge that C and E were under the influence of alcohol. In Lee Kit's words used in the context of looking closely at C and E while walking in the MRT station, they did so to find out "whether they are really drunk".<sup>232</sup>

84 In my view, this conduct prior to the time they approached C and E at the bus stop furnished significant insight into the intent harboured by the accused and Lee Kit. Despite losing sight of C and E while in the MRT station, the two men made the deliberate decision to persist, with the accused taking the trouble to check the toilet area twice. When they saw C and E at the bus stop, they waited patiently. The manner in which they waited showed that their intention in following C and E was not merely to interact, flirt or seduce the drunk ladies. They did not approach C and E until E fell over at the bus stop. At that juncture, it was clear that E was close to losing consciousness and C, herself drunk, would be desperate for help. This helplessness would have increased after Phue left, and unsurprisingly, three minutes later, C agreed to the lift. This watchfulness continued in the car (in this context, see [27] – [30] above), where the men posed queries that C was unable to answer, and the accused took a photo to ascertain whether C and E were asleep. The facts showed that Lee Kit and the accused had been observing closely, following continuously, and waiting patiently for the point in time when they expected C would be unable to resist. This reflected pre-meditation on their part; they had no intention to seek consent.

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<sup>232</sup> NE 8 July 2025 at p 51 lines 8–10.

***The in-car camera audio recordings***

85 I have set out above (at [56] and [58]) extracts from the transcript of the conversation between the accused and Lee Kit in the accused's car after they left C's unit as recorded by the in-car camera, in which the two men revealed their prior assumption that C was unconscious when they penetrated her. I deal here with extracts which showed how the two men feared that they would run into trouble with the police:<sup>233</sup>

Accd: Eh but if this one ah, if they complain police ah, anything we *kena* or not (Malay for "hit")?

Lee: Maybe ah. I don't know leh

[emphasis in original in italics]

This fear would *not* have been present *if C had consented* to the sexual penetration.

86 The exchange above was then followed on with a discussion on the likelihood of C reporting the matter to the police,<sup>234</sup> the presence of surveillance cameras,<sup>235</sup> and whether these cameras captured the accused's car plate number and their movements within the condominium complex:<sup>236</sup>

Accd: Some more got car plate some more. You and me come up, come down, everything have sia.

Lee: (*laughter*) No la just say we send them back la.

Accd: But then why so long. You.. you also.. Then this fella come out then you also come out. You come out first, know?

Lee: Ya

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<sup>233</sup> Exhibit P64 at p 10.

<sup>234</sup> Exhibit P64 at p 10.

<sup>235</sup> Exhibit P64 at pp 10–11.

<sup>236</sup> Exhibit P64 at p 11.

But there got camera meh? show we come out meh?

Accd: Got the downstairs got the camera.

Lee: But she... don't know leh. Don't know, if she never report ok la, if she report.

Accd: Both also *kena* sia, you and me also *kena* sia (Malay for hit").

[emphasis in original in italics]

87 Subsequently, fear turned into panic when the accused realised that he had left one of his mobile phones at C's Unit, reflected in the following exchange between the accused and Lee Kit:<sup>237</sup>

Accd: Eh, my another phone drop la sial.

Lee: Huh? Where drop? *Cheebye* at the girl's house... *Habis* (Malay for "finished").

Accd: Eh ya la, drop there la.

Lee: Huh, serious ah?

Accd: Ya. Have to go back and take uh.

Lee: Go back?

Accd: Eh come la, follow me la.

Lee: But how you go up? Now the problem is cannot go up leh.

Accd: Eh *cheebye*, die sia.

[emphasis in original in italics]

88 As the accused and Lee Kit set off on their drive back to the condominium complex, Lee Kit then tried to gain a better appreciation of the situation which resulted in this exchange:<sup>238</sup>

Lee: That phone is work work one or what?

Accd: My private one la.

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<sup>237</sup> Exhibit P64 at pp 12–13.

<sup>238</sup> Exhibit P64 at pp 13–14.

Lee: Oh.

Accd: But that one ah *cheebye* can can *kena tangkap* (Malay for “get caught”) sia that one.

Lee: A lot of thing ah inside?

Accd: Not a lot of things.

Lee: Then?

Accd: My photo there what.

Lee: Oh ya. Then how, I think very hard to go up you know the house. Just now which story you know or not?

