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

[2024] SGHC 240

Criminal Case No 44 of 2023

Between

Public Prosecutor

And

CHJ

GROUNDS OF DECISION

[Criminal Law — Offences — Sexual offences]
[Criminal Procedure and Sentencing — Sentencing]

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v
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17 September 2024

Hoo Sheau Peng J:

Introduction

1 The Accused claimed trial to two sexual assault by penetration charges committed against his wife ("the Complainant") under s 376(2)(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code" and the "SAP Charges", respectively), and one charge for obstructing the course of justice under s 204A(*b*) of the Penal Code (the "Obstruction Charge").

2 The charges read as follows:

> **1st Charge**
>
> That you, [the Accused], on a first occasion, sometime at night on 13 July 2020, at [the Flat], did sexually penetrate with your finger, the vagina of [the Complainant], female / then-35 years old, without her consent, and you have thereby committed an offence under section 376(2)(*a*) and punishable under section 376(3) of the Penal Code (Cap 224, 2008 Rev Ed).

2nd Charge

That you, [the Accused], on a second occasion, sometime at night on 13 July 2020, at [the Flat], did sexually penetrate with your finger, the vagina of [the Complainant], female / then-35 years old, without her consent, and you have thereby committed an offence under section 376(2)(*a*) and punishable under section 376(3) of the Penal Code (Cap 224, 2008 Rev Ed).

3rd Charge

That you, [the Accused], on four occasions between 11 and 17 October 2020, in Singapore, did do acts that had a tendency to obstruct the course of justice, *to wit*, by telling [the Complainant's mother], to tell her daughter, [the Complainant], to withdraw her sexual assault allegation against you, intending thereby to obstruct the course of justice, by saying that:

(a) You would consent to [the Complainant's] Personal Protection Order ("PPO") application against you if she withdrew her sexual assault allegation;

(b) Your lawyer had informed you that [the Complainant] can withdraw her sexual assault allegation against you;

(c) You would not contest [the Complainant's] application for a PPO if she withdraws the sexual assault allegation against you;

(d) If [the Complainant] withdrew her sexual assault allegation, you would pay [her] fine if she was charged for the withdrawal;

(e) [The Complainant's] children could end up in foster care if she did not withdraw her sexual assault allegation;

(f) [The Complainant], her children and this case would be published in the papers if she did not withdraw her sexual assault allegation; and

(g) There was a strong possibility that you would be acquitted of the sexual assault allegation;

which acts taken together amount to a course of conduct, and you have thereby committed an offence under section 204A(*b*) of the Penal Code (Cap 224, 2008 Rev Ed), which charge is amalgamated under section 124(4) of the Criminal Procedure Code 2010 (Cap 68, 2012 Rev Ed) and punishable under section 124(8)(*a*)(ii) of the said Act.

3 At the conclusion of the trial, I found that the Prosecution had proved the three charges beyond reasonable doubt and convicted the Accused of the SAP Charges and the Obstruction Charge. The Accused was sentenced to a global sentence of eight years' imprisonment and six strokes of the cane.

4 I gave brief oral reasons for my decision and indicated that I will be furnishing full grounds in due course. The Accused has appealed against his conviction and sentence, and I now proceed to set out the full reasons for my decision.

The facts

5 The Accused and the Complainant have been married since May 2012. They have a son and a daughter (collectively referred to as "the Children").[1]

6 On 30 August 2019, upon being discharged from the Institute of Mental Health ("IMH"), after his second admission there, the Accused moved into the home of his sister ("AS").[2]

Events on 12 July 2020

7 On 12 July 2020, the Accused returned to the couple's matrimonial home (the "Flat") with AS and her husband. There was a heated family meeting involving the relatives on both sides (the "Family Meeting"), which resulted in the Complainant eventually acceding to the Accused's request to move back into the Flat.[3]

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1 Statement of Agreed Facts dated 29 August 2023 ("SOAF") at paras 1–3.

2 SOAF at para 5.

3 SOAF at para 6.

8 It was undisputed that this Family Meeting was held because the Accused wanted to move back into the Flat although the Complainant was reluctant to allow him to do so.[4] The individuals present at the Family Meeting were the Accused, the Complainant, the Complainant's mother ("CM"), the Complainant's sister, AS and her husband, as well as the Accused's father.[5]

9 Without delving too much into the contents of the discussion which ensued, AS, her husband and the Accused's father broadly advocated for the Accused to stay in the Flat whilst CM and the Complainant's sister took the opposite position.[6] Eventually, the Complainant agreed to the Accused moving back into the Flat on two conditions: first, that the Children were not to be involved in any relationship issues or arguments between them; and second, that any discussions about the marriage must be done downstairs, at the void deck.[7]

Events on 13 July 2020 (ie, the date of the SAP Charges)

10 Sometime in the evening of 13 July 2020, the Accused, the Complainant and the Children went cycling in the neighbourhood. After cycling, they returned to the Flat. Subsequently, the Accused and the Complainant were alone in the master bedroom to talk about their marriage. During this time, the acts of digital penetration took place.[8]

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4 Prosecution's Opening Submissions dated 26 September 2023 ("POS") at para 8; Defence's Opening Submissions ("DOS") dated 26 September 2023 at para 41.

5 Prosecution Closing Submissions dated 29 December 2023 ("PCS") at para 13; Defence's Closing Submissions dated 29 December 2023 ("DCS") at para 57.

6 PCS at paras 13–14; DCS at para 58.

7 PCS at para 16; DCS at para 58(ll).

8 SOAF at paras 7–8.

11 During these acts, the Accused and the Complainant's son and daughter knocked on the master bedroom door to ask for the Complainant's phone and hair serum, respectively. Their son first asked for the Complainant's phone, which the Accused handed to him. After passing her phone to their son, the Accused returned to the bed where the Complainant was. Subsequently, their daughter asked for the Complainant's hair serum which the Accused handed to her.[9]

The Complainant's version of events

12 In relation to the acts of digital penetration, the Complainant's version is as follows. The Complainant was in the master bedroom with the Accused, and was sitting on the bed with her back on the bed's head rest, when they got into an argument.[10] The argument escalated. The Accused proceeded to kneel beside the Complainant, and then he grabbed both sides of her pants and panties and "yanked [them] off of [her]".[11] The Accused had used "[v]ery, very hard force" when he pulled the Complainant's pants and panties "off completely … [a]t the same time", which caused her to slip down from a sitting up position.[12] He then threw the Complainant's pants and panties "on the floor … to [her] right".[13] Although the Complainant was initially shocked and unable to react,[14] she subsequently "realised that something was going on" and "twisted [her] legs together as tight as [she] possibly" could by crossing her legs and feet.[15] The

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9 SOAF at paras 9–11.

10 Notes of Evidence ("NE") dated 10 October 2023 at p 104 lines 3–5.

11 NE dated 10 October 2023 at p 104 lines 8–27.

12 NE dated 10 October 2023 at p 105 lines 4–27.

13 NE dated 10 October 2023 at p 105 lines 28–29.

14 NE dated 10 October 2023 at p 105 line 9.

15 NE dated 10 October 2023 at p 106 lines 1–15.

Accused proceeded to try and pry her legs open. As he was unsuccessful, he picked up the Complainant's legs (which were still twisted together) and placed them on his shoulder such that her buttocks were elevated while her back and head were still on the bed and head rest, respectively.[16]

13 The Accused then proceeded to ask the Complainant "questions about the past", and when she responded with "No, that's not what happened" or something to that effect, the Accused would insert his finger into her vagina and "wriggle it around".[17] He did this repeatedly,[18] despite the Complainant's repeated requests for him to stop and attempts to "wiggle [her] way out", though she was unable to escape as the Accused held on to her legs with the hand that he was not using to insert his finger into her vagina.[19] The Accused also used both of his hands "to grab [the Complainant's] breasts multiple times", and tried to kiss her though she turned her head to avoid kissing him.[20] Throughout, the Complainant continued telling the Accused to cease his actions, but he only stopped when their son knocked on the door to ask for the Complainant's phone.[21]

14 The Accused asked the Complainant to unlock her phone. When she refused, he placed her "phone down and … proceeded to insert his finger" into her vagina and continued asking her to unlock the phone.[22] Eventually, the

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16 NE dated 10 October 2023 at p 106 lines 21–28 and p 107 lines 10–15.

17 NE dated 10 October 2023 at p 107 lines 17–21 and 29.

18 NE dated 11 October 2023 at p 79 lines 16–20.

19 NE dated 10 October 2023 at p 107 line 22 to p 108 line 29.

20 NE dated 10 October 2023 at p 109 line 10 to p 110 line 24.

21 NE dated 10 October 2023 at p 110 lines 28–31.

22 NE dated 10 October 2023 at p 111 lines 18–31.

Accused agreed to pass the Complainant's phone to their son if she stayed where she was. The Complainant complied while the Accused passed her phone to their son through a small gap before shutting and locking the door.[23] The Accused then returned to the bed and assumed the same position, with the Complainant's legs on his shoulders, before he continued questioning her and inserting his finger into her vagina repeatedly.[24] He threatened to "call the [C]hildren to come in" and the Complainant asked him not to "get them involved", at which point she "completely gave up … [and laid] there and just let him do whatever he wanted".[25] This continued "for a while" until the parties' daughter knocked on the door and asked for hair serum. The Accused allowed the Complainant to get up, put on her pants and go to the bathroom to get the hair serum. While he handed the hair serum to their daughter, the Complainant felt sick in her stomach and ran to the bathroom.[26]

The Accused's version of events

15 In contrast, the Accused recounted that while conversing with the Complainant, he "went on top" of her "in a crawling position" and told her that he did not wish to argue with her.[27] The Complainant then gave him a "seductive look" and pouted, which he took as a sign to initiate intimacy to diffuse the situation and thus kissed her.[28] The Complainant reciprocated his advances by kissing him back, saying "[d]on't do that" in a low seductive voice when he ran his hands along her body and raising her hips to make it easier for him to take

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23 NE dated 10 October 2023 at p 112 lines 3–12.

