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

[2025] SGHC 81

Magistrate's Appeal No 9104/01 of 2024

Between

Sugumaran s/o Kannan

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 16 of 2025

Between

Sugumaran s/o Kannan

… *Applicant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing — Appeal — Adducing fresh evidence]
[Criminal Law — Statutory Offences — Penal Code]

Sugumaran s/o Kannan
v
Public Prosecutor and another matter

[2025] SGHC 81

General Division of the High Court — Magistrate's Appeal No 9104 of 2024/01, Criminal Motion No 16 of 2025
Vincent Hoong J
29 April 2025

29 April 2025

Vincent Hoong J (delivering the judgment of the court ex tempore):

Introduction

1 The Appellant claimed trial to two charges in the court below. The first charge is for sexual activity in the presence of a minor (the "masturbation charge"), an offence under s 376ED(1) punishable under s 376ED(3)(*b*) of the Penal Code 1871 (2020 Rev Ed) ("PC").[1] The second charge is for sexual assault by penetration (the "SAP charge"), an offence under s 376(1)(*b*) punishable under s 376(3) of the PC.[2]

---

1 Grounds of Decision ("GD") at [2], Record of Appeal ("ROA") at pp 958–959.

2 GD at [2], ROA at pp 958–959.

2 At the close of trial, the Appellant was convicted on both charges.[3] The District Judge ("DJ") sentenced the Appellant to six weeks' imprisonment for the masturbation offence, and seven years and five months' imprisonment for the SAP offence.[4] These two sentences were ordered to run concurrently,[5] resulting in an aggregate sentence of seven years and five months' imprisonment.

3 HC/MA 9104/2024/01 ("MA 9104") is the Appellant's appeal against conviction and sentence.[6] HC/CM 16/2025 ("CM 16") is his application to admit further evidence in support of MA 9104. I shall first deal with CM 16.

The application to admit further evidence

4 In CM 16, the Appellant seeks to adduce two statements recorded from the complainant under s 22 of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC").[7] I shall refer to these two statements as the "15 July Statement" and the "23 July Statement" respectively.

5 Pursuant to s 392(1) of the CPC, an appellate court may take additional evidence itself or direct it to be taken by the trial court, where such evidence is deemed necessary. In *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 ("*Soh Meiyun*"), this court held that whether fresh evidence is "necessary" is to be

---

3 GD at [4], ROA at pp 959–960.

4 GD at [166], ROA at p 1027.

5 GD at [172], ROA at p 1029.

6 Notice of Appeal dated 29 May 2024 ("POA"), ROA at p 10.

7 Notice of Criminal Motion dated 28 February 2025 at p 2.

determined by applying the three criteria of "non-availability", "relevance", and "reliability" (at [14]).

6 The criterion of "relevance" is satisfied if the evidence is such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive (*Soh Meiyun* at [14]). The Appellant contends that the complainant's statements would exculpate him of both charges. At face value, the Appellant is right on this point. Indeed, in the 15 July Statement, the complainant made no reference to the Appellant masturbating at the urinal and stated that he did not feel any penetration.[8] This clearly goes towards the *actus reus* of the two charges which the Appellant faces. Relatedly, in the 23 July Statement, the complainant stated that he "thinks" the Appellant was masturbating at the urinal.[9] This also goes towards the *actus reus* of the masturbation charge, as the use of the equivocal word "thinks" suggests a degree of uncertainty in the complainant's recollection.[10]

7 However, I find that both the 15 July and the 23 July Statements do not satisfy the criterion of "relevance", as they are inadmissible and therefore cannot be said to have any influence, let alone "an important influence", on the result of the case. Both the 15 July and the 23 July Statements are witness statements, and s 259(1) of the CPC states that any statement made by a person other than the accused in the course of any investigation by any law enforcement agency is inadmissible in evidence, subject to five enumerated exceptions. However, as the Respondent has rightly pointed out, the Appellant did not seek

---

8 Affidavit of Sugumaran S/O Kannan dated 27 February 2025 at pp 15–17.

9 Affidavit of Sugumaran S/O Kannan dated 27 February 2025 at p 18.

10 Appellant's Written Submissions dated 16 April 2025 ("AWS") at [112].

to rely upon such an exception in the court below and had not identified such an exception in his affidavit, notice of motion, or written submissions.[11] It was only during oral submissions that the Appellant alluded to ss 147 and 157 of the Evidence Act 1893 (2020 Rev Ed) ("EA") as potential bases for the statements to be admitted. Even then, I am unable to accept this argument, as both ss 147 and 157 of the EA would require the complainant to be either cross-examined or impeached.