[emphasis in original in italics]

89 I agreed with the Prosecution that these audio recordings betrayed the accused’s guilty mind.<sup>239</sup> If consent had been given, there was no reason for the accused to feel scared or afraid of the police. For completeness, I disbelieved the accused’s assertion that his fear stemmed from Lee Kit’s non-consensual digital penetration of C.<sup>240</sup> This was incongruous with his earlier statement that “both also *kena*”. I similarly disbelieved the accused’s assertion that his fear of “*tangkap*” (getting caught) and his corresponding desire to retrieve his phone at the earliest possible instance stemmed from his being “scared of [his] wife”.<sup>241</sup> Rather, I agreed with the Prosecution that, up till that point in his conversation with Lee Kit in the car, the accused was singularly concerned with being investigated by the police.

### ***C’s medical diagnosis of Post-Traumatic Stress Disorder***

90 The medical evidence surrounding C’s condition after the incident was consistent with the absence of consent. C had been examined after 31 January

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<sup>239</sup> PCS at para 87.

<sup>240</sup> NE 4 August 2025 at p 78 lines 13–28.

<sup>241</sup> NE 4 August 2025 at p 100 line 7 to p 101 line 6.

2021 by two psychiatrists, namely Dr Soh and Dr Jayne Ho Wen Ling (“Dr Ho”). Both psychiatrists diagnosed C with Post-Traumatic Stress Disorder (“PTSD”), and both psychiatrists opined that such a diagnosis was probative of C’s sexual contact with the accused being non-consensual.<sup>242</sup> Dr Soh also concluded that C had developed Mixed Depressive and Anxiety Disorder, with her non-consensual sexual contact with the accused being “a major precipitating factor” in her development of this condition.<sup>243</sup>

91 For completeness, both Dr Soh and Dr Ho were asked if it was possible for someone to consent to sexual activity, forget about having given consent, and subsequently develop PTSD. While both psychiatrists agreed that this was theoretically possible, it was their evidence that they had never come across such a case before.<sup>244</sup> This speculative query did not raise any reasonable doubt.

### ***Summation of evidence on consent***

92 Based on the totality of the evidence before me, I found that, even if C had retained the capacity to consent to sexual activity when the accused was in C’s bedroom with her, she nonetheless did not factually consent to any sexual activity, much less penetrative sexual intercourse, with the accused.

### **Whether the Prosecution had satisfied its burden of proof**

#### ***The independent evidence***

93 On the totality of the evidence, I was of the view that the Prosecution had met its burden of proof in showing that C did not have the capacity to

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<sup>242</sup> NE 25 July 2025 at p 9 lines 18–29; NE 25 July 2025 at p 26 lines 27–32.

<sup>243</sup> Exhibit P7 at paras 102(b) and 106(b).

<sup>244</sup> NE 25 July 2025 at p 12 lines 6–12; NE 25 July 2025 at p 40 lines 22–30.

consent and that, in any case, she did not in fact consent. On both of these issues, there was independent evidence implicating the accused. These included the evidence of Lee Kit, the audio recordings of the conversations between the accused and Lee Kit in the accused's car, and the CCTV footage showing the accused's movements at Holland Village. These various strands, taken together, served as *Baskerville* corroboration, implicating the accused in a material particular (see *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [42]–[43]).

### *C's and E's evidence*

94 The Prosecution relied on C's evidence.<sup>245</sup> I should mention that I placed less weight on C and E's evidence because they were inebriated to such a large extent that it was likely their memory would have been fragmented. Dr Soh's evidence also reflected the possibility of alcohol-related blackout,<sup>246</sup> during which the brain's processes of forming memories become compromised.<sup>247</sup> In any case, the presence of *Baskerville* corroboration rendered C's testimony less necessary to the issues at hand.

95 Nevertheless, the evidence from C and E was consistent with the Prosecution overall assertions and the other evidence adduced.

96 C testified that, by the time she arrived at the condominium complex, she was feeling the acute effects of the alcohol she consumed. Consequently, she had no memory of entering her Unit or getting into bed.<sup>248</sup> According to C,

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<sup>245</sup> NE 22 September 2025 at p 4 lines 10–23; PCS at paras 56 and 57.

<sup>246</sup> Exhibit P7 at paras 74 and 107.

<sup>247</sup> NE 25 July 2025 at p 20 lines 4–11.