24 NE dated 10 October 2023 at p 112 lines 28–29 and p 113 lines 16–19.

25 NE dated 10 October 2023 at p 113 lines 20–31.

26 NE dated 10 October 2023 at p 115 lines 11–28

27 NE dated 31 October 2023 at p 15 lines 20–26.

28 NE dated 31 October 2023 at p 15 lines 29–32.

off her pants and panties.[29] She also placed her legs on his shoulder and he proceeded to insert his finger into her, and he "could see that she was enjoying it".[30]

16 Then, the parties' son knocked on the master bedroom door asking for the Complainant's phone.[31] The Complainant instructed the Accused to get her phone from her bag. When he asked her to unlock her phone, she refused, stating that their son knew the password. As such, the Accused proceeded to leave the master bedroom to pass the phone to their son.[32] Afterwards, he closed the door and locked it before going back to the Complainant who had not moved from her position on the bed.[33] The Accused thus went "on top of her again" and resumed inserting his finger into her vagina.[34] This continued until the parties' daughter knocked on the door asking for hair serum. The Complainant intimated that she should pass the hair serum to their daughter, and so the Accused took this to mean that "the intimacy has stopped". Thus, he got off the Complainant and handed her clothes to her. She then passed the hair serum to him. The Accused then left the master bedroom and went to the Children's room to pass the hair serum to their daughter. When he returned to the master bedroom, he noticed that the Complainant was in the toilet.[35]

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29 NE dated 31 October 2023 at p 17 line 7 to p 18 line 12.

30 NE dated 31 October 2023 at p 19 lines 8–29 and p 20 line 28.

31 NE dated 31 October 2023 at p 19 lines 29–30.

32 NE dated 31 October 2023 at p 20 lines 6–20.

33 NE dated 31 October 2023 at p 20 lines 21–23.

34 NE dated 31 October 2023 at p 21 lines 17–19.

35 NE dated 31 October 2023 at p 22 line 1 to p 23 line 5.

The Complainant's police report and the Accused's arrest

17 On the morning of 14 July 2020, the Complainant made a police report alleging that the Accused had sexually assaulted her. On that same morning, the Accused called AS and spoke with her on the phone. He also sent her several WhatsApp messages. The Accused was subsequently arrested in the afternoon.[36]

Events on 11–17 October 2020 (ie, the dates within the Obstruction Charge)

18 Between 11 and 17 October 2020, the Accused called CM four times. Three of these calls were made on 11 October 2020 and the final call was made on 17 October 2020.[37] The first call was made with AS's home phone, while the next three calls were made with a prepaid M1 SIM card (the "prepaid card") using a newly purchased phone (the "Phone").[38]

Statements recorded from the Accused

19 On the evening of his arrest on 14 July 2020, a video-recorded interview (the "first VRI") was conducted with the Accused.[39] His cautioned statement for the first SAP Charge was recorded on the following day, *ie*, 15 July 2020 (the "first Cautioned Statement").[40] Further video-recorded interviews were subsequently conducted with the Accused, on 9 November 2020 (the "second VRI"), 29 March 2021 and 30 September 2021.[41] The Accused's cautioned

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36 SOAF at paras 12–14.

37 POS at paras 17–19; DCS at paras 24–25.

38 PCS at para 49; DCS at para 25.

39 Agreed Bundle of Documents dated 26 September 2023 ("AB") at p 80.

40 AB at pp 201–206.

41 AB at pp 240, 267 and 285.

statements for the Obstruction Charge and the second SAP Charge were recorded on 30 September 2021.[42]

The SAP Charges

20 I now turn to deal with the two SAP Charges. For the offence of sexual assault by penetration under s 376 of the Penal Code, two elements must be established beyond reasonable doubt: (a) the Accused sexually penetrated the vagina of the Complainant with his finger; and (b) the Complainant did not consent to the penetration (*Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*") at [45]).

21 The Prosecution's case was that the Accused had digitally penetrated the Complainant's vagina with his finger and that the Complainant did not consent to the penetration.[43] Conversely, while the Accused did not dispute that he penetrated the Complainant's vagina with his finger, his position was that these sexual acts occurred with her consent.[44] In the alternative, the Accused sought to rely on s 79 of the Penal Code for the defence of mistake on the basis that he had reasonably believed, at all material times, that the Complainant consented to the sexual acts.[45]

The applicable legal principles

22 It is settled law that the uncorroborated evidence of a complainant may be the sole basis for a conviction. However, such evidence must be "unusually convincing": see *Public Prosecutor v GCK* [2020] 1 SLR 486 ("*GCK*") at [87];

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42 AB at pp 299–311.

43 POS at para 7.

44 DOS at para 12.

45 DCS at para 125.

AOF v Public Prosecutor [2012] 3 SLR 34 ("*AOF*") at [111]; and *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 ("*Mohammed Liton*") at [37].

23 To elaborate, in *AOF,* the Court of Appeal held that "in a case where no other evidence is available, a complainant's testimony can constitute proof beyond reasonable doubt … only when it is so "unusually convincing" as to overcome any doubts that might arise from the lack of corroboration" (at [111]). In determining whether a testimony is "unusually convincing", the court will "weig[h] the *demeanour* of the witness alongside both the *internal and external consistencies* found in the witness' testimony" (*AOF* at [115]). If, however, the evidence of the complainant is not "unusually convincing", the "accused's conviction is unsafe unless there is some corroboration of the complainant's story" (*AOF* at [173]).

24 At [92] of *GCK,* the Court of Appeal stressed that the "unusually convincing" standard is not meant to impose a mandatory warning from the judge to himself or herself. Rather, it serves as a cautionary reminder at the last stage of the evaluation of the evidence, and just before a conviction is found. It is to ensure that the trial judge has an awareness of the dangers of convicting the offender on uncorroborated evidence, and that he or she undertakes a rigorous and holistic assessment of the evidence.

25 That said, and as it shall appear clear later, this was not a case where the Prosecution relied solely on the Complainant's testimony. Indeed, I accepted that there were other pieces of evidence which I eventually found to be corroborative of her account. As such, the cautionary reminder was not applicable.

The Complainant's testimony

26 It would be apposite to start with a consideration of the Complainant's testimony, especially since a key element of dispute was that of the Complainant's consent.

27 The main thrust of the Prosecution's case was that although the "unusually convincing" standard did not apply – as the Complainant's evidence was not the sole basis which it relied upon – the Complainant was a compelling and highly credible witness whose evidence contained a ring of truth. Her evidence was both internally consistent and corroborated by other pieces of evidence.[46]

28 As I shall set out in more detail later, the Accused contended otherwise.

Whether the Complainant's testimony was consistent

29 The Prosecution submitted that the Complainant's testimony in court was "clear and cogent", and she was able to provide a detailed account "of what happened prior to, during, and after the sexual assaults".[47] Her credibility was buttressed by the fair and measured nature of her evidence. She also never once sought to portray her relationship with the Accused in the worst possible light.[48] Where there were gaps in her memory, the Complainant did not embellish her account so as to fill in the gaps but was candid about her inability to recall certain details. Importantly, these gaps were minor, and the Complainant's

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46 PCS at para 55.

47 PCS at para 56.

48 PCS at para 57.

account remained unwavering even under rigorous cross-examination, and there was no material inconsistency throughout her testimony.[49]

30 Conversely, the Accused sought to rely on several instances of inconsistencies in the Complainant's evidence to undermine her credibility as a witness.[50] I deal with three areas of such alleged inconsistencies:

(a) the Complainant's testimony was inconsistent as to whether there was a two-month ultimatum to fix the marriage;

(b) the Complainant's account of the events preceding the family's cycling activity was inconsistent; and

(c) the Complainant was inconsistent about the instances when the Accused questioned her during the alleged assault, and was unable to recall certain details during the alleged assault.

31 Ultimately, I did not find any of these instances of inconsistency to be sufficiently material or significant as to seriously impinge upon the Complainant's credibility. These are my reasons.

32 The first purported inconsistency was the inconsistency in the Complainant's testimony regarding an alleged two-month ultimatum to fix the marriage, or she would file for divorce. The Accused pointed to the fact that despite appearing to acknowledge the existence of this two-month ultimatum during the Family Meeting, the Complainant subsequently reneged on having

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49 PCS at paras 58–59.

50 Defence's Reply Submission dated 19 January 2024 ("DRS") at para 56.

made this demand at trial, referring instead to an eight-year ultimatum.[51] He further submitted that this latter ultimatum "defied sense" and the only reference to eight years, during the Family Meeting, was when the Complainant stated that she had already given the parties' marriage eight years, and not in reference to an ultimatum.[52]

33 For convenience, I reproduce the portion from the transcript of the Family Meeting, *ie*, an exchange between the Complainant and AS, which the Accused appeared to rely on:[53]

> [AS]: Ok. Because you have given a timeline till August, that's why he rushing now. So, when I already spoke to you about the timeline, you have given such a close timeline. You … you need to give it a bit more longer …
>
> …
>
> [AS]: So as we have spoken the 3 of us, the time you give and I already spoke to you about the timeline. It's too soon. You said, no, he has to work with this timeline.
>
> [Complainant]: Yes
>
> …
>
> [AS]: … Your timeline is till August, after that you all know what you all should do. You all do the proper thing.
>
> [Complainant]: But we already talked about it …

34 In response, the Prosecution pointed out that there was no inconsistency as the reference to the two-month ultimatum, during the Family Meeting, was made by AS who was "pestering" the Complainant to come up with a timeline to fix the marriage.[54] The Complainant's claim, that there was no two-month

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51 DCS at paras 58(a) and 59.

52 DRS at para 66(a).

53 Exhibit D2I at p 134.

54 PCS at para 63; citing NE dated 11 October 2023 at p 113 lines 22–26.

ultimatum, was supported by WhatsApp messages between the Accused, the Complainant and AS on 6 July 2020, in which the Complainant tells AS that she could not give the Accused a time frame on when she would be able to trust him again.[55]

35 After examining that exchange and its surrounding discussion, I agreed with the Prosecution that the Complainant had not, in fact, agreed to a two-month ultimatum, and there was therefore no inconsistency in her evidence in this regard. Her reply of "yes" to AS's statement was in response to a discussion of *a* timeline and not the two-month ultimatum in particular. Indeed, such a finding is bolstered when examined in context with the 6 July 2020 WhatsApp messages, as the Complainant stated that "ultimately [she] cannot give [the Accused] a time frame for anything because [she does] not know how [she] will feel in time to come". Additionally, when asked by AS if there was a conclusion to the discussion on their attempt to compromise, the Complainant responded with "nope".[56] In any regard, even if I were to accept that the Complainant had been inconsistent about the specific timeframe of the ultimatum, this inconsistency was not particularly material. Regardless of whether the ultimatum was two-months or eight-years, the key overall effect remained the same, *ie*, that the parties' marriage was on the rocks.