8 Thus, having found that the criterion of "relevance" is not satisfied, the Appellant's application must fail, and accordingly, I dismiss CM 16.

The appeal against conviction

9 I now consider the Appellant's appeal against his conviction on both charges. I shall address the appeal against each charge in turn.

10 In the court below, as the Prosecution's case in relation to the masturbation charge was solely reliant on the uncorroborated evidence of the complainant, the DJ convicted the Appellant on the basis that the complainant's testimony was "unusually convincing".[12] The Appellant now contends that the DJ erred in this regard, on the basis that there are discrepancies within the Prosecution's case which suffice to cast reasonable doubt that masturbation occurred at the urinal.[13]

---

11 Prosecution's Written Submissions dated 15 April 2025 ("PWS") at [42].

12 GD at [96] and [97], ROA at p 998.

13 AWS at [9].

11 In accordance with the guidance issued in the recent decision of *GII v Public Prosecutor* [2025] 3 SLR 578 ("*GII*"), I shall first assess whether there is proof beyond a reasonable doubt within the Prosecution's case, and then assess whether there is proof beyond a reasonable doubt on the totality of the evidence (at [25]–[28]).

12 In his Grounds of Decision ("GD"), the DJ found that the complainant's evidence was credible and reliable.[14] I see no reason to disturb this finding. Indeed, in *Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636, it was held that an appellate court should be slow to reassess a trial judge's assessment of witness credibility unless it is "plainly wrong or against the weight of evidence" (at [32]). I find that there is no such error in the DJ's assessment of the complainant's testimony.

13 I now consider the contents of the complainant's testimony. I agree with the DJ that there is internal consistency, for there is no weakness or inconsistency within the complainant's account of the events leading up to and surrounding the masturbation charge.

14 In his examination-in-chief, the complainant stated that he encountered the Appellant outside the MRT toilet,[15] where the Appellant told him that the weather made him feel "horny",[16] and then asked him if he wanted to "jerk off",[17] a rude phrase meaning to masturbate. Subsequently, the Appellant asked

---

14 GD at [98], ROA at p 998.

15 Notes of Evidence ("NEs"), Day 8, p 36 line 29 to p 37 line 3, ROA at pp 442–443.

16 NEs, Day 8, p 38, lines 23–31, ROA at p 444.

17 NEs, Day 8, p 39, line 19–31, ROA at p 445.

the complainant to follow him to a toilet in the shopping mall,[18] which the complainant did. The complainant followed the Appellant to level five of the shopping mall,[19] and as they entered the passageway leading to the toilet, the Appellant headed for the emergency exit door instead of the mall toilet.[20] Thereafter, both of them went into the mall toilet, and while in this toilet, the two of them used urinals which were adjacent to each other.[21] Then, in that configuration, the Appellant masturbated while looking at the complainant's penis.[22]

15 I agree with the DJ that this account discloses a clear intent on the part of the Appellant to engage in sexual activity with the complainant.[23] Plainly, the Appellant invited the complainant to masturbate together, asked the complainant to follow him and find a relatively secluded location to do so, and first considered the emergency exit, before deciding to follow the complainant into the mall toilet.[24] That the Appellant eventually masturbated while looking at the complainant's penis in the mall toilet is entirely consistent with this intent.

