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

[2025] SGHC 71

Magistrate's Appeal No 9073 of 2024/01

Between

JCU

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Sentencing — Young offenders]
[Criminal Law — Offences — Rape]

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JCU
v
Public Prosecutor

[2025] SGHC 71

General Division of the High Court — Magistrate's Appeal No 9073 of 2024/01
Dedar Singh Gill J
1 October 2024, 6 January 2025

21 April 2025 Judgment reserved.

Dedar Singh Gill J:

1 The present appeal touches upon an issue which arises from two developments in the law.

(a) In January 2020, s 375 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code") was amended by Parliament. Through this amendment, the offence of rape, which had hitherto been defined as involving penile-vaginal penetration, was expanded to encompass both penile-oral and penile-anal penetration:

> **Rape**
>
> **375.**–(1) Any man who penetrates the vagina of a woman with his penis —
>
> (*a*) without her consent; or

> (*b*) with or without her consent, when she is under 14 years of age,
>
> shall be guilty of an offence.
>
> (1A) Any man (*A*) who penetrates, with A's penis, the anus or mouth of another person (*B*) —
>
> (*a*) Without *B*'s consent; or
>
> (*b*) with or without *B*'s consent, when *B* is below 14 years of age,
>
> shall be guilty of an offence.

As a result of this legislative amendment, the law now recognises three types of rape: (i) penile-vaginal rape; (ii) penile-anal rape; and (iii) penile-oral rape.

(b) Last year, the Court of Appeal delivered its judgment in *Public Prosecutor v CPS* [2024] 2 SLR 749 ("*CPS*"), where it elaborated on the circumstances in which rehabilitation would be displaced as the dominant sentencing consideration for youthful offenders who had been convicted of rape.

2 A key issue which arises in the present appeal is whether, in the light of Parliament's amendment of the Penal Code, penile-oral rape cases may be said to be as severe as penile-vaginal rape cases such that, as a broad heuristic, rehabilitation may be displaced as the dominant sentencing consideration for youthful offenders of mature age and understanding in the absence of exceptional circumstances.

3 The Appellant, JCU, pleaded guilty to two charges under s 375(1A)(*b*) of the Penal Code (the "First Proceeded Charge") and s 375(1A)(*b*) of the Penal Code 1871 (2020 Rev Ed) (the "Second Proceeded Charge") for penetrating the

mouth of the complainant with his penis. The complainant was less than 14 years of age at the material time. Six charges were taken into consideration for the purpose of sentencing (the "TIC Charges"). The District Judge ("DJ") sentenced the Appellant to eight years' imprisonment and eight strokes of the cane.

4 On appeal, the Appellant contends that the DJ erred in sentencing him to a term of imprisonment and caning as opposed to reformative training ("RT"). For the reasons that follow, I reject this argument and dismiss the appeal.

5 As a semantic matter, it is useful to clarify which version of the Penal Code this judgment refers to in its analysis. Of principal concern in this appeal is the legislative amendment to s 375 of the Penal Code, which took effect on 1 January 2020. This was an amendment to the Penal Code (Cap 224, 2008 Rev Ed), which has earlier been defined in this judgment as the "Penal Code". The Penal Code 1871 (2020 Rev Ed) then came into effect on 31 December 2021. As such, *both* the version of the Penal Code (as defined earlier in this judgment) in force on or after 1 January 2020 *and* the Penal Code 1871 (2020 Rev Ed) incorporate the legislative amendments to s 375. Subsequent references to the "Post-Amendment PC" in this judgment are references to both: (a) the Penal Code 1871 (2020 Rev Ed); and (b) the version of the Penal Code in force on or after 1 January 2020.

Facts

6 In 2017, the Appellant began attending religious classes which were conducted by his neighbour (the "Teacher"). It was there that he became acquainted with the complainant, who was the granddaughter of the Teacher.[1]

7 The events in the First Proceeded Charge occurred in November 2021, when the Appellant was 18 years old. The Appellant had just attended a religious class at the Teacher's flat. He sat with the complainant and the Teacher on a sofa in the living room. The Teacher fell asleep soon after. The Appellant then pulled the complainant closer to him and asked if she wanted to touch his penis. When the complainant did not reply out of fear, the Appellant led the complainant to touch his penis and asked her if she wanted to "suck it". When the complainant did not respond, the Appellant pushed her head to his penis and penetrated her mouth for about 10 minutes. He ejaculated into her mouth. The complainant was nine years of age at the material time.[2]