36 The second purported inconsistency was the Complainant's evidence regarding the Accused's assault of her in front of the Children before the family went cycling on 13 July 2020. It was undisputed that prior to going cycling, the Accused engaged in "affectionate" acts, such as hugging the Complainant and

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55 PCS at para 64.

56 Exhibit P57 at pp 22–23.

running his hands over her body, in front of the Children.[57] However, when questioned about this incident in court, the Complainant said that although she had not consented to such acts, she told the Children that she was alright as she did not want to worry them.[58] The Accused submitted that the Complainant's testimony on this incident was contradictory because when asked if she felt afraid of the Accused after they returned from cycling and were in the master bedroom, she had initially said "No. At that point, no",[59] but then changed her answer to an inaudible "Yes",[60] when questioned again.[61]

37 In response, the Prosecution argued that there was no inconsistency. The Complainant had explained that she had locked the door to prevent the Children from going into the master bedroom as she wanted to smoke a cigarette.[62] Importantly, the Complainant had caveated that she was not afraid "at that point" when she locked the door as it was her desire to smoke a cigarette away from the Children, and not her fear of the Accused, that was at the forefront of her mind.[63] Hence, there was no inconsistency in the Complainant's evidence.

38 I rejected the Accused's claim that the Complainant's purported inconsistency, when queried on whether she was afraid of him, was one which materially undermined her credibility. As the Prosecution pointed out, the Complainant's alleged denial of being afraid was likely due to her being focused

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57 PCS at para 18; DCS at para 22(g); NE dated 11 October 2023 at p 52 lines 22–27.

58 PCS at para 18; NE dated 10 October 2023 at p 102 lines 9–23.

59 NE dated 11 October 2023 at p 56 lines 25–27.

60 NE dated 11 October 2023 at p 58 lines 27–28.

61 DCS at paras 22(g) and 83–85.

62 NE dated 11 October 2023 at p 57 lines 1–6.

63 Prosecution Reply Submissions dated 19 January 2024 ("PRS") at para 13(a); citing NE dated 11 October 2023 at p 58 lines 23–26.

on her desire to have a cigarette. Indeed, when queried in cross-examination on why she claimed to not be afraid despite alleging that the Accused had used violence on her in front of the Children, the Complainant explained that she "really needed a cigarette" but did not want the Children around when she was smoking.[64] Hence, even if there was some inconsistency in the Complainant's evidence on how she felt about the Accused, such an inconsistency did not severely undermine her credibility. Rather, the discrepancies in the Complainant's answers appeared to be a product of her understanding of the Defence counsel's questions, as evidenced by how she later clarified her position upon his further questioning. Moreover, much like the inconsistency with the ultimatum, any purported incongruity was not material as the general contours of the Complainant's evidence, that she did not consent to the Accused's touching prior to the cycling and that she closed the master bedroom's door because she did not want the Children to be in the room while she smoked, remained consistent even under cross-examination.

39 The Accused also submitted that the Complainant's alleged discomfort at his actions was incongruous with her actions as she had proceeded to "go cycling, play Uno and then lock the door in the [master bedroom] with him after they came back from cycling".[65] More will be said about the Complainant's actions and behaviour after the incidents of sexual assault and the bearing that has on her credibility (at [54]–[55] below). At this juncture, it would suffice for me to note that victims of sexual assault cannot be straitjacketed into reacting in certain prescribed ways. Thus, the mere fact that the Complainant was able to continue interacting with the Accused and the Children, as per normal, was

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64 NE dated 11 October 2023 at p 56 line 28 to p 57 line 4.

65 DCS at para 130; DRS at para 5.

not dispositive of whether the Complainant felt uncomfortable with the Accused's actions after they returned from the afternoon outing.

40 The third and final purported inconsistency concerned the Complainant's inability to recall certain questions that the Accused posed to her about past events, while he allegedly assaulted her, and her inconsistent evidence on what he was doing while asking these questions. The Complainant's recount of this incident during direct examination is as follows:[66]

> He started asking me questions about the past. I cannot remember exactly what he was asking, what the questions were asked, but he kept on asking me about the past, and every time I would answer him, to say, "No, that's not what happened" or anything like that, he would---he would take his finger and he would put it up my vagina and he will wriggle it around and I kept on asking him to stop, I said, "Stop violating me. Stop doing this to me. Why are you doing this to me? Stop", and then he would ask me another question and it would just go on and on and on.

During cross-examination, Defence counsel asked *when* the Accused would insert his finger in her vagina during and the Complainant answered as follows:[67]

> Q And while he's talking about the past, he's doing these things with his hands and his finger.
>
> A When he was asking me, it didn't happen. When I answered and he didn't like the answer, any answer that I answered, he would then proceed to---to continue---I mean, he would then proceed to put his finger into my vagina and---and wiggle it around, and then he will stop, and then he'll question me, and then he'll just keep on doing that over and over again.
>
> Q I'm sorry, but I do have to try to understand this, alright? Are you saying, therefore, that when he asked you questions, his finger was not in your vagina?
>
> A Correct.

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66 NE dated 10 October 2023 at p 107 lines 17–24.

67 NE dated 11 October 2023 at p 78 lines 17–22.

> Q But when you answered, then he would put his finger in if he didn't like the answer?
>
> A Correct.

41 The Accused argued that it was unbelievable that the Complainant – despite remembering that he brought up "so many things … about the past" and that he did not only mention a single event – was unable to recall *any* details of what he had brought up.[68] He claimed that this appeared to be a "convenient lapse in her memory".[69] He also pointed out that the Complainant materially changed her answer. Initially, she stated that the Accused would insert "his finger into [her] vagina … and wiggle it around, and then he will stop, and then he'll question [her]" and repeat himself. But subsequently, she agreed that the Accused "would put his finger in if he didn't like [her] answer".[70]

42 In response, the Prosecution argued that the Complainant's candour in admitting that there were gaps in her memory, as well as her willingness and readiness to admit to the limitations in her recollection, lent further credence to her testimony. Additionally, these gaps in her memory, *eg*, on the nature of the questions, were minor and did not affect the overall credibility of her account.[71] Indeed, the Complainant's incomplete recollection was especially reasonable given the trauma arising from the incident and the passage of time.[72] Ultimately, although the Complainant was unable to recall the precise details of the past incidents the Accused questioned her on, she was still able to *consistently* testify that such questions were asked, that the Accused was upset during the

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68 DCS at paras 94–95; citing NE dated 11 October 2023 at p 78 lines 12–16.

69 DCS at para 121; PRS at para 4(a).

70 DCS at para 96.

71 PCS at paras 58–59.

72 PRS at para 11.

questioning, and that he would insert his finger in her vagina whenever he disliked her answer.[73]

43 As a preliminary matter, I rejected the Accused's claim that the Complainant was inconsistent in her testimony. She was clear in her testimony, when questioned by the Prosecution and Defence counsel, that the Accused would insert his finger into her vagina whenever he was dissatisfied with her answer, including instances when she denied and disagreed with what he said (see above at [40]). The Accused's attempts to suggest that the Complainant's evidence changed from stating that he would insert his finger whenever she answered him, to only when she gave an answer that he did not like, had no merit. Not only was this not borne out in the notes of evidence, but it was also a needlessly pedantic distinction.

44 In *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45, the High Court affirmed that "[i]t is trite law that minor discrepancies in a witness's testimony should not be held against the witness in assessing his credibility" as "human fallibility in observation, retention and recollection is both common and understandable" (at [82]). I agreed with the Prosecution that where there were gaps in her memory on certain details, the Complainant did not embellish her account so as to fill in the gaps. Instead, she was upfront about her inability to recall certain details of the assault, not just on the questions the Accused asked her while inserting his finger into her vagina, but also which shoulder the Accused placed her legs on, to gain access to her vagina, and which hand the Accused used to insert his finger into her vagina. I disagreed with the Accused's attempts to diminish the Complainant's credibility by relying on her inability to recall these details. These were fine and minute details, and such

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[73] PRS at para 12.

lapses in her memory were understandable. The Complainant's inability to recall such details did not detract from the overall consistency and reliability of her evidence which was, for the most part, detailed, clear and cogent.

45 Accordingly, I found the Complainant's account in court, of the events on the evening of 13 July 2020, to be compelling. Her recount of the incidents was sufficiently detailed, and her testimony remained largely consistent even under rigorous cross-examination by the Defence counsel. I further agreed with the Prosecution that the Complainant had been forthright about the nature of her relationship with the Accused. For instance, she readily admitted that despite the separation period of 11 months, she continued to be sexually active with the Accused up to a month before the assault on 13 July 2020.[74] The Complainant had also not attempted to exaggerate the seriousness of the Accused's behaviour, and openly admitted that the Accused's behaviour on the night of the incident was abnormal as he had never sexually assaulted her before and that he seemed "out of control" and "not himself".[75] This, in my view, lent further credence to her testimony.

Whether the Complainant's testimony was consistent with prior statements

46 The Prosecution submitted that not only was the Complainant's evidence in court consistent, but it was also consistent with the prior statements she made. The Accused contended otherwise.

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74 NE dated 11 October 2023 at p 29 lines 6–18.

75 NE dated 11 October 2023 at p 79 line 27 to p 80 line 14.

(1) The Complainant's conditioned statement

47 I begin with the Complainant's conditioned statement, and the alleged discrepancies between her evidence in court and her conditioned statement. The Accused sought to impeach the Complainant's credibility under s 157(*c*) of the Evidence Act 1893 (2020 Rev Ed) ("EA") on the basis that she had materially contradicted her prior testimony in three respects: (a) that the Accused had inserted his finger into her vagina as he was angered that she did not give him her phone's passcode; (b) that the Accused said that he could "do whatever he wants with" the Complainant as she was his wife; and (c) that she had been the one to calm the Accused down after the incidents. These were details present in her evidence in court but not in her conditioned statement.[76]

48 I had dismissed the Accused's application to proceed to impeach the Complainant's evidence. As I indicated when I made the ruling during the proceedings, I did not find the Complainant's testimony in court materially inconsistent with her conditioned statement.[77] However, the Accused rehashed these same arguments in his closing submissions. In my view, the discrepancies raised were not so much inconsistencies as they were details that were missing from the conditioned statement. More pertinently, these details – such as the Accused inserting his finger into the Complainant's vagina in retaliation for her not providing her phone's password, and him saying that he could "do whatever he wants" as the Complainant was his wife – were specifics that did not conflict with the Complainant's account at trial. Thus, when I compared these gaps against the backdrop of the totality of the Complainant's evidence, I did not find them sufficiently serious as to warrant permitting the Accused to proceed with

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76 DCS at paras 56, 101–102 and 111.