16 The Appellant asserts that there exists an inconsistency in the manner in which the masturbation took place. While the complainant testified that the Appellant had masturbated,[25] the complainant also stated that the Appellant was

---

18 NEs, Day 8, p 41, lines 1–8, ROA at p 447.

19 GD at [106], ROA at p 1002.

20 NEs, Day 8, p 47 line 24 to p 48 line 14, ROA at pp 454–455.

21 NEs, Day 8, p 49, line 29, ROA at p 455.

22 NEs, Day 8, p 50, lines 1–13, ROA at p 456.

23 GD at [105], ROA at p 1002.

24 Exhibit P3 (Screenshots of CCTV Footage) at p 26, ROA at p 1059.

25 NEs, Day 8, p 50 line 30 to p 51 line 8, ROA at pp 456–457.

"fumbling with" and "touching" his penis.[26] On this basis, the Appellant contends that masturbation did not in fact take place, as this would require, in his words, the "act of moving his penis up and down".[27] I am unable to agree with this submission as it is founded on a mischaracterisation of the complainant's evidence. Under cross-examination, immediately before stating that the Appellant fumbled with and touched his penis, the complainant also testified that the Appellant was, while at the urinal, "in between" touching and masturbating.[28] This is wholly consistent with the complainant's evidence during examination-in-chief, that the Appellant was "touching himself and masturbating" and "masturbating and touching".[29] I find the Appellant's narrow definition of masturbation to be contrived, and I find no inconsistency in this aspect of the complainant's testimony.

17 Additionally, the Appellant contends that masturbation requires that the act be done for the purpose of sexual gratification, and on that basis, further contends that the Prosecution failed to make out the masturbation charge as it was not put to him that he had touched his penis for the purpose of sexual gratification.[30] I am also unable to accept this submission as it is a mischaracterisation of the proceedings in the court below. Plainly, the Prosecution did, in fact, put it to the Appellant that he had masturbated at the urinal,[31] and that he did so for sexual gratification.[32]

---

26 NEs, Day 9, p 18, lines 4–6, ROA at p 509.

27 AWS at [14].

28 NEs, Day 9, p 18, lines 4–6, ROA at p 509.

29 NEs, Day 8, p 50 line 30 to p 51 line 8, ROA at pp 456–457.

30 AWS at [17]–[21].

31 NEs, Day 14, p 33 line 31 to p 34 line 12, ROA at pp 825–826.

32 NEs, Day 14, p 34, lines 8–12, ROA at p 826.

18 I turn to address the Appellant's related submission, that there is insufficient evidence to demonstrate that the Appellant did in fact derive sexual gratification from his act of masturbation at the urinal.[33] I find that this gratification may be readily inferred from the Appellant's conduct, in his propositioning of the complainant outside the MRT toilet, and his subsequent act of masturbation in front of the complainant at the urinal while looking at the complainant's penis.[34]

19 Similarly, I agree with the DJ that the complainant's account in relation to the masturbation charge is externally consistent.[35] Preliminarily, the complainant's account is corroborated by closed-circuit television ("CCTV") footage. Indeed, the CCTV footage obtained from the MRT station corroborated the complainant's assertion that they had a brief conversation outside the MRT toilet.[36] Similarly, the CCTV footage obtained from the mall also corroborates the complainant's evidence that the Appellant had opened the emergency exit door instead of heading straight into the mall toilet, before trailing the complainant into the mall toilet.[37]

20 Crucially, the complainant's account is also corroborated by the Appellant's statements to the police. In his statement taken on 15 July 2020, the Appellant confirms that he mentioned to the complainant that the weather made

---

33 PWS at [21].

34 NEs, Day 8, lines 6–8, ROA at p 457.

35 GD at [111]–[113], ROA at p 1004.

36 GD at [111], ROA at p 1004.

37 Exhibit P3 (Screenshot of CCTV Footage) at p 26, ROA at p 1059.

him feel "horny", that he needed to "jerk off", and that he invited the complainant to follow him to a toilet in the mall.[38]

21 The Appellant asserts that there is an external inconsistency, in that the complainant did not inform "any" of the doctors he saw that the Appellant was masturbating at the urinal.[39] In this regard, the Appellant refers to the report prepared by Dr Wong (PW15) in July 2020, and the report prepared by Dr Cai (PW18) in November 2020.[40] I find this omission to be irrelevant, given that it is not a contradiction of the complainant's account, and that the acts which led up to the alleged penetration of the complainant would not be the focus of the doctors examining the complainant. Rather, I find that the doctors tasked with examining the complainant, a patient presenting with the "chief complaint" of sexual assault,[41] would be concerned primarily with the physical sexual contact sustained by the complainant, and not the masturbation which the complainant had witnessed prior to this physical sexual contact.