8 The Second Proceeded Charge concerns an incident on 23 January 2023, when the Appellant was 19 years old. The Appellant had just attended a religious class at the Teacher's flat. He was seated on a sofa in the living room of the Teacher's flat, alongside the complainant and the Teacher. Eventually, the Teacher fell asleep on the sofa. After noticing that the Teacher had fallen asleep, the Appellant placed the complainant's hand on his penis. He then exposed his penis to her and told her to "suck it". He pushed her head towards his penis and penetrated her mouth. After about 10 to 15 minutes, he ejaculated into her mouth. The complainant was 11 years of age at the material time.[3]

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1 Statement of Facts dated 15 February 2024 ("SOF") at para 3.

2 SOF at paras 5–11.

3 SOF at paras 15–21.

9 The TIC charges largely relate to two separate incidents which occurred between the events of the first and second charges, where the Appellant penetrated the complainant's mouth with his penis and made her masturbate him at the Teacher's flat.[4] These incidents occurred on two separate days. On each occasion, the Appellant met the complainant after his religious class. He made the complainant masturbate him and then penetrated her mouth with his penis. These acts comprised four TIC charges. The remaining two TIC charges arise from the fact that, during the events of the First and Second Proceeded Charges, the Appellant made the complainant masturbate him before he penetrated her mouth.

10 The complainant has felt sad, scared and angry since the offences. She had insomnia, a loss of appetite, flashbacks and recurrent thoughts about the offences. She is also scared of males and has difficulty trusting others.[5]

The decision below

11 In calibrating the appropriate sentence, the DJ first determined that rehabilitation was not the primary sentencing consideration. Instead, the sentencing principles of deterrence and retribution came to the fore for the following reasons:[6]

> (a) First, the Appellant's offences were serious. The heinous nature of the act of rape itself was exacerbated by the complainant's young age and vulnerability. The DJ also considered the fact that the Appellant's offences were committed over the course of more than a year, and that

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4 SOF at paras 12–14.

5 SOF at para 24.

6 Record of Appeal ("ROA") at p 75 at para 38.

he had abused the trust of the Teacher in committing such acts against the complainant in her home and while she was asleep. There was also premeditation by the Appellant.

(b) Second, the Appellant demonstrated a "victim-blaming attitude" which reflected a lack of insight into his offending conduct.

(c) Third, the Appellant had caused severe harm to the complainant. A forensic assessment revealed that the complainant had since suffered from flashbacks, a loss of appetite, and recurrent thoughts about the abuse. She was also scared of males and had difficulty trusting others.

In the DJ's view, a sentence of RT would not meet the needs of deterrence and retribution.

12 Next, the DJ considered the appropriate sentence that should be imposed. He applied the two-step sentencing bands approach laid down by the Court of Appeal in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [39]:[7]

(a) First, the offences fell within Band 1 of the *Terence Ng* sentencing framework, which warranted an indicative starting point of approximately 12 years' imprisonment and six strokes of the cane for each offence. The fact that the Appellant was a youthful offender was counterbalanced by the complainant's young age, her vulnerability, the fact that she suffered serious psychological harm, and the fact that there had been a degree of premeditation and abuse of trust by the Appellant.

[7] ROA at pp 77–81 at paras 43–50.

(b) Second, the DJ held that there should be a 30% reduction from the indicative starting point to reflect the Appellant's early plea of guilt. As such, the DJ imposed an imprisonment term of eight years per charge. The two sentences were to run concurrently. The DJ also applied the totality principle to reduce the number of strokes of the cane per charge to four.

The DJ thus imposed a global sentence of eight years' imprisonment and eight strokes of the cane.

The parties' cases

13 The Appellant's sole contention on appeal is that the DJ had incorrectly concluded that rehabilitation was not the dominant sentencing consideration.[8] Accordingly, he argues that he should have been given a sentence of RT instead of a term of imprisonment and caning. The Prosecution argues otherwise.[9]

Issues to be determined

14 The issue in this appeal is whether the DJ erred in concluding that rehabilitation had been displaced as the dominant sentencing consideration. In this context, the following sub-issues arise:

(a) Whether penile-oral rape can be said to be as severe as penile-vaginal rape such that, as a broad heuristic, rehabilitation may be displaced as the dominant sentencing consideration for youthful offenders of mature age and understanding in the absence of exceptional circumstances ("Issue 1").

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8 Appellant's Submissions dated 20 September 2024 ("AWS1") at para 4.