77 NE dated 12 October 2023 at p 22 line 16 to p 23 line 7.

his application to impeach her credibility, much less to make a finding that they rendered the Complainant's testimony materially inconsistent with her prior conditioned statement.

(2) Account provided to Dr Lee Wai Yen

49 The Complainant also provided an account of the incident to Dr Lee Wai Yen ("Dr Lee"), who examined her on 14 July 2020 at the Police Cantonment Complex ("PCC"). I found her account to Dr Lee, as recorded in Dr Lee's medical report, to be materially consistent with her evidence at trial about the key details of the sexual assault and the surrounding circumstances. These details included the incident prior to cycling, her attempt to lock her knees to prevent the Accused from assaulting her and the times during which the Children interrupted his assault.[78]

Whether the Complainant's testimony was consistent with her conduct

50 According to the Prosecution, the Complainant's actions after the alleged assault were also consistent with her account. Immediately after the sexual assault, the Complainant recounted running into the master bedroom toilet. She broke down, cried and even vomited. The Complainant's genuine emotional distress was also supported by her decision to make a police report the very next morning.[79]

51 The Accused, however, sought to impugn the Complainant's credibility on the grounds that her testimony was inconsistent with her actions after the

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78 PCS at paras 78–79.

79 PCS at para 84.

incidents, as well as her demeanour and personality.[80] I will address each of these contentions in turn.

(1) The Complainant's actions after the events

52 With regard to the Complainant's actions after the incident, the Accused argued that after the alleged sexual assault, the Complainant was able to go to the kitchen to get food for herself and the Accused, eat with him whilst watching television in the master bedroom and sleep in the same bed with him.[81] Additionally, the Complainant made no mention of the sexual assault to any of her family members until *after* she made the police report, despite regularly communicating with CM and living in the Flat with her father.[82] In particular, the Accused highlighted the fact that *despite* being incredibly close with CM, it was peculiar that the Complainant did not inform CM of the assault despite communicating with her *prior* to making the police report,[83] and did not go into the details of the assault even during a call with CM *after* the police report.[84]

53 In response, the Prosecution relied on the case of *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048 for the proposition that "victims of sexual crimes cannot be straitjacketed in the expectation that they must act or react in a certain manner" provided that their reaction is "within the realm of possibilities" (at [20]). Although the Complainant did not inform anyone or seek help in the immediate aftermath and was able to continue interacting with the Accused, such conduct was not inconsistent with her claim

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80 DRS at paras 89(a) and (c).

81 DCS at paras 22(t) and 113.

82 DCS at para 22(c).

83 DCS at paras 126–127.

84 DCS at para 126(c).

that she had just been assaulted. This was especially since, as the Complainant explained, she was in a state of shock and confusion for most of the night.[85] Moreover, she provided cogent and credible explanations for not informing anyone of the assault immediately. For instance, with regard to her father, the Complainant explained that she did not have that sort of relationship with her father where she would see him as her "protector", and he had made clear to her that her issues with the Accused did not concern him.[86]

54 I agreed with the Prosecution that the Complainant's actions, after the incident in the master bedroom, cannot be said to be inconsistent with her claim that she had been sexually assaulted. It is trite that victims of sexual assault may react to sexual abuse in different ways, and it is "not necessary for a complainant to be distraught for her to be believed" (*Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749 ("*Yue Roger Jr*") at [34]). I accepted the Complainant's explanation that she had been in a state of shock and confusion after the sexual assault, and that she had tried to maintain an air of normalcy by getting dinner and sleeping in the same room as the Accused.[87] The fact that she was in a state of shock after the assault was also within the realm of possibility, in light of her testimony that the Accused had *never* "displayed any acts of violence while being intimate with her" before, as the incident was the *first* time he had sexually assaulted her.[88] The Complainant's explanation was further supported by her desire to not involve the Children. Acting in an abnormal manner or alerting them as to what had happened might have done so.[89] The reasonableness of her actions must be

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85 PCS at para 74.

86 PCS at para 75; NE dated 11 October 2023 at p 27 lines 1–13 and p 87 lines 4–8.

87 NE dated 11 October 2023 at p 18 line 27 to p 19 line 8.

88 NE dated 11 October 2023 at p 29 lines 16–26.

89 NE dated 10 October 2023 at p 112 lines 22–25.

assessed against the context that she is married to the Accused, that they were sexually intimate until not long before that night and that the sexual assault was confined to acts of digital penetration. Thus, the mere fact that the Complainant had gone through the motions of preparing dinner for the family and slept with the Accused could not be said be contradictory to her testimony that she had just been sexually assaulted prior to those acts.

55 The Complainant's decision not to inform any of her family members, including CM, with whom she was close, before filing the police report as she did not "want anyone to change [her] mind" must similarly be considered in light of her claim that this was not the first time the Accused had used physical force on her, and that she did not want to risk being dissuaded from filing the report after his most recent escalation to sexual assault.[90] In relation to CM, I did not find the purported delay of the Complainant waiting until after she made the police report before informing CM about the assault to be unreasonable. When she was communicating with CM on the night of 13 July 2020 after the incident, the Complainant was likely still processing what had happened to her given that she was in shock.[91] In light of this, and the sensitive nature of sexual crimes, it was not inconceivable that the Complainant would have been hesitant to speak out about the matter even to her close relatives before making the police report.

(2) The Complainant's personality

56 Next, the Accused claimed that the Complainant's testimony of non-consensual sexual activity was inconsistent with her demeanour and personality,

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90 See generally, NE Dated 10 October 2023 at p 118 lines 17–22.

91 NE dated 12 October 2023 at p 14 lines 18–20.

as well as the history of them frequently engaging in sexual intercourse. The Accused relied on the Complainant's purported assertive nature to claim that she could and would have aggressively resisted any unwanted sexual acts on the part of the Accused.[92] He argued that given that she was able to resist his attempt to pry her legs open, this demonstrated how strong she was. Thus, her claim that she could not resist being assaulted was not to be believed.[93] The Accused also relied on a video clip of the Complainant purportedly grabbing his genitals as evidence that she was capable and willing to use physical force on him when necessary.[94] He further supported this with a statement from a mutual friend of theirs ("F"), who testified that the Accused was the passive party to the relationship, whilst the Complainant was the more dominant and controlling party. Finally, the Accused pointed to the fact that the Complainant had repeatedly sneaked him into the Flat for sexual relations to show that he was readily compliant, even to such peculiar requests, and that the couple had frequently engaged in sexual activities.[95] Hence, the sexual activity on 13 July 2020 was simply one such consensual encounter.

57 In response, the Prosecution pointed out that the Complainant had explained that she refrained from using her hands to resist or kick with her legs as she was afraid that the Accused would retaliate and hit her back.[96] Despite this, she made her lack of desire to have sex with him clear, by locking her legs together, and trying to wiggle away from the Accused when he inserted his

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92 DCS at para 22(y).

93 DCS at para 91.

94 DCS at para 52.

95 DCS at paras 34 and 63–64.

96 PCS at para 68; citing NE dated 11 October 2023 at p 75 lines 26–30.

finger into her vagina.[97] With regard to F's evidence, the Prosecution submitted that any observations by him were likely to be dated and one-sided, since any knowledge he had of the parties' relationship after 2019 was solely based on the Accused's retelling and not independent observation.[98]

58 I did not accept the Accused's claim that the Complainant's failure to fight back harder was out of character, and that this undermined the reliability of her evidence. As the Prosecution rightly pointed out, the Complainant *had* expressed her resistance to the Accused's actions by locking her legs and verbally informing the Accused to stop violating her.[99] She also explained that she was afraid of running away as the last time she had attempted to run from the Accused, he had twisted her knee resulting in injuries.[100] This explanation was logical and supported by some objective evidence. This came in the form of a medical report from Jurong Polyclinic (which recorded a bruise to the Complainant's left orbit and tenderness in her right knee) and messages between the Accused and the Complainant, where the latter stated "I am very sorry I did that to you" in relation to the injuries.[101]

59 It also bears repeating that the law does not prescribe certain expected behaviour on victims of sexual assault (see above at [53]). The mere act of helpless resignation or non-resistance cannot signify consent. It is not unreasonable for a victim – even one who is normally assertive and dominant,

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97 PCS at para 68; citing NE dated 11 October 2023 at p 87 lines 27–29.

98 PRS at para 22.

99 NE dated 10 October 2023 at p 106 lines 8–22.

100 NE dated 10 October 2023 at p 112 lines 17–19.

101 Exhibits P55 and P56.

such as the Complainant – to freeze in shock and fear and not strongly resist in the face of sexual assault (*GCK* at [111]).

60 I also gave limited weight to F's evidence. As the Prosecution pointed out, most of his evidence was based on a one-sided retelling of the Accused and the Complainant's relationship from the Accused's perspective. For instance, one key aspect of F's evidence, which the Accused relied on, was an occasion when F observed scratches on the Accused during a friend's wedding and was informed by the Accused, that the Complainant had been the aggressor.[102] This, the Accused argued, showed that the Complainant had been the more aggressive party and would have easily been able to stop and resist his assault. However, when F was questioned on this incident, he admitted that he never verified with the Complainant on how and why the scratch marks appeared on the Accused and simply took the Accused's word that "she had scratched him because he disagreed with her".[103]

61 As a final note, I was unpersuaded by the Accused's attempts to rely on his and the Complainant's past sexual encounters, and pattern of engaging in "make-up sex" after an argument to undermine her evidence. It is natural for a married couple to engage in intimate activities, even if their relationship is one that is turbulent. If the fact that parties regularly engaged in sexual intercourse can serve as a reason for disbelieving that an alleged victim did not consent, then it would seem that sexual assault can hardly be made out in cases where the parties were in an intimate relationship. This clearly cannot be the case.

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102 DCS at paras 89 and 257.

103 NE dated 3 November 2023 at p 87 lines 6–32.

Whether the Complainant's testimony was corroborated by external evidence

62 In addition to being internally and externally consistent, the Prosecution further submitted that the Complainant's testimony was supported and corroborated by the WhatsApp messages exchanged between AS and the Accused, the contents of AS's police statement, as well as the Accused's admissions in his first VRI.

63 In contrast, the Accused attempted to explain away the WhatsApp messages, and the contents of his statement. He also relied on how AS had retracted from her position in her police statement. Further, the Accused argued that the lack of any injuries or bruises on the Complainant contradicted her claim that she had been assaulted.