<sup>248</sup> NE 22 July 2025 at p 22 lines 14–31.

her first memory of being back in her Unit was “the feeling of being pulled away from [E]” and “the feeling of sex or penetration”,<sup>249</sup> which C later confirmed to be by a penis.<sup>250</sup> C was also able to recall that she was penetrated “another time”, though she was unable to discern what the penetrative object was.<sup>251</sup> After this second penetration, she said, “it just went all black”.<sup>252</sup> It was C’s evidence that, at the time, “[she] just didn’t think that that was even a possibility that somebody was in [her] room having sex with [her]”.<sup>253</sup> When asked if she had the ability to resist at the material time, C stated that she did not, as she “was so out of it” and “just dozed off”, though she reiterated that she would have resisted if she could.<sup>254</sup> Further, from the moment C regained consciousness and came to the realisation that she had been raped, she promptly called her mother and the police.<sup>255</sup> From the evidence of her mother, her helper and the police officers who attended, C was still intoxicated at the time of her complaint.

97 The accused relied on various inconsistencies in C’s evidence. I set out here my views on the same:

- (a) C had not mentioned to the doctors attending to her that she had vomited in the accused’s car. However, vomiting is commonly associated with inebriation and this was not a material fact.

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<sup>249</sup> NE 22 July 2025 at p 22 lines 29–31.

<sup>250</sup> NE 22 July 2025 at p 24 lines 7–10.

<sup>251</sup> NE 22 July 2025 at p 23 lines 5–6.

<sup>252</sup> NE 22 July 2025 at p 23 lines 7–8.

<sup>253</sup> NE 22 July 2025 at p 24 lines 19–21.

<sup>254</sup> NE 22 July 2025 at p 24 line 29 to p 25 line 4.

<sup>255</sup> NE 22 July 2024 at p 26 lines 8–31.

(b) C told the doctors who examined her that she had been penetrated a second time while on her stomach. At trial she explained she was no longer sure whether this was a reliable memory. This inconsistency was not material. Memory distortion was expected owing to her intoxication. A second penetration from a “doggy” position was in any event part of the accused’s account of events.

(c) C testified that she heard men’s laughter and saw light from a cell phone in the bedroom. Both Lee Kit and the accused testified that there was no laughter and no cell phone light in the room,<sup>256</sup> although Lee Kit testified that light came into the bedroom when he entered from the bathroom.<sup>257</sup> There was no independent evidence as to either fact and, in any event, these discrepancies were not material.

98 Relatedly, E testified that she similarly had no memory of entering C’s Unit or getting into C’s bed. Instead, her last recollection before being in C’s bedroom was being supported whilst walking towards the lift lobby in the condominium complex’s carpark.<sup>258</sup> E’s recollection of what transpired in C’s bedroom was somewhat circumscribed as, according to her, she had “passed out” and was awake for only “30 seconds to a minute”<sup>259</sup> while the accused and Lee Kit were in C’s bedroom.<sup>260</sup> Even then, E testified that she saw C lying on the bed next to her with the lower half of her body unclothed and with a man

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<sup>256</sup> DCS para 50.

<sup>257</sup> NE 7 July at p 58 lines 17–23, p 59 lines 11–17.

<sup>258</sup> NE 2 July 2025 at p 26 lines 5–10.

<sup>259</sup> NE 2 July 2025 at p 40 lines 15–26.

<sup>260</sup> NE 2 July 2025 at p 26 lines 20–21.

kneeling on the bed and touching C with his hand.<sup>261</sup> E also remembered feeling that something was wrong, and that she had said “[s]top, go away”.<sup>262</sup>

99 To sum up, C’s and E’s testimonies were consistent with what was expected of two highly intoxicated persons. While their testimonies were less necessary to the conviction of the accused, their evidence was honest and broadly consistent with the other evidence adduced.

### **Whether the Defence had raised a reasonable doubt**

100 The accused was not a credible witness. I set out my analysis of and views on the accused’s evidence.

### ***Inconsistencies in the accused’s evidence***

#### *How sexual contact escalated*

101 I deal first with the inconsistencies in the accused’s account of what transpired in C’s bedroom. According to the accused, after C had stroked his thigh, he became aroused and decided to kiss C in order to ascertain if C was interested in sexual intercourse:<sup>263</sup>

Q: ... how do you feel when [C] started touching your---or stroking your thigh?

A: I felt aroused.

Q: Did you feel surprised?

A: At that point of time, I couldn’t think.

Q: Why not?

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<sup>261</sup> NE 2 July 2025 at p 27 lines 15–17.

<sup>262</sup> NE 2 July 2025 at p 45 lines 21–26.

<sup>263</sup> NE 1 August 2025 at p 47 line 30 to p 48 line 13.

- A: Because she already touched my thigh, and then I was aroused.
- Q: But you were also totally sober at the time, correct?
- A: Yes.
- Q: So you were not surprised, or you just didn't think about anything?
- A: I didn't think about anything.
- Q: Did you do anything to check whether [C] was in the right frame of mind to have sex?
- A: That is why I kes---I kiss her.
- Q: Wait. You're saying that you kissed her to establish consent?
- A: She's the one who initiated it first.