9 Respondent's Submissions dated 20 September 2024 at para 16.

(b) Whether the DJ erred by considering the Appellant's purported lack of insight into his offending ("Issue 2").

15 Issue 1 arises for two reasons. First, it is relevant because the parties rely on various sentencing precedents to justify their respective positions on whether rehabilitation had been displaced as the central consideration in sentencing. The parties disagree on whether certain precedents can be relied upon as they relate to penile-vaginal rape, as opposed to penile-oral rape. Second, and more importantly, the Court of Appeal delivered its decision in *CPS* during these proceedings.

16 In *CPS*, the Court of Appeal elaborated that, as a broad heuristic, rehabilitation would *usually* be displaced as the dominant sentencing consideration for cases involving rape where the offender is of mature age and understanding, save where there are exceptional circumstances (at [31]–[32]). However, *CPS* was decided in the context of penile-vaginal rape and not penile-oral rape. Thus, *if* the two types of rape can be equated with each another, the court's elaboration in *CPS* will apply and this appeal can be determined through the application of those principles. As *CPS* was decided after the parties had already addressed me on whether the two types of rape could be equated with each other, the parties subsequently requested for permission to address me on the applicability of *CPS* to the present case. I allowed this request.

Issue 1: Whether penile-oral rape can be said to be as severe as penile-vaginal rape such that, as a broad heuristic, rehabilitation may be displaced as the dominant sentencing consideration for youthful offenders in the absence of exceptional circumstances

17 Before I consider the first issue, it is apposite to briefly set out the sentencing framework for youthful offenders to contextualise the following analysis.

The sentencing principles for youthful offenders

18 The sentencing of a youthful offender is split into two distinct stages. First, the court will identify and prioritise the primary sentencing considerations which are appropriate to the youth in question in the light of all the circumstances. Second, the court will select the appropriate sentence that would best meet those sentencing considerations: *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") at [28].

19 Under the first stage, the primary sentencing consideration for youthful offenders will generally be rehabilitation. However, this may be diminished or eclipsed by other considerations such as deterrence or retribution: *Boaz Koh* at [30]. This will be the case where: (a) the offence is serious; (b) the harm caused is severe; (c) the offender is hardened and recalcitrant; or (d) the conditions do not exist to make rehabilitative sentencing options viable: *Boaz Koh* at [30] and [34]. For reasons that will be elaborated on later in this judgment, the first factor (*ie*, the gravity of the offence) is of particular relevance in this appeal.

20 If rehabilitation remains the dominant consideration, the court can consider "one from among the wide range of sentencing options it has at its disposal", such as RT: *Boaz Koh* at [34]. However, if rehabilitation is displaced at the first stage of the analysis, the dominant sentencing consideration almost

necessarily turns to deterrence: *See Li Quan Mendel v Public Prosecutor* [2020] SGCA 61 ("*Mendel See*") at [13]. In such a situation, RT ceases ordinarily to be a viable option and "the appropriate sentences must be the legislatively prescribed options such as imprisonment and caning": *Mendel See* at [13]. This is the context in which the present appeal arises.

Whether penile-oral rape and penile-vaginal rape are of equivalent gravity

21 As stated earlier, the Court of Appeal in *CPS* elaborated that, as a broad heuristic, if a youthful offender of mature age and understanding has been convicted of rape, rehabilitation will *usually* be displaced as the dominant sentencing consideration (save for exceptional circumstances) given the gravity of such an offence. The Appellant argues that the court's elaboration in *CPS* is not applicable in the present case, which concerns penile-oral rape, as there remains an intelligible difference between penile-vaginal rape and penile-oral rape. He contends that the latter is "less serious" than the former and raises several arguments in support of his position. First, penile-oral rape is located in a separate subsection of the Post-amendment PC than penile-vaginal rape. As Parliament does not legislate in vain, he submits that it must have been Parliament's intention to maintain a distinction between the two types of rape. Second, he argues that various cases have recognised that penile-vaginal rape carries the unique risk of unwanted pregnancy, which is absent in penile-oral rape. This supports the established position in caselaw that penile-vaginal rape is the most serious of sexual offences. Third, the maximum punishment that the Appellant would have faced if he had committed the offences prior to the amendment to the Penal Code in 2020 would have been the same as the maximum punishment for penile-oral rape after the amendment.[10]

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[10] Appellant's Reply Submissions dated 18 November 2024 ("AWS2") at paras 21–32.