(1) WhatsApp messages between AS and the Accused, and AS's police statement

64 I turn first to the WhatsApp messages between AS and the Accused. To recapitulate, on the morning after the alleged incident of sexual assault (*ie*, 14 July 2020), the Accused called and messaged AS to inform her about what had happened the night before.[104] Although the call was not recorded, photographs of the subsequent WhatsApp messages between AS and the Accused were taken. I reproduce the material portions of the message conversation between AS and the Accused:[105]

> [14/07/2020, 8:33 am] AS: She said it won't go in as rape if u didn't penetrate on to her. It will be consider molest even its your wife. *Cause she didn't consent to it.* So this is your information.

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104 PCS at para 4; DCS at para 132.

105 Exhibit P3-7 and Exhibit P3-8.

> [14/07/2020, 8:35 am] AS: Like I said *it was wrong of you* to do that and u should make her feel better …
>
> [14/07/2020, 8:47 am] Accused: *I'm ashamed of myself for having no control and allowing myself to do it while I know she was fearful*. I am a terrible role model as a father. But it is in my power to let it happened and redeem myself …
>
> [14/07/2020, 8:48 am] AS: … Love your positivity. *Don't do that ever again* ok.
>
> [14/07/2020, 8:51 am] Accused: Yes i won't, I am *sorry to have you disappointed*. I feel terrible as a brother its not acceptable, and I know you are very disappointed.
>
> [14/07/2020, 8:59 am] AS: No its OK. I'm glad u shared with me …
>
> [14/07/2020, 8:59 am] AS: Just be mindful of your actions ok
>
> [14/07/2020, 9:45 am] Accused: This is hard, *I feel like I lack control*.
>
> [emphasis added]

65 After these messages were exchanged, later in the day on 14 July 2020 at around 5.00pm, AS also gave a statement to the police while at the PCC. This statement was subsequently relied upon by the Prosecution to impeach AS's credibility. The key paragraph relied upon is as follows:[106]

> Today, this morning, [the Accused] called me about 7 plus and shared that they had a genuine talk about [the Complainant's] fears and how he could improve as a husband. Then after that, he also told me that he did something wrong. I then asked what was wrong. He told me that before they talked, he tried to force himself to make love to her. However, she started crying and he felt bad and stopped. The reason why he did that was because he thought he was losing her. That was when they had this genuine talk. He did not share with me with regards to any sexual assault. I did ask him if he had any penetrative acts on his wife but he told me he did not penetration. Furthermore, previously, they had arguments and had sex. This was previously shared by [the Accused] to me.
>
> [emphasis in original]

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106 Exhibit P53 at p 3.

AS also confirmed that her statement was true and correct before she signed it.[107]

66 At trial, AS testified that in her call with the Accused, he only told her that "something was bothering him",[108] and not that *he* did something wrong. AS also claimed that she only knew that force had been used on the Complainant, though she was unsure of the nature of the force and whether the Accused was admitting to using force or if he was merely repeating what the Complainant had said.[109] This was despite AS asking, in her WhatsApp messages with the Accused, whether he engaged in penetrative acts, and subsequently stating in her police statement that the Accused told her that he had tried to force himself to make love to the Complaint. When questioned about this apparent inconsistency between her court testimony and her prior statements, AS averred that the version in court was the correct version as she was not in the right state of mind on the day her statement was taken.[110] As for the WhatsApp messages, AS claimed that the "she" referenced in her messages was merely her paraphrasing her friend who said "if there wasn't any consent", and was not reflective of any admission by the Accused that the *Complainant* had not consented.[111]

67 The Prosecution submitted that the WhatsApp messages between AS and the Accused clearly supported an inference that the Accused had admitted

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107 Exhibit P53 at p 1; NE dated 5 October 2023 at p 62 lines 10–12.

108 NE dated 5 October 2023 at p 39 lines 6–7.

109 NE dated 5 October 2023 at p 39 line 27 to p 41 line 11.

110 NE dated 5 October 2023 at p 62 lines 22–23 and p 64 line 24 to p 65 line 23.

111 NE dated 5 October 2023 at p 50 lines 18–23.

to sexually assaulting the Complainant in his call to AS.[112] To this end, AS's testimony at trial was her attempt to obfuscate the truth to protect the Accused and was clearly inconsistent with her contemporaneous police statement.[113] Thus, the Prosecution applied to impeach AS's credibility under s 157(*c*) of the EA and to substitute her oral testimony with her police statement under s 147(3) of the EA.

68 The Prosecution further submitted that AS's WhatsApp messages and contemporaneous police statement corroborated the Complainant's testimony that the Accused had sexually assaulted her. This is evidenced from, *inter alia*, AS's reference to a lack of consent, her discussion of the possible sexual offences that the Accused might be liable for, her unequivocal criticism of the Accused's actions as wrong as well as his corresponding expression of shame and remorse for lacking control, and her claim that the Accused told her that he "tried to force himself to make love to [the Complainant]".[114]

69 In response, the Accused's position was that his apparent admission of guilt to AS was a product of him mistakenly believing that he had violated the Complainant, as well as his willingness to simply accept blame and apologise.[115] Consequently, AS's police statement was made under a similar mistaken belief based on her incomplete knowledge from the limited information provided by the Accused and his incorrect belief that the Complainant had not consented. Additionally, AS's seeming awareness that the Accused had engaged in sexual acts was based on her own assumptions, since the Accused was unlikely to share

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112 PCS at para 36.

113 PCS at paras 34 and 37.

114 PCS at paras 80–81.

115 DCS at paras 132–133 and 225–226.

such intimate details with AS.[116] As for the discrepancies flagged by the Prosecution between AS's court testimony and police statement, they were minor at best and immaterial, and the former ought to be preferred.[117]

70 I was unconvinced by the Accused's attempt to explain the discrepancies in AS's evidence. Looking at the WhatsApp messages in their totality, the references to "she" and "her" were clearly made in relation to the Complainant. Indeed, the Accused's response that "*she* was fearful" only made sense if the "she" referenced in AS's preceding message was interpreted as referring to the Complainant. It was also clear that AS was aware of the sexual nature of the Accused's acts as she assured him that his actions "won't go in as rape" though it may "be consider[ed] molest even [if] its [his] wife". This contradicted her court testimony that she only knew that "force" was used and had been uncertain of its precise nature or of who had been the one to use force.

71 I also rejected the Accused's claim that the discrepancies were minor and immaterial. In her police statement, AS clearly stated that the Accused told her that *he* did something wrong and tried to force *himself* to make love to the Complainant. This was materially different from her evidence in court that she was unaware of the Complainant's lack of consent and the sexual nature of the Accused's actions. AS's explanation that she could not quite remember what she had said in her police statement, and that she signed the statement even though the lines were not accurately recorded as she was "very emotional" and "not in [the] right state of mind",[118] was unsatisfactory. She accepted in court that she had no reason to lie in her police statement and had been cooperative

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116 DRS at para 71(a).

117 DCS at paras 168–169 and 227–228.

118 NE dated 5 October 2023 at p 65 line 16 and p 66 line 12.

with the police.[119] While I was cognisant of the emotional turmoil she must have experienced on 14 July 2020, that was insufficient to justify why she would adopt a position unfavourable to the Accused, unless it was the truth. Thus, I held her credit to be impeached.

72 It is trite that more weight is generally accorded to statements made contemporaneously as such temporal proximity guards against inaccuracy (*Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 at [71]; s 147(6) of the EA). I thus saw no reason to prefer AS's court testimony over her police statement and agreed that her version in the police statement should replace her evidence in court. In this regard, AS's version in the police statement clearly supported and corroborated the Complainant's testimony that she had not consented and was sexually assaulted by the Accused.

73 I also disbelieved the Accused's attempt to justify his apparent admission to AS on the grounds that this was aligned with his general behaviour and willingness to accept fault when blamed by the Complainant, and his mistaken belief that he had assaulted her. I did not find his explanation to be particularly persuasive. Even if I were to accept that the Accused mistakenly accepted the Complainant's claim that she had not consented, this would not explain why he further admitted to being aware that she "was fearful" and that he "lack[ed] control".

(2) The contents of the Accused's first VRI

74 The Accused's initial confession to AS in his call and messages to her are further supplemented by his admissions in his first VRI. When queried on

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119 NE dated 5 October 2023 at p 61 lines 10–22.

what happened when he inserted his finger into the Complainant's vagina, the Accused accepted that he had done so without her consent and stated that "she was crying" and "was scared of [him]".[120] Before me, the Accused sought to undermine the veracity of his admissions in the first VRI, a point which I deal with in greater depth subsequently (from [93] onwards). Regardless, it was clear to me that these admissions corroborated the Complainant's evidence that she had not consented to the sexual acts of penetration.

(3) The lack of injuries

75 Finally, I turn to the Accused's contention that the Complainant's claim, that she had not consented to him inserting his finger into her vagina, was contradicted by the lack of any injuries on her. He argued that if the penetrative acts were truly nonconsensual, she would not have been aroused and thus her unlubricated vagina should have sustained injuries consistent with assault.[121] Additionally, the Complainant did not have any bruising around her thighs or any other part of her body despite her claim that the Accused had used force on her and attempted to force her legs apart.[122] In response, the Prosecution relied on Dr Lee's testimony, in which she emphasised that it was reasonable for there not to be any injuries to the Complainant's vagina as she had been digitally penetrated with a single finger. This was so even if the Complainant was neither aroused nor lubricated.[123] Dr Lee also testified that there was no reasonable

120 AB at p 108 lines 16–29.

121 DCS at paras 98, 103 and 236–237.

122 DCS at paras 91 and 237.

123 PCS at para 72; citing NE dated 12 October 2023 at p 90 lines 1–3 and NE dated 11 October 2023 at p 79 lines 5–24.

expectation of injury or bruising to the Victim's inner thighs, buttocks or sides despite her scuffle with the Accused.[124]

76 I agreed with the Prosecution that Dr Lee had adequately addressed all the issues raised by the Accused. Throughout the Defence counsel's cross-examination, Dr Lee maintained that it was entirely plausible for the Complainant not to have sustained any injuries to her vagina – despite not consenting to the Accused's acts – as digital penetration by a finger was unlikely to cause any injuries to the vagina. This was especially so, given that the Complainant was "a non-virgin [and had] given birth twice vaginally".[125] Relatedly, I also accepted Dr Lee's evidence that simply because force was applied in an attempt to separate the Complainant's thighs, it did not necessarily mean that a bruise would form. This was particularly since the Accused had only used his hands and not any other weapon or object to restrain the Complainant.[126] Ultimately, while the presence of injuries may have strengthened the Prosecution's case, the lack of injuries was simply a neutral matter.