102 However, in his statement to the police, the accused gave a starkly different account of how his interactions with C escalated into sexual intercourse. In his statement, the accused asserted that he first kissed C when both of them fell onto C's bed as they were moving E onto the bed:<sup>264</sup>

- Yap ["IO"]: ... we need to know in detail what happen. What cause you all to start kissing each other?
- Fok ["Accd"]: 'Uh'... is just like, because when we fall together right, it became like the mouth to mouth at that point of time like you know, so, so that's why, that's where the kissing start to happen.
- IO: OK so what you are saying is that while you all were pulling [E], once you all manage to put [E] in place right, you and [C] both fall towards the right side of the bed.
- Accd: 'Ya'.
- IO: So when you all fell towards the right side of the bed, both your mouth somehow came into contact with each other.
- Accd: 'Mm'.

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<sup>264</sup> Prosecution's Bundle of Exhibits at pp 262–263.

IO: And then, at that point in time you all just started kissing.

Accd: Start, started ‘ya’.

[emphasis in original omitted]

103 In his statement to the police, it was also the accused’s evidence that C had touched his thigh *after* they had kissed.<sup>265</sup>

Accd: ... the kissing was ongoing, and then ‘uh’ slowly it started to... ‘uh’ slowly her hands started to go to my private area.

[emphasis in original omitted]

104 At trial, the accused was unable to proffer a credible explanation as to why his accounts diverged. This inconsistency was material, as it was the accused’s evidence that he did not converse with C while in her bedroom and his account at trial was that his kissing was an intentional act on his part to gauge C’s interest in sexual intercourse. Consequently, the physical acts which allegedly evinced consent would be significant and the accused’s inconsistent evidence on how these physical acts transpired significantly undermined his claim that C had in fact consented to sexual intercourse.

***The accused’s evidence suggested C did not consent***

105 Inconsistencies aside, material portions of the accused’s evidence also suggested that C was unconscious during penetration.

106 In the accused’s own account of what transpired, C did not say anything to him prior to penetration<sup>266</sup> or during penetration.<sup>267</sup> Pertinently, when asked

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<sup>265</sup> Prosecution’s Bundle of Exhibits at p 265.

<sup>266</sup> NE 1 August 2025 at p 63 lines 28–32.

<sup>267</sup> NE 1 August 2025 at p 64 lines 6–9.

how he and C were able to change positions without speaking to each other, the accused's evidence was as follows:<sup>268</sup>

Q: ... But how do you tell [C] that you want to change positions?

A: I think the understanding was there when I wanted to change position, so she cooperated with that position.

Q: The understanding was there.

A: Yes.

Q: How?

A: She did not move away or what.

Q: Is it that you just moved her how you wanted her to be?

A: I moved her to what I wanted---wanted the position to be and then she cooperated.

Q: And then you penetrated or then you did what you wanted after that.

A: Yes.

Q: She didn't really have any input into the positions you would both be taking, right?

...

A: I was deciding the position and she cooperated.

Q: You're saying she cooperated. What you mean is she didn't resist, correct?

A: Yes.

107 This aspect of the accused's evidence gave the distinct impression that C did not move on her own and was instead physically manipulated by the accused at whim. This impression was buttressed by the accused's evidence on C's lack of independent movement after he ceased penetrating her, which I reproduce below:<sup>269</sup>

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<sup>268</sup> NE 1 August 2025 at p 67 line 30 to p 68 line 20.

<sup>269</sup> NE 1 August 2025 at p 81 lines 9–18.

- A: She cannot see me go to the toilet, but she was facing the wall.
- Q: And she didn't say anything to you?
- A: No.
- Q: She just looked at you?
- A: She just looking at me.
- Q: That seemed normal to you? You just---you just told me you just finished penetrating her, and she's just staring at you blankly?
- A: I did not finish penetrating. I was halfway, then I stopped.
- Q: You just stopped penetrating her, and she's just staring at you blankly.
- A: Just staring at me blankly.

108 Other aspects of the accused's evidence were consistent with a lack of consent. He said there had been no intimate conversation between C and himself until C allegedly first stroked his thigh.<sup>270</sup> C did not know his name nor did he know hers,<sup>271</sup> there was no conversation prior to or during the sexual intercourse,<sup>272</sup> and there was no discussion on the use of protection.<sup>273</sup>

109 In short, the accused's evidence reinforced the findings that C was unable to consent and did not consent.

### ***The accused's lie to the police***

110 Further, it was not disputed that the accused had lied to the police about his sexual contact with C. When SI Muhammad Firdaus bin Ramli spoke to the

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<sup>270</sup> NE 1 August 2025 at p 47 lines 22–29.