22 Therefore, I am satisfied that there is proof beyond a reasonable doubt within the Prosecution's case. As the Appellant makes no other submissions on the evidence pertaining to the masturbation charge, I similarly find that there is proof beyond a reasonable doubt on the totality of the evidence, and that the DJ was right to convict the Appellant on the masturbation charge.

---

38 Exhibit P30AH-TP (VRI Transcript dated 15 July 2020) at p 6, lines 1–31, ROA at p 1234.

39 AWS at [9(e)].

40 AWS at [23]; Exhibit P9, ROA at p 1096, and Exhibit P12, ROA at p 1116.

41 Exhibit P11A, ROA at p 1108 ("chief complaint: hot sa"); Exhibit P12, ROA at p 1116 ("alleged victim of sexual assault by penetration").

23 I turn to consider the Appellant's appeal against conviction on the SAP charge. Pertinently, as the DJ rightly observed, since the Prosecution relied on the Appellant's statements in proving the charge, it was unnecessary for the complainant's evidence to satisfy the unusually convincing standard.[42]

24 The Appellant's appeal against conviction on the SAP charge is singularly premised on the submission that no penetration of his anus had taken place.[43] In this regard, the Appellant contends that the DJ failed to account for external inconsistencies in the complainant's testimony on whether penetration occurred.[44]

25 Before I address the external inconsistencies which the Appellant has raised, I shall first assess the evidence which the DJ relied upon in convicting the Appellant on the SAP charge.

26 In the court below, the complainant provided an account of what occurred within the cubicle in the mall toilet. In short,[45] the Appellant gestured to him to enter the cubicle with him, and after he entered, the Appellant locked the door, took off his pants and undergarments, and asked the complainant to take off his pants, which he did. The Appellant then asked the complainant if he wanted to engage in sexual intercourse, to which he agreed. Thereafter, the Appellant positioned himself facing the cubicle door and bent over, while the complainant stood behind him and was able to see his anus. The Appellant then used one hand to hold his buttock while simultaneously guiding the

---

42 GD at [123], ROA at p 1009.

43 AWS at [38].

44 AWS at [37].

45 GD at [124], ROA at p 1010.

complainant's penis towards his anus. The complainant felt his foreskin being pulled back and both persons thrusted back and forth. Lastly, while this was happening, the complainant sent a text message to his mother to assure her that he was almost done using the toilet.

27 In his GD, the DJ held that the above account suggested that all necessary conditions for penetration to occur were present.[46] I agree. Additionally, I find that any uncertainty as to whether penetration occurred is unequivocally resolved in the affirmative by the Appellant's own statements. Glaringly, in his statement to the police taken on 15 July 2020, the Appellant states that he felt "a bit go in",[47] and that he felt it "go in a bit",[48] in reference to the complainant's penis. Additionally, in his statement to the police taken on 18 July 2020, the Appellant also agreed that the complainant "was already pushing his penis into your ass".[49] I find these admissions to be highly probative of the presence of penetration. After all, as observed by the Court of Appeal in *Imran bin Mohd Arip v Public Prosecutor and other appeals* [2021] 1 SLR 744, self-incriminating statements "are generally more reliable because they are made against the interest of the maker" (at [62]).

28 For good measure, I note that in his statements to the police taken on 15 and 18 July 2020, the Appellant largely corroborates the complainant's account which was recounted above (at [26]). Indeed, the Appellant stated that he asked

---

46 GD at [126], ROA at p 1011.

47 P30AH-TP, p 19, line 24, ROA at p 1247 ("it's really didn't go in, but a bit go in, but I feel very pain").

48 P30AH-TP, p 21, lines 9–12, ROA at p 1249 ("second time, also difficult to go in, but I feel like, go in a bit").

49 P32AH-TP, p 33, lines 21–23, ROA at p 1336.

the complainant whether he wanted to have sex with him,[50] and after he agreed, he took off his own pants and positioned himself for sexual intercourse by standing in front of the complainant and then bending down with his buttocks facing the complainant.[51] The Appellant also stated that after this occurred, the complainant pushed his penis into his anus.[52] Lastly, during this encounter, he saw the complainant use his handphone.[53]

29 For completeness, I note that the Appellant has sought to rely on a portion of the complainant's testimony, given under cross-examination, where the complainant stated that the penetration was not successful.[54] The Appellant also points to the complainant's evidence, given under re-examination, that he was in fact unsure of whether penetration was successful or not.[55] On this issue, I find that the DJ was correct to have reasoned that the complainant's lack of certainty here was not probative of whether penetration occurred or not,[56] because the complainant simply did not have any previous experience with penile-anal intercourse.[57] This is especially since it was the Prosecution's case, as well as the Appellant's own evidence, that the penetration was only partial.