Whether the Complainant had a motive to make false allegations

77 The Accused submitted that the Complainant had lied about the nonconsensual nature of their sexual acts and that she raised these false allegations to implicate him. In *GCK*, the Court of Appeal affirmed that when "a motive for a false allegation is raised … it is for the Defence to first establish sufficient evidence of such a motive [… additionally,] that motive must be specific to the witness concerned" (at [102]). It is only once the defence is able

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124 PCS at para 72; citing NE dated 12 October 2023 at p 89 line 6 to p 91 line 31.

125 See, *eg*, NE dated 12 October 2023 at p 79 line 27 to p 80 line 3 and p 82 lines 5–18.

126 NE dated 12 October 2032 at p 90 lines 7–9.

to raise "sufficient evidence of a motive to fabricate so as to raise a reasonable doubt in the Prosecution's case" that the burden shifts to the Prosecution "to prove that that there was no such motive" beyond reasonable doubt (*Yue Roger Jr* at [48]).

78 The chief motive put forth by the Accused was that the Complainant had been planning to divorce him. Thus, she fabricated the assault to obtain more favourable terms in the divorce, such as gaining full custody and care and control of the Children, as well as ownership of the Flat.[127] To support such claims, the Accused relied chiefly on messages between the Complainant and CM on 13 July 2020, where the latter told the Complainant that she should get the Accused committed to IMH to "get control of the house back".[128] He further relied on exchanges during the Family Meeting: such as when CM stated that the Accused cannot "force somebody to have sex with (him)";[129] when CM talked about getting the divorce paper ready;[130] and when CM stated that the Complainant wants a divorce.[131] Finally he argued that the Complainant ensured that she achieved her objectives through her false allegation of sexual assault and applications for a Personal Protection Order ("PPO") and Domestic Exclusion Order ("DEO").[132]

79 I pause at this juncture to note that although the main motive alleged by the Accused was the Complainant's alleged desire to obtain favourable divorce

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127 DCS at paras 195–197.

128 DRS at paras 3(d), 10, 38 and 65.

129 DCS at para 58(e).

130 DCS at para 58(p).

131 DCS at para 58(t).

132 DCS at paras 34(d) and 172.

terms, it was one of several other slightly different motives levied by the Accused and his counsel at the Complainant. In the first VRI, the Accused appeared to speculate that the Complainant might have accused him of assaulting her because she was under the influence of marijuana.[133] The Accused then suggested (in his case for the defence ("CFD") and written submissions) that the Complainant could have been pressured by her mother to end her relationship with him.[134] Finally, for the first time during his cross-examination, the Accused theorised that the Complainant could have lied due to her budding relationship with a mutual friend "M".[135]

80 The Prosecution, on the other hand, submitted that the Complainant had no reason to lie about the assault or to falsely implicate the Accused. In particular, the Prosecution highlighted the speculative and shifting nature of the motives put forth by the Accused,[136] and argued that all of these alleged motives were bare assertions and unbelievable.[137] In particular, the Accused's speculation of the Complainant's relationship and potential intimacy with M appeared to be a mere afterthought.[138] The Complainant's demeanour in court also contradicted any allegation of motive as she had given an even-handed and candid testimony of the assault and parties' relationship. Additionally, she only filed for a divorce a year *after* she made the police report, and subsequently

133 AB at p 154 lines 2–4; NE dated 31 October 2023 at p 83 lines 21–29.

134 DCS at para 260(b); DRS at para 66(d)(ii).

135 NE dated 2 November 2023 at p 76 lines 25–28.

136 PCS at para 95.

137 PCS at para 92.

138 PCS at para 96.

discontinued it. As for the PPO and DEO, she had sought those applications out of genuine concern for her and the Children's safety.[139]

81 As for the messages between the Complainant and CM as well as the latter's comments during the Family Meeting – the Prosecution argued that there was ultimately not a single incriminating text message that could support a finding of collusion or instigation.[140] Additionally, the Defence counsel failed to put to the Complainant, his case that she falsely accused the Accused on CM's instigation to obtain favourable divorce terms.[141] Collectively, the Accused's constantly evolving and illogical account of the Complainant's possible motives were mere baseless speculations and unsupported by any piece of evidence.[142]

82 I agreed with the Prosecution that the Complainant's alleged motives of obtaining more favourable divorce terms and appeasing CM were largely unsubstantiated. In relation to the Accused's heavy reliance on the messages between the Complainant and CM on 13 July 2020, I was of the view that this reliance was misplaced. CM's communication that "the only way [for the Complainant] to regain [her] house is to get [the Accused] committed to IMH again"[143] must be seen in light of the fact that the Accused had indeed moved out of the Flat to stay with AS when he was discharged from IMH. This communication, while harsh and hostile towards the Accused, did not evince any instruction or plan for the Complainant to accuse the Accused of any sort of *criminal* wrongdoing, much less sexual assault. The same could be said of

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139 PCS at para 93.

140 PRS at para 4.

141 PRS at para 6.

142 PCS at paras 97–98.

143 Exhibit D11 at p 28.

CM's statements during the Family Meeting. For instance, CM's statement that the Accused "can't force somebody to have sex with [him]" comes *after* the Accused responded stating "We make love", to the Complainant's question of "What do you plan on achieving for the both of us being in the same house?".[144] In this context, it could hardly be said that CM's statement was an attempt to instigate the Complainant to cast false allegations against the Accused.

83 In a related vein, while the Complainant's applications for a PPO and DEO were not incongruous with a potential motive to oust the Accused from the Flat and obtain control over the Children, neither were they inconsistent with a desire to protect herself and the Children from the Accused in the immediate aftermath of a sexual assault. As such, even taking the messages on 13 July 2020, the statements during the Family Meeting and the Complainant's applications into account – the Accused was ultimately unable to raise sufficient evidence of any motive, by the Complainant, to falsely implicate him for sexual assault. He thus failed to raise reasonable doubt in the Prosecution's case.

84 As for the Accused's claim that the Complainant might have lied about the assault to be with M, I found this claim to be entirely unmeritorious. Even if I accepted that the Complainant was desirous of a relationship with M, the Accused did not explain why such a relationship was contingent on him being charged with sexual assault. In fact, at the time when the Complainant was talking to M, the Complainant testified that she had already decided that her relationship with the Accused was "not going to work" and that it was "over".[145] There was no reason for her to make such serious accusations just to engage in

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144 Exhibit D2I at pp 157–158.

145 NE dated 10 October 2023 at p 90 line 4; NE dated 12 October 2023 at p 37 lines 20–21.

a relationship that she would have otherwise been able to engage in, after leaving the Accused. Similarly, his speculation that the Complainant might have consumed marijuana prior to accusing him of assault was pure conjecture and not a single piece of evidence has been provided in support of such claims.

Conclusion on the Complainant's testimony

85 To conclude on this section of the Complainant's testimony, after reviewing it in full, I found her testimony credible as not only was it consistent with her other statements and actions, but it was also largely corroborated by external pieces of evidence.

86 In contrast to the Complainant's detailed and cogent testimony, I found the Accused's testimony, in respect of the Complainant's consent, to be a mere afterthought. I shall deal with the Accused's testimony in greater detail subsequently. For now, I highlight that his claim that the Complainant purportedly gave him a seductive look and pouted[146] and said "don't do that" in a low seductive voice,[147] which evidenced her consent, was only raised, for the first time, in his CFD. Indeed, the Accused conceded that no mention of such acts was made in his various video-recorded interviews on 14 July 2020,[148] 9 November 2020[149] and 30 September 2021[150] as well as his first Cautioned Statement.[151] The belated nature of such statements severely undermined their veracity. The Accused had thus failed to cast any reasonable doubt on the

146 NE dated 31 October 2020 at p 15 lines 29–30.

147 DCS at para 221; NE dated 31 October 2020 at p 17 line 10.

148 NE dated 1 November 2023 at p 86 lines 6–8.

149 NE dated 2 November 2023 at p 22 lines 10–24.

150 NE dated 2 November 2023 at p 36 lines 18–22.

151 NE dated 1 November 2023 at p 90 lines 1–21.

Prosecution's case that there was no consent by the Complainant to the sexual acts.

87 Therefore, I was satisfied that the Prosecution had proved, beyond a reasonable doubt, that the Complainant did not consent to the Accused's acts of digital penetration.

The Accused's testimony

88 As stated above (at [21]), the Accused's main defence was that the Complainant consented to the sexual acts. Since I found that the Complainant did not, in fact, consent to the sexual acts of digital penetration done by the Accused, I now assess the Accused's testimony primarily in relation to the Accused's alternative defence that he had mistakenly believed that the Complainant had consented to them.

89 When an offender seeks to rely on s 79 of the Penal Code, he bears the burden of establishing, on a balance of probabilities, that he believed "in good faith" that the victim consented to the sexual acts forming the basis of the offence, having exercised due care and attention (*Asep Ardiansyah v Public Prosecutor* [2020] SGCA 74 at [45]; s 52 of the Penal Code).

90 In my view, there were two key instances where the Accused's admissions illustrated his awareness that the Complainant had not consented to the sexual acts. These were the Accused's call and WhatsApp messages to AS and his first VRI. Significantly, it seemed to me that this alternate defence – that the Accused had mistakenly believed that the Complainant had consented – only appeared for the *first* time in a medical report by Dr Low Tchern Kuang Lambert

("Dr Low") on 6 October 2020,[152] *after* his WhatsApp messages to AS, the first VRI[153] and his first Cautioned Statement.[154] In fact, it was not until the Defence's closing submissions that this defence of mistake, under s 79 of the Penal Code, was particularised for the first time.

The Accused's messages with AS

91 I first address the Accused's initial confession to AS in the morning of 14 July 2020. As I had held above (at [70]–[71]), I preferred AS's police statement over her court testimony, and consequently, her evidence that the Accused told [her] that he did something wrong" by "forc[ing] himself to make love to" the Complainant.[155] I also rejected the Accused's and AS's claim – that the former only informed the latter that the Complainant "claimed that [he] was forcing [himself] on her" and had not actually confessed to assaulting the Complainant.[156]

92 It made little sense for AS to admonish the Accused that "it was wrong of [him] to do" what he did, and for the Accused to admit that he felt "ashamed",[157] if he merely informed AS that the Complainant was *accusing* him of sexual assault. Indeed, such a response would be at odds with how AS readily came to the Accused's defence and sought to divert the conversation when CM had suggested, during the Family Meeting, that the Accused cannot "force

152 AB at p 49 para 9.

153 NE dated 1 November 2023 at p 86 lines 6–8.

154 AB at p 204.

155 Exhibit P53 at p 3.

156 NE dated 31 October 2020 at p 34 lines 2–3; NE dated 5 October 2020 p 40 lines 19–25.

157 Exhibit P3-7 and P3-8.

somebody to have sex with [him]".[158] It did not make sense for her to have been so protective of him in one instance, and yet immediately accept his guilt, purely based on the Complainant's accusations, in another. Moreover, the Accused made no mention of the fact that he *thought* that the Complainant was consenting in his WhatsApp messages with AS – although he could have very well said so, even if he had been led to believe that he was at fault and that the Complainant did not actually consent.