22 The Prosecution submits that the Court of Appeal's elaboration in *CPS* applies squarely to the present case. This, it argues, is because Parliament intended for both penile-vaginal and penile-oral rape to be treated with equal gravity and the court should give effect to this legislative intention. First, it highlights that the Penal Code was amended in 2020 to include in the definition of rape under s 375 of the Penal Code, both penile-oral and penile-anal penetration. According to the Prosecution, this evinces an intention by Parliament to recognise that penile-oral penetration is a grave and intrusive act which warrants the label of rape and it ought to be punished as such. Second, it contends that the legislative amendment to expand the definition of rape is consistent with the position in the UK, where there is no differentiation between penile-vaginal and penile-oral rape. Third, it submits that our courts have applied the *Terence Ng* sentencing framework, and not the sentencing framework in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*"), to offences of penile-oral rape committed after 1 January 2020. This purportedly demonstrates that the courts have not differentiated between penile-oral and penile-vaginal rape.[11]

23 I am persuaded by the Prosecution's argument for four reasons.

24 First, the legislative structure and plain wording of the Post-amendment PC indicates that penile-oral rape and penile-vaginal rape are to be treated equally. The Post-amendment PC includes penile-oral penetration within the ambit of the offence of rape; it is now criminalised under s 375(1A) of the Post-amendment PC. While the Appellant argues that penile-oral rape should be regarded as less serious than penile-vaginal rape as these offences are located

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[11] Respondent's Supplementary Submissions dated 22 October 2024 ("PWS2") at paras 24–38.

in different subsections of s 375, this ignores the fact that the punishment provisions under s 375 do not distinguish between penile-oral and penile-vaginal rape. The offence-creating and punishment subsections of s 375 are reproduced below:

> **Rape**
>
> **375.**–(1) Any man who penetrates the vagina of a woman with his penis —
>
> (a) without her consent; or
>
> (b) with or without her consent, when she is under 14 years of age,
>
> shall be guilty of an offence.
>
> (1A) Any man (*A*) who penetrates, with A's penis, the anus or mouth of another person (*B*) —
>
> (a) Without *B*'s consent; or
>
> (b) with or without *B*'s consent, when *B* is below 14 years of age,
>
> shall be guilty of an offence.
>
> (2) Subject to subsection (3), a man who is guilty of *an offence under this section* shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning.
>
> (3) Whoever —
>
> (a) in order to commit or to facilitate the commission of an offence *under subsection (1) or (1A)* —
>
> (i) voluntarily causes hurt to any person; or
>
> (ii) puts a person in fear of death or hurt to that person or any other person;
>
> (b) commits an offence *under subsection (1) or (1A)* against a person below 14 years of age without that person's consent; or
>
> (c) commits an offence *under subsection (1) or (1A)* against a person below 14 years of age with whom the offender is in a relationship that is exploitative of that person,

> Shall be punished with imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning of not less than 12 strokes.
>
> [emphasis added]

25 In my view, it is significant that the punishment provisions do not distinguish between penile-vaginal rape (under s 375(1)) and penile-oral rape (under s 375(1A)). Section 375(2), which concerns rape *simpliciter*, merely prescribes the punishment for *an offence under* "*this section*". In a similar vein, s 375(3) prescribes the *same* minimum punishment for offences under ss 375(1) and 375(1A) when certain additional elements are present. This means that both types of rape are of the same gravity in the eyes of the law.

26 More importantly, it appears to me that the separation of these different types of rape into distinct subsections simply reflects the fact that, as a matter of logic, penile-vaginal rape may only be perpetrated against a female victim whereas penile-oral and penile-anal rape may be perpetrated against either a male or female victim. Section 375(1) involves the penetration of "the vagina of a woman", whereas s 375(1A) concerns the penetration of "the anus or mouth of another person". As such, it is likely that penile-oral and penile-anal rape are situated in a different subsection from penile-vaginal rape to make it clear that the former may be committed against both male and female victims.

27 In sum, nothing in the text or legislative structure of s 375 of the Post-amendment PC suggests that one type of rape should be treated as being more serious than the other.