---

50 P30AH-TP, p 19, lines 4–5, ROA at p 1247; P32AH-TP, p 28, lines 16–17, ROA at p 1331.

51 P32AH-TP, p 31, lines 1–12, ROA at p 1334.

52 P30AH-TP, p 21, line 9, ROA at p 1249; P32AH-TP, p 33, line 19, ROA at p 1336.

53 P32AH-TP, p 31, lines 16–23, ROA at p 1334.

54 AWS at [40]–[41]; NEs, Day 9, p 44, lines 2–3, ROA at p 535.

55 NEs, Day 9, p 56 line 26 to p 57 line 11, ROA at pp 547–548.

56 GD at [125], ROA at p 1011.

57 NEs, Day 8, p 70, lines 16–19, ROA at p 476.

30 I also note that the Appellant has sought to rely on the medical reports which revealed no signs of penetration on both the complainant's penis and the Appellant's anus.[58] Again, by virtue of the fact that the penetration was only partial, I find that the absence of such medical evidence does not constitute an external inconsistency.

31 Accordingly, I dismiss the Appellant's appeal against conviction.

The appeal against sentence

32 I now turn to address the Appellant's appeal against sentence. The Appellant contends that the aggregate sentence of seven years and five months' imprisonment is manifestly excessive,[59] on the basis that the DJ accorded inappropriate weight to certain sentencing factors.[60]

33 Specifically, the Appellant contends that the DJ accorded excessive weight to the complainant's young age in aggravating his sentence and failed to account for the complainant's maturity.[61] I am unable to accept this argument. In *Public Prosecutor v AOM* [2011] 3 SLR 1057, this court observed that those below the age of 16 are, due to their inexperience and presumed lack of sexual and emotional maturity, considered to be vulnerable and susceptible to coercion and hence incapable of giving informed consent (at [34]). It is undisputed that the complainant was below 16 years of age.

---

58 AWS at [50]–[58].

59 AWS at [89].

60 AWS at [91]–[95].

61 AWS at [91]–[92].

34 Relatedly, the Appellant also contends that his offending conduct was mitigated by the fact that he was not the first adult to engage sexually with the complainant.[62] For the same reasons as the DJ identified,[63] I am similarly unable to accept this submission. Indeed, in *Annis bin Abdullah v Public Prosecutor* [2004] 2 SLR(R) 93, it was held that the presence or absence of sexual experience on the part of the complainant is entirely irrelevant, as a minor does not become less vulnerable simply because he or she may have made similar inappropriate choices in the past (at [73]).

35 For completeness, I find that the DJ did not err in sentencing the Appellant to seven years and five months' imprisonment in respect of the SAP offence. Indeed, the DJ correctly applied the relevant sentencing framework set out in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015,[64] found that the Appellant's offending fell "near the lower bound" of the Band 1 sentencing band,[65] and gave a mild uplift to account for both the Appellant's lack of remorse and the four strokes of the cane which would have ordinarily been imposed but for the applicable statutory exemption.[66]

36 Accordingly, I dismiss the Appellant's appeal against sentence.

---

62 AWS at [93].

63 GD at [160], ROA at p 1025.

64 GD at [147], ROA at p 1020.

65 GD at [153], ROA at p 1022.

66 GD at [154] and [166], ROA at pp 1023 and 1027.

Conclusion

37 In summary, I dismiss CM 16 and MA 9104.

Vincent Hoong
Judge of the High Court

Yong Hong Kit Clement (Beyond Legal LLC) for the appellant;
Claire Poh and Wong Shiau Yin (Attorney-General's Chambers) for the respondent.