The Accused's first VRI and first Cautioned Statement

93 I turn next to the first VRI and first Cautioned Statement. The Prosecution argued that the Accused clearly admitted to sexually assaulting the Complainant in his first VRI.[159] When asked if he thought the Complainant consented to him inserting his finger into her vagina, the Accused responded, "no".[160] Even after the Accused returned from a toilet break, he affirmed that the Complainant "did not want it but then [he] still do it".[161]

94 While the Accused did not dispute the contents of his first VRI, he argued that limited weight ought to be placed on his statements. He claimed that he was not comfortable sharing personal and intimate details with the two male recording officers that he met for the first time.[162] Additionally, the officers failed to ask appropriate questions, to clarify the Accused's responses, which could have elicited his responses in a better manner.[163] They also failed to inform

158 Exhibit D2I at pp 158–159.

159 PCS at paras 41 and 101.

160 AB at p 113 lines 15–18,

161 AB at p 134 lines 17–21.

162 DCS at para 7.

163 DCS at paras 22(p) and 148–156.

the Accused that the first VRI was his formal statement in relation to the Complainant's allegation.[164] Moreover, when looked at in its entirety, the Accused's first VRI alongside his first Cautioned Statement were actually exculpatory as, in the latter, he stated that he only realised that he had done something wrong when the Complainant started crying, and had not realised that she was not consenting until she informed him of such *after* the incident.[165]

95 The Accused further justified his apparent admissions on the grounds that he was not in the "right state of mind" for his statement to be taken. He claimed that he had been hysterical upon his arrest, and he began hyperventilating which resulted in the police aborting the first attempt to conduct the first VRI. He was also incredibly agitated during the interview, and his annoyance and irritation should have indicated to the officers that he wished to stop his statement.[166] Thus, he was psychologically unfit for the interview. In support of this, the Accused relied on the evidence of Dr Tommy Tan ("Dr Tan") that the officers failed to ask proper questions, interrupted the Accused and ought to have conducted a medical check-up before and after his statement.[167] Thus, the Accused urged the court to treat the first VRI with extreme circumspection.

96 In response, the Prosecution contended that the Accused's attempts to explain why limited weight should be given to his first VRI, ought not to be accepted. There was nothing to support the Accused's claim that he was hysterical during his arrest, that he was hyperventilating to such an extent that

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164 DCS at paras 143 and 160–161.

165 DCS at paras 158–159.

166 DCS at para 142.

167 DCS at paras 253–254.

the first VRI had to be postponed or that he was having trouble comprehending the officers' questions. Moreover, the Accused *was* informed that the first VRI would be his formal statement in relation to the Complainant's accusations, and in any regard, the Accused was aware that he was required to give a truthful and full account.[168] The Prosecution also relied on Dr Low's evidence that despite being annoyed, angry, and even slightly agitated, the Accused was still able to respond appropriately, carry a reasonable conversation, make sense in his answers and maintain somewhat good eye contact with the officers. The fact that the Accused was *unwilling* to answer some questions did not mean that he was *unable* to do so.[169]

97 I rejected the Accused's submission that limited weight should be placed on his statements as he had been in a state of hysteria, which resulted in an aborted initial attempt to procure a statement, and that he had not been informed of the purpose of the first VRI. In relation to the former, I accepted the officers' evidence that they did not begin the interview earlier, as it was dinner time, and that there was no such aborted attempt.[170] The Accused's claim that he was in a state of hysteria was also undermined by his confirmation, at the beginning of the first VRI, that he was fine when queried if he was feeling unwell.[171] Indeed, the Accused subsequently conceded that he had merely *assumed* that the officers had tried to a take a statement from him prior to the first VRI because he was brought to a room that looked like the interview room – but that no one gave him DVD-ROMs to choose from until the first VRI was taken.[172] I also accepted

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168 PCS at paras 101(a)–(c) and 101(e).

169 PCS at para 101(d).

170 NE dated 16 October 2023 at p 4 lines 15–16.

171 AB at p 82 lines 18–20.

172 NE dated 2 November 2023 at p 70 line 7 to p 71 line 15.

the officers' evidence that prior to the start of the recording of the first VRI, they had informed the Accused that the statement was for a case of sexual assault by penetration which involved his Wife.[173] In any regard, the Accused admitted that he knew that he was required to give truthful answers during the interview.[174]

98 I also rejected the Accused's claim that his first VRI, when considered in tandem with his first Cautioned Statement, was exculpatory. The Accused's statement, that the Complainant's crying woke him up "from [his] intense mood of affection" was less evidence that he had mistakenly believed her to have been consenting, and more proof that he had ignored the Complainant's acts of resistance.[175] Furthermore, even if I were to regard the contents of the Accused's first Cautioned Statement as not containing any confession, his first VRI, which was given the prior day, clearly did. As I discussed above (at [74] and [93]), the Accused had admitted that he "kn[e]w it was wrong" for him to insert his finger into the Complainant's vagina without her consent.[176] Thus, it could not be seriously argued that the contents of the first VRI and first Cautioned Statement, when considered in their entirety, were exculpatory.

99 Turning to the Accused's claims regarding his mental and physical state during the first VRI, I found them to be without merit. Despite being a key lynchpin in the Accused's case on this issue, Dr Tan's testimony did not really support his claim. It was notable that when cross-examined by the Prosecution, Dr Tan qualified his report to say that the Accused "appeared agitated and

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173 NE dated 16 October 2023 at p 5 lines 23–30.

174 NE dated 2 November 2023 at p 73 lines 1–26.

175 AB at p 204.

176 AB at p 90 lines 1–18.

distressed" but that he could only speculate on whether the Accused was able to grasp the questions asked of him.[177] Notably, Dr Tan went on to accept that even when the Accused appeared to not have answered the officers' questions that this did not "mean that he didn't understand … the questions",[178] and while it was possible that the Accused was confused, it was also possible that he was simply unhappy about being handcuffed and interrogated.[179] Finally, as Dr Tan acknowledged, he only interviewed the Accused nearly three years after the purported incident.[180] Given the lapse in time and Dr Tan's admission that his conclusion that the Accused was unable to comprehend the officers' questions was equivocal at best, I ascribed limited weight to his report.

100 In contrast, the medical report produced by the Prosecution's expert Dr Low was far more contemporaneous as it was made on 6 October 2020.[181] In that report, Dr Low stated that the Accused was "forthcoming, relevant and coherent during the interview". Moreover, his "mood was euthymic and his affect was reactive". Additionally, he "did not display any abnormal perceptual disturbances".[182] Dr Low affirmed this report in his court testimony, and testified that although the Accused appeared irritated, agitated and unhappy at times, he did not seem "overtly agitated" as he was "still able to have a reasonable conversation with [the officers, …] provide information, attend to the conversation, and make sense during his answers".[183] Having watched the

177 NE dated 3 November 2020 at p 44 line 31 to p 45 line 11.

178 NE dated 3 November 2020 at p 52 line 27 to p 53 line 4.

179 NE dated 3 November 2020 at p 53 line 31 to p 54 line 6 and p 54 lines 15–18.

180 NE dated 3 November 2020 at p 54 line 21.

181 AB at p 47.

182 AB at p 50 para 11.

183 NE dated 5 October 2023 at p 21 lines 11–17.

first VRI, I agreed with Dr Low's assessment and was satisfied that the Accused was fit to be questioned. Although the Accused was clearly reticent to answer certain questions that concerned intimate details of his and the Complainant's sexual life, he was clearly able to understand the questions asked of him, and to provide his answers. More significantly, his state of mind could not serve as an explanation for why he admitted to the non-consensual nature of the sexual acts and his knowledge of the lack of consent.

101 Moreover, even if I accepted that the questions posed by the officers to the Accused could have been better phrased and that the Accused was understandably agitated and stressed, given the circumstances that he had found himself in, I did not find these reasons to be sufficient for me to disbelieve the truth of the Accused's initial admissions. Indeed, the Accused did not provide any adequate explanation as to why he did not even *mention* that he had initially believed that the Complainant had consented, even accepting that he was manipulated by the Complainant to believe that such a mistake would not absolve him of fault or guilt. I disagreed with the Accused's suggestion that had the right questions been posed, the officers would have elicited the fact that he was operating under the mistaken belief that the Complainant was consenting. If he was indeed labouring under such a misapprehension, this would have been a material point he should have readily and naturally raised on his own accord.

102 In light of these two material contemporaneous confessions, the inexorable conclusion to be drawn was that the Accused's subsequent defence, that he mistakenly believed the sexual acts to be consensual, was disingenuous and a mere afterthought conceived after his call to AS and the first VRI.

Conclusion on the SAP Charges

103 I make three final points on the SAP Charges.

104 First, the Prosecution and the Accused both submitted on the Accused's potential, or absence of, motives for committing the sexual assault. The Prosecution alleged that the Accused tried to have sex with the Complainant in a misguided attempt to repair their relationship.[184] Conversely, the Accused's position was that it was precisely because he was trying to save the marriage that it would not have made any sense for him to risk committing the acts that he was accused of.[185] These were diametric arguments which I did not need to make a finding on. It is axiomatic that motive is not needed to prove intention (*Muhammad Hamir B Laka v Public Prosecutor* [2023] 2 SLR 286 at [32]), and in this particular case, a finding of motive was not necessary to show that the Accused was aware that the Complainant did not consent to the sexual acts.

105 I turn to the Accused's invitation for the court to draw an adverse inference from the Prosecution's failure to call the Complainant's father, stepmother and domestic helper (who all live in the Flat) to testify. I rejected this argument. In his own defence, the Accused accepted – and in fact relied heavily on – the fact that the Complainant neither called out while she was being sexually assaulted nor did she inform her father or stepmother of her sexual assault until much later. Indeed, these were key aspects that the Accused relied on to undermine the Complainant's credibility.[186] Given this stance, I did not see how these same individuals – whose obliviousness of the Complainant's assault formed a key aspect of the Accused's case – can be considered material

184 PCS at para 108.

185 DCS at paras 34(b), 53–54 and 78–79.

186 See, *eg*, DCS at paras 22(c), 33 and 72(d).

witnesses who should have been called, and why the Prosecution's failure to call them should lead to an adverse inference.