28 This conclusion is buttressed by the second reading of the Criminal Law Reform Bill (No 6 of 2019) ("CLRB"), where the then Senior Parliamentary Secretary to the Minister for Home Affairs, Mr Amrin Amin, explained that the

definition of rape would be expanded to include acts of penile-oral penetration. Mr Amin explained that the label of "rape" was appropriate for non-consensual penile-oral and penile-anal penetration as it reflected the high degree of violation and the physical and health risks involved (Singapore Parl Debates; Vol 94, Sitting No 103; [6 May 2019] (Mr Amrin Amin, Senior Parliamentary Secretary to the Minister for Home Affairs)):

> … On updating current sexual offences, first, let me talk about the offence of rape. The Bill will expand the definition of rape to include penile penetration of the anus and mouth. Currently, the offence of rape covers only penile penetration of the vagina. We take the view that the *label of "rape" is appropriate* for non-consensual acts involving penile penetration of the anus and mouth. This reflects the *high degree of violation* and the physical and health risks involved. With this Bill, both men and women can be victims of rape. …
>
> [emphasis added]

29 Apart from the high degree of violation involved in non-consensual penile-oral and penile-anal penetration, the significance of the label of "rape" is that it signals that these acts are *equivalent in gravity* to the other act (*ie*, penile-vaginal penetration) which falls within the definition of rape. This appears to be the position taken in the Penal Code Review Committee, *Penal Code Review Committee Report* (August 2018) (the "PCRC Report"), where the Penal Code Review Committee ("PCRC") recognised that the rationale for the expansion of the definition of rape in "other jurisdictions" was to reflect that non-consensual penile-oral and penile-anal penetration were *as severe an infringement* of sexual autonomy as a violation of the vagina (at 324). Crucially, while the PCRC Report recommended (at 325) that penile-anal rape be included in the definition of rape, it proposed that penile-oral rape be excluded on the basis that it would be difficult to achieve public consensus that "non-consensual penile-oral penetration is *equivalent in gravity* to non-consensual penile-vaginal penetration or non-consensual penile-anal penetration" [emphasis added]. The

PCRC's recommendation to exclude penile-oral penetration from the definition of rape was rejected by the Government after it received feedback from representatives from the social sector: Ministry of Home Affairs, "First Reading of Criminal Law Reform Bill and the Government's Response to Feedback on it", press release (11 February 2019) at [24]–[26].

30 Second, the Appellant's reliance on the case of *BPH v Public Prosecutor and another appeal* [2019] 2 SLR 764 ("*BPH*") for the proposition that penile-vaginal rape is the most serious of sexual offences is misplaced. This observation was made *before* the definition of rape was broadened to include penile-oral penetration. While the Court of Appeal in *BPH* opined that the offence of rape (which related to penile-vaginal penetration) was the gravest of all sexual offences, it expressly recognised (at [34]) that the CLRB proposed to broaden the definition of rape to include penile-oral and penile-anal penetration and declined to consider its possible impact on sentencing as the legislative amendment had not come into operation at the time. As such, I do not think that the Court of Appeal's observation in *BPH* undermines my reasoning.

31 The Appellant also relies on the observation in *BPH* and *Public Prosecutor v CRX* [2024] SGHC 162 ("*CRX*") that penile-vaginal rape carries the unique risk of unwanted pregnancy. This, he argues, demonstrates that penile-vaginal rape is a more serious offence than penile-oral or penile-anal rape. I accept that this additional risk is only present in penile-vaginal rape. However, this in itself cannot subvert the *legislative intention* to regard penile-oral rape and penile-anal rape with the same gravity as penile-vaginal rape (see also [33] below).

32 Third, it is difficult to understand the Appellant's argument relating to the maximum sentence that he would have been liable for prior to the legislative

amendment. To my mind, the mere fact that the Appellant may have been liable to the same maximum punishment for his acts under the Post-amendment PC and the version of the Penal Code which was in force prior to the legislative amendment of s 375 does not make penile-oral penetration less severe than penile-vaginal penetration. This argument is neither here nor there.

33 Fourth, in England and Wales where the definition of rape has similarly been expanded to encompass non-consensual penile-oral and penile-anal penetration in addition to penile-vaginal penetration, the English courts have not differentiated between the different types of rape for the purpose of sentencing. In *R v Abokar Ahmed Ismail* [2005] EWCA Crim 397, the English Court of Appeal (Criminal Division) declined (at [11]–[12]) to draw a distinction between these three types of rape as defined under s 1 of the Sexual Offenders Act 2003 (c 42) (UK) for the purpose of sentencing:

> [11] The principal offence here was under s 1 of the Sexual Offenders Act 2003. *Section 1 extends the definition of rape so as to cover not only the intentional penetration of the vagina, but also the anus or mouth of another person by the assailant with his penis.* Very appropriately in his submissions Mr Barradell submits that the fact that this was oral rape does not mean that it is any less serious than vaginal or anal rape. The fact of the matter is that it is true that there would be no risk of pregnancy in the case of oral rape. That is a relevant factor; but, as Mr Bingham submitted, there are dangers in oral rape of sexually transmitted diseases particularly when, as in this case, there was no protective action taken by the assailant.
>
> [12] In our judgment *it cannot be said that in approaching the question of sentencing any distinction should be made because of the category of rape. One form can be more offensive than another to the victim.* It is very much a subjective matter. That is another reason why it is valuable to have a victim impact statement.
>
> [emphasis added]

34 In sum, the legislature has made clear that penile-vaginal rape, penile-anal rape and penile-oral rape should be treated as being equivalent in gravity.

It follows then that, in assessing whether rehabilitation has been displaced as the dominant sentencing consideration for a youthful offender, the Court of Appeal's elaboration in *CPS* is applicable to the present case.

The application of CPS to the present case

35 In *CPS*, the Court of Appeal held (at [31]–[32]) that rehabilitation would usually be displaced as the dominant sentencing consideration for youthful offenders of mature age and understanding who committed a rape offence, save where there are exceptional circumstances. These exceptional circumstances, as identified at [32] of *CPS*, are that: (a) there are few or no aggravating factors which apply to the offence; (b) the offender's involvement in the offence is extremely limited; *and* (c) the offender demonstrates a good potential for reform. These three factors, which are *cumulative* in nature, are plainly inapplicable to the present case.

The presence of several aggravating factors

36 The facts disclose several aggravating factors.

37 First, I agree with the DJ's observation that the complainant, who was only between 9 years old during the first offence and 11 years old during the second offence, was "very young and vulnerable". The younger the victim, the more vulnerable he or she will be found to be: *Mustapah bin Abdullah v Public Prosecutor* [2023] SGCA 30 ("*Mustapah*") at [123].

38 Second, the DJ correctly held that the offences caused "severe" psychological harm to the complainant. This is not disputed by the Appellant.

39 For completeness, I do not agree with the DJ's finding that there was an abuse of trust by the Appellant. Such an aggravating factor encompasses a situation where the offender is in a position of responsibility in relation to the complainant, or where he is a person in whom the victim has placed her trust by virtue of his office of employment: *Mustapah* at [121]. The facts do not suggest that the Appellant was in a position of responsibility in relation *to the complainant*.

The extent of the Appellant's involvement in the offences

40 As for the second factor, the proceeded charges relate to two separate instances of penile-oral rape which occurred approximately a year apart, and the TIC charges disclose two additional instances of penile-oral rape during the intervening period. On all four occasions, the Appellant also made the complainant masturbate him before he penetrated her mouth.

The Appellant's potential for reform

41 Lastly, it cannot be clearly said that the Appellant has a "good potential" for reform. As I will elaborate on later in this judgment (see [47]–[49] below), the Appellant exhibited a victim-blaming attitude even up until his RT interview. There is also some doubt about the extent to which he has insight into his offending behaviour.

42 It follows from this that the DJ was entitled to conclude that rehabilitation had been displaced as the dominant sentencing consideration. The Appellant also relies heavily on certain sentencing precedents to argue otherwise. I am of the view that, having regard to the two developments in the law identified at [1], it will not be a fruitful exercise to slavishly compare the facts of the present case with those in the precedent cases cited by the parties.

The Court of Appeal has also cautioned that it may not always be helpful to compare the proceedings before the court with previous, more serious cases: *CPS* at [40]. Further, the mere fact that RT was not imposed in a more severe rape case does not in itself mean that a comparatively less serious rape case should necessarily attract a sentence of RT: *CPS* at [40]. Ultimately, it is for the court to decide *on the facts of each case* whether rehabilitation has been displaced as the dominant sentencing consideration. In my view, it is appropriate to decide the present case according to the elaboration by the Court of Appeal in *CPS* at [31]–[32], which has been applied in the preceding paragraphs.

43 For completeness, I acknowledge that the Prosecution also argues that, in considering whether rehabilitation should be displaced as the dominant sentencing consideration, the court should consider the offender's *exact* age. It submits that the Appellant, who was 19 years old during the final offence, was closer to the threshold age of 21 years old. This supposedly militates against rehabilitation being the predominant sentencing consideration.[12] The Appellant argues in reply that this court should not consider an offender's precise age at the time of his offending.[13] It is unnecessary for me to determine this issue as the appeal can be resolved through a direct application of the principles stated in *CPS*.