<sup>271</sup> NE 1 August 2025 at p 66 lines 18–19.

<sup>272</sup> NE 1 August 2025 at p 64 lines 6–9.

<sup>273</sup> NE 1 August 2025 at p 64 lines 1–5.

accused at sometime after 2.19am on 31 January 2021, the accused had denied having any sexual contact with C.<sup>274</sup> Similarly, during the recording of his first Video Recorded Interview (“VRI”) Statement between 8.30am and 9.50am on 31 January 2021 recorded by DSP Jerald Xu, the accused similarly maintained that he did not have sexual contact with C:<sup>275</sup>

Xu [“IO”]: OK. So just to be clear ‘la’ ‘uh’, just to be clear. You are telling me that ‘uh’ after you send them home from Holland Village out of the kindness and the goodness of your heart, you send them back, you carry them into the bedroom, and then you put them there, you stumbled around and then after that then you left, absolutely nothing happen at all ‘la’.

Accd: ‘Ya’.

IO: Nothing inappropriate happen at all ‘la’, that what you are telling me right?

Accd: ‘Ya’.

IO: OK. Then why would she make such a report against you?

Accd: Sir I got no idea for this ‘uh’. Seriously I also don’t know.  
...

[emphasis in original omitted]

111 The Prosecution submitted that the accused’s lie to the police, where he denied having any sexual contact with C, reflected his guilty conscience.<sup>276</sup>

112 In *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 (at [60]), the Court of Appeal explained that such evidence was corroborative of guilt (referred to as a “*Lucas lie*”), if four requirements were satisfied:

- (a) the lie told out of court was deliberate;

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<sup>274</sup> PS10 at para 7.

<sup>275</sup> Prosecution’s Bundle of Exhibits at p 49 line 19 to p 50 line 3.

<sup>276</sup> PCS at paras 122–125.

- (b) it related to a material issue;
- (c) the motive for the lie was a realisation of guilt and a fear of the truth; and
- (d) the statement was clearly shown to be a lie by independent evidence.

113 In my view, these four requirements were met. The accused initially denied that anything happened in C’s bedroom when questioned by the police. He made no mention at all that he had sexual intercourse with C. To the extent that the accused affirmed that nothing happened in C’s bedroom, I found that the accused had lied about whether he penetrated C. I was convinced that this lie was deliberate and that the presence or absence of penetration was a material issue. Under cross-examination, the accused agreed that he had lied to the police,<sup>277</sup> and that he did so as he was “scared that [his] wife will find out”.<sup>278</sup> This was illogical, as he would have been uncontactable for the duration of his police interview and would consequently have to account for his absence regardless of what he said to the police during said interview. By the time his VRI statement was being taken, the accused had been informed that he was being investigated for rape.<sup>279</sup> This would have certainly been more fear-inducing than spousal disapproval, which in any event would be inevitable once he was charged with rape. In other words, the accused must have known that lying about the presence of penetration would do nothing to prevent the cat from getting out of the bag. I was also of the view that, had the sexual contact been consensual, the accused would not have denied sexual contact but would have

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<sup>277</sup> NE 4 August 2025 at p 106 lines 7–11.

<sup>278</sup> NE 4 August 2025 at p 105 line 28.

<sup>279</sup> Prosecution’s Bundle of Exhibits at p 3.

instead told the police about how this sexual contact was consensual in nature. From the transcript of the interview conducted by the police, it appeared instead that the accused had sought to avoid the truth until he was confronted with the in-car camera recordings recovered from his car.<sup>280</sup> It was therefore apparent that the accused's motive for lying was a realisation of guilt and he was unable to explain otherwise.

114 Therefore, I was satisfied that the accused's lie to the police – that no sexual contact had occurred between C and himself – corroborated his guilt.

### **Conviction**

115 For these reasons, I was satisfied that the Prosecution had proven its case beyond a reasonable doubt. I found the accused guilty and convicted him as charged.

Valerie Thean  
Judge of the High Court

David Rajeev Menon and Ashley Chin Sze-En (Attorney-General's  
Chambers) for the Prosecution;  
Ramesh Chandr Tiwary (M/s Ramesh Tiwary) for the accused.

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<sup>280</sup> Prosecution's Bundle of Exhibits at p 49–59.