Issue 2: Whether the DJ erred by considering the Appellant's purported lack of insight into his offending conduct

44 As alluded to earlier (see [35] and [41] above), it is relevant for the court to consider the Appellant's "potential for reform" when determining whether

12 PWS2 at paras 21–23.

13 AWS2 at paras 12–20.

rehabilitation has been displaced as the primary sentencing consideration. Conceptually, this analysis appears to fall under the third *Boaz Koh* factor (mentioned at [19] above), *ie*, whether the offender was hardened and recalcitrant: see *CPS* at [45]–[50], where the Court of Appeal considered the offender's track record of offending and his attitude towards his rape offence in its analysis of the third *Boaz Koh* factor. The Appellant argues that the DJ had incorrectly concluded that he lacked insight into his offending conduct. In concluding that rehabilitation had been displaced as the primary sentencing consideration, the DJ considered the fact that the Appellant displayed a "victim-blaming attitude", which reflected a "troubling lack of insight into his offending conduct and reinforced a need for specific deterrence".[14]

45 The Appellant argues that this misunderstands the Appellant's pre-sentencing report for RT (the "RT Report"). He argues that while the RT Report concludes by stating that his "victim-blaming attitude" contributed to his offence, other paragraphs of the same report state that he demonstrated remorse and had greater insight into his behaviour *at the time of the RT interview*. Accordingly, he submits that the DJ should not have concluded that the Appellant showed a lack of insight into his offending conduct.[15]

46 In response, the Prosecution submits that the Appellant's attitude towards the offences was "concerning". It highlights that he initially blamed the complainant for the offences when he was interviewed by a psychiatrist from the Institute of Mental Health ("IMH") in February 2023. The Appellant only showed better insight into his offending behaviour when he was interviewed for the RT Report in March 2024. Even then, the Prosecution argues that he had

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14 ROA at p 76 at para 38(b).

15 AWS1 at paras 11–13; AWS2 at paras 3–7.

only recognised in vague and speculative terms that it was "possible" that the complainant was too shy to reject him and "could have" felt scared.[16]

47 This point was pursued vigorously by the Appellant. However, I do not agree with him for two reasons.

48 First, the RT Report indicates that the Appellant demonstrated some level of victim-blaming conduct during his interview in March 2024. According to the RT Report, the Appellant attempted to "justify his arousal" by stating that the complainant had tried to get him aroused by sitting close to him and speaking to him in a "manja" manner (*ie*, in a pampered/spoilt manner). The relevant excerpt of the RT Report is reproduced below:[17]

> Based on the information available, it is assessed that [the Appellant's] poor impulse control precipitated, while his frequent use of pornography, victim-blaming attitude, and lack of consequential thinking perpetuated his sexual offences.
>
> Despite the fact that he "know she was young, (in) primary school", [the Appellant] was unable to control his sexual urges and "felt horny" after they sat close together on the sofa. He explained that he just decided to "out of (his) mind to ask her" to perform the sexual behaviours … . He also justified his arousal by saying that the victim "try to get (him) aroused" by sitting "really very close (and) 'manja'" him. He opined that the victim did that because she was "attracted to (him)" and was "happy that (he) come" so she sat close to him on the sofa to watch videos on his phone. [The Appellant] also presented with a lack of consequential thinking as he "never think it's wrong" when he was aroused.

I accept the Prosecution's submission[18] that this section of the RT Report refers to the Appellant's act of recounting how the offences occurred *during his RT*

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16 Respondent's 2nd Further Submissions dated 6 January 2025 ("PWS3") at paras 11–13.

17 ROA at pp 115–116.

18 PWS3 at para 12.

interview on 13 March 2024. The language of the paragraph (which uses phrases such as "He explained that", "He opined that", and "[The Appellant] also presented with") indicates that these observations were gathered from the RT interview. In my view, this undercuts the Appellant's argument that he did not harbour a victim-blaming attitude at the time of the RT Report in March 2024.

49 Second, even if the Appellant is correct and this section of the RT Report was derived from events and documents that were dated prior to the RT interview on 13 March 2024, his purported insight into his offending conduct does not necessarily indicate that he has a *good* potential for reform. I raise two points in this regard.

(a) One, our courts have observed that when a sentencing judge adjourns sentencing to ascertain whether there will be signs of reform pending the imposition of sentence, the conduct of the offender during the period of the adjournment may be of questionable probative value: *Boaz Koh* at [67]. This is because the offender, who senses that he has been given a chance to avoid what may potentially be a heavier sentence, is inevitably and strongly incentivised to put up a favourable front: *Boaz Koh* at [67]. In the present case, the Appellant urged the court to call for an RT Report in his mitigation plea dated 5 March 2024. The DJ acceded to this request and the matter was adjourned for the Appellant to be remanded at the Reformative Training Centre from 8–15 March 2024 for an RT Report to be prepared.[19] Although the present case concerned an adjournment *prior* to receiving the RT Report, I am of the view that the concern articulated by the court in *Boaz Koh* is equally applicable to the present case. By the time of the adjournment, the Appellant would

[19] ROA at p 74 at para 36 and p 82 at para 51.

have been alive to the possibility that he might be sentenced to a substantial period of imprisonment if the RT Report contained an unfavourable assessment of his prospects for reform:[20]

> Court: Well, at this point, I shall be calling for a reformative training report to have a better understanding of the defendant's background and situation before I decide on the sentence. …
>
> …
>
> Court: *There's a good chance that reformative training will not be a suitable option, and in that regard, I am persuaded by the assumption of the prosecution that something more than that might be suitable at this point*, but I'll leave that decision to later after I've looked at the RT report. …
>
> [emphasis added]

This concern is bolstered by the fact that the Appellant had, in his RT interview, attempted to downplay the extent of his interaction with the complainant. In the RT Report, he alleged that he would go to the Teacher's flat for religious classes but would "never talk or even look" at the complainant.[21] However, this it at odds with his IMH interview which occurred more than a year prior. In his IMH interview, he averred that he would "often interact with the [complainant] socially" after completing his religious classes at the Teacher's flat and would "often [talk] to her and [watch] videos together with her on the sofa".[22] In the circumstances, I cannot discount the possibility that the Appellant was incentivised to put on a favourable front during his RT interview. This diminishes the probative value of the RT Report's conclusion that the Appellant had a greater level of insight into his behaviour.

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20 ROA at pp 48–49.

21 ROA at p 115.

22 ROA at p 95 at para 11.

(b) Two, and in any event, it bears repeating that in order for there to be such exceptional circumstances that rehabilitation will not be displaced where a youthful offender has committed a rape offence, *all three* factors identified by the Court of Appeal at [32] of *CPS* must be satisfied (see above at [35]). *Even if* the Appellant displayed a good potential for reform (which he has not established), this does not overcome: (i) the fact that there were several aggravating factors in the present case; and (ii) the extent of his involvement in the rape offences.

50 For these reasons, the DJ was entitled to conclude that the Appellant's "victim-blaming attitude" was reflective of his lack of insight into his offending conduct.

51 I conclude with an observation about the appropriate sentencing framework that should be applied when sentencing offenders who commit penile-oral rape under s 375(1A) of the Post-amendment PC. While this issue does not arise in the present case as the Appellant has not appealed against the precise duration of his term of imprisonment, I observe that the DJ applied the sentencing framework in *Terence Ng*. This, in my view, was correct. While the sentencing framework in *Pram Nair* had previously been applied to offences involving penile-oral penetration under s 376 of the version of the Penal Code prior to 1 January 2020 (see *BPH* at [55]), this did not take into account the legislative amendment to expand the definition of rape in 2020 (*BPH* at [34]). In my view, given Parliament's recognition that penile-oral and penile-anal rape are as severe as penile-vaginal rape, it is appropriate for the court to apply the *Terence Ng* sentencing framework in cases involving penile-oral and penile-anal rape.

Conclusion

52 In taking guidance from the Court of Appeal in *CPS* and giving effect to the intention of Parliament, two points are evident. First, penile-oral rape, penile-anal rape and penile-vaginal rape should be treated as being equal in severity. Second, where a youthful offender of mature age and understanding has committed a rape offence, rehabilitation will likely be displaced as the predominant sentencing objective unless *all* three factors identified at [32] of *CPS* are fulfilled.

53 For the aforementioned reasons, the DJ was not in error when he concluded that rehabilitation had been displaced as the dominant sentencing consideration. As this is the Appellant's sole ground of appeal, I dismiss his appeal.

Dedar Singh Gill
Judge of the High Court

Patrick Fernandez and Mohamed Arshad bin Mohamed Tahir (Fernandez LLC) for the appellant;
Claire Poh and Maximilian Chew (Attorney-General's Chambers) for the respondent.