106 Third, the Accused's argument that there should, in any event, be only one SAP charge as the incidents ought to have been treated as one, as they concerned the same continuing act of intimacy. I rejected this as well. I noted that the two instances, which formed the two SAP charges, were separated by the son's interruption when he asked for the Complainant's phone. The Prosecution's decision to prefer two distinct charges was not wrong, and the SAP charges were not defective. That said, I address this point in greater detail again in relation to sentencing for the SAP charges.

107 By the above, I was satisfied that the Complainant's testimony was ultimately one which was credible and believable. In contrast, the Accused's initial communications with AS and his first VRI appeared to be the most accurate version of his shifting evidence – and they indicated the Complainant's lack of consent, as well as the Accused's awareness of the Complainant's lack of consent. Consequently, the irresistible inference to be drawn was that the Complainant had not consented to the sexual acts committed by the Accused against her and that he was aware of her lack of consent. For these reasons, I was satisfied that the Prosecution had proven the SAP charges beyond a reasonable doubt.

The Obstruction Charge

108 I turn to consider the Obstruction Charge, which was a single amalgamated charge grounded on four separate calls by the Accused to CM. It was undisputed between parties that the Accused called CM using AS's home

phone once on 11 October 2020.[187] Thereafter, he used the prepaid card and Phone, which he purportedly bought because his normal phone was not working, to make three more calls to CM between 11 and 17 October 2020.[188] Eventually, he threw the prepaid card and Phone away.[189] CM recorded all four calls. During the calls, the Accused told CM that:

(a) he would consent to the Complainant's PPO application if she were to withdraw her sexual assault allegation against him;[190]

(b) his lawyer had informed him that the Complainant can withdraw her sexual assault allegation against him;[191]

(c) if the Complainant withdraws her sexual assault allegation, he would pay her fine if she were to be charged for the withdrawal;[192]

(d) the Children could end up in foster care if she did not withdraw her sexual assault allegation against him;[193]

(e) the Complainant, the Children and this case would be published in the papers if she did not withdraw her sexual assault allegation;[194] and

187 AB at p 244 lines 21–23.

188 AB at p 288 line 11 to p 289 line 29.

189 AB at p 291 lines 1–24.

190 AB at p 209 S/N 23 to p 210 S/N 27.

191 AB at p 210 S/N 29 to p 211 S/N 34.

192 AB at p 219 S/N 21.

193 AB at p 211 S/N 35.

194 AB at p 230 S/N 16 to p 231 S/N 25.

(f) there was a strong possibility that he would be acquitted of the sexual assault allegation.[195]

109 In my view, it could not be seriously disputed that these were acts with the tendency to obstruct the course of justice – in relation to the progress of the investigation into the Complainant's sexual assault allegations. Indeed, the Accused's main contention was that he did not intend to obstruct the course of justice when he made the calls.[196]

110 The Prosecution submitted that the four calls made by the Accused were clearly made with the intent to scare and threaten the Complainant into dropping her sexual assault allegations against him, by convincing CM to change the Complainant's mind.[197] Conversely, the Accused claimed that he only wished to settle issues relating to the Complainant's PPO, DEO and divorce applications.[198] This was especially since the Accused had been communicating with two of the Complainant's proxies, one of whom informed the Accused to communicate with CM on those matters.[199] He was also concerned that he would be compelled to rely on the Complainant's involvement in marijuana consumption for those applications, which could get her in trouble and jeopardise her Permanent Resident status.[200] He further justified his aggressive words and tone, not as an attempt at intimidation, but rather him simply "venting

195 AB at p 230 S/N 26.

196 DCS at paras 26(a)–26(b).

197 PCS at para 50.

198 DCS at para 24.

199 DCS at paras 25(a), 174 and 194.

200 DCS at paras 25(e) and 176.

and ranting" as he was angered by, amongst other things, being unable to spend time with his son on his son's birthday.[201]

111 I rejected the Accused's various explanations. Even if I accepted that his aggressive tone was reasonable given his heightened emotions at being separated from the Children – there were many aspects of his behaviour and statements that remained inexplicable. In my view, the Accused's offer to pay the Complainant's fine if she were to be charged for withdrawing her allegation was telling. It clearly revealed that his intention was to encourage the Complainant to change her position with regard to the sexual assault allegation, notwithstanding the legal consequences that might befall her. I was also unable to accept the Accused's explanation that he had purchased the prepaid card and the Phone, because his old phone had suddenly stopped working, but that as it suddenly started functioning again, he decided to get rid of the new Phone. Rather these acts appeared to be clear preparatory steps and disposal measures that were taken with the intent to conceal the fact that he made the calls. Such precautionary measures further undermined his claim that he genuinely believed that his calls were perfectly legitimate.

112 I also found his explanation, that he was worried about needing to disclose the Complainant's marijuana consumption, to be unbelievable. On a previous occasion, prior his admission in August 2019, the Accused admitted to informing the police that he smoked marijuana with the Complainant.[202] Subsequently, he also informed Dr Low – during his examination on 6 October 2020 – that the Complainant's "personality had changed significantly and he attributed it to her chronic use of Marijuana" and that he would smoke

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201 DCS at para 188(c); DRS at para 55.

202 NE dated 31 October 2023 at p 28 lines 13–14 and p 116 lines 8–10.

Marijuana with her every day in the past.[203] Finally, during the second VRI, the Accused also informed the recording officers that the Complainant would smoke marijuana with him.[204] In light of the Accused's numerous past instances of revealing the Complainant's alleged habit of smoking marijuana, I found his current claim – that he called CM to keep the Complainant's consumption a secret – incredible.

113 As a final point, I noted that the Accused challenged the Prosecution's decision to amalgamate the four calls to a single charge under s 124(4) of the Criminal Procedure Code 2010 (Cap 68, 2012 Rev Ed) ("CPC").[205] Section 124(4) of the CPC allows the court to combine two or more incidents of the commission of the same offence if these incidents, when taken together, amounted to a course of conduct. In the present case, all four calls were made to CM, and their contents were directed to the same individual namely, the Complainant. The calls were also made over a short period of seven days. As such, they clearly amounted to a course of conduct, as defined under s 125(5) of the CPC, and could properly be combined under s 124(4) of the CPC.

114 Consequently, I was satisfied that the Prosecution had established the Obstruction Charge beyond a reasonable doubt.

Conclusion on conviction

115 In conclusion, the Prosecution had proven the three charges against the Accused beyond a reasonable doubt. I thus convicted the Accused of the two SAP Charges against him under s 376(2)(*a*) of the Penal Code and the single

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203 AB at p 48 paras 5–6.

204 AB at p 246 lines 31–32 and 1–7.

205 DCS at paras 26(c), 27 and 29.

Obstruction Charge for obstructing the course of justice under s 204A(*b*) of the Penal Code. I now turn to the sentencing of the Accused.

Sentencing for the SAP Charges

116 Section 376(3) of the Penal Code provides that a person convicted of a charge under s 376(2)(*a*) of the Penal Code "shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning". Parties were in agreement that the appropriate sentencing framework for the SAP Charges is that set out in *Pram Nair*.[206]

117 The framework in *Pram Nair* sets out the following approach (at [119]–[120] and [158]–[159]):

> (a) identify the number of offence-specific aggravating factors in the case;
>
> (b) determine, based on the number and intensity of the aggravating factors, which of three sentencing bands the case falls under;
>
> (c) identify where precisely within the sentencing band the case falls in order to derive an indicative starting sentence; and
>
> (d) adjust that indicative sentence to reflect the presence of any offender-specific aggravating and mitigating factors.

At the first step of the framework, some relevant aggravating factors that the court will take into account, include an abuse of position, premeditation, severe harm to victim and deliberate infliction of special trauma (at [120]).

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206 Prosecution Sentencing Submissions dated 28 May 2024 ("PSS") at paras 11–13; Defence Sentencing Submissions dated 25 June 2024 ("DSS") at paras 62 and 65(a).

118 The three sentencing bands for the offence of digital-vaginal sexual penetration of the vagina are as follows (*Pram Nair* at [122] and [159]):

Band	Indicative starting sentence	Qualifying criteria
1	Seven to ten years' imprisonment and four strokes of the cane	No offence-specific aggravating factors or where the factor(s) are present to a very limited extent and therefore should have limited impact on the sentence
2	Ten to 15 years' imprisonment and eight strokes of the cane	Two or more offence-specific aggravating factors
3	15 to 20 years' imprisonment and 12 strokes of the cane	The number and intensity of the aggravating factors present an extremely serious case

The parties' positions and submissions

119 The Prosecution submitted that the present case fell at the lower end of Band 2 and would warrant an indicative starting sentence of ten to 12 years' imprisonment and eight strokes of the cane for each SAP Charge.[207] To place the present case within Band 2 of the framework, the Prosecution identified two main offence-specific aggravating factors: a serious breach of trust and severe psychological and emotional harm to the Complainant.

120 First, there was a serious breach of trust as the Complainant had allowed the Accused to move back into the Flat as she had reposed a significant amount of trust in him as her husband. However, the Accused exploited this trust by

[207] PSS at para 15.

sexually assaulting the Complainant in their master bedroom. After the assault, the Complainant was distraught, but the Accused's only response was that she was his wife and he could do whatever he wanted to her. Additionally, the Accused exploited the Complainant's desire to not involve the Children in their martial disputes, by repeatedly attempting to involve them in order to try and get his way with the Complainant.[208]

121 Second, the Prosecution argued that the psychological and emotional harm suffered by the Complainant was significant. This was evinced by her court testimony where the Complainant stated that, as a result of the sexual assault, "[her] whole life has been a mess ever since" and it has "made [her] live in fear" as well as resulted in her being unable to sleep well.[209] Moreover, the manner of the assault – namely that the Accused had forcefully inserted his finger into the Complainant's vagina repeatedly, despite her attempts to demonstrate her reluctance and her begging him to stop his actions – further aggravated the harm inflicted on the Complainant.[210]

122 As for offender-specific factors, the Prosecution highlighted the fact that the Accused lacked remorse for his actions which is a recognised aggravating factor (citing *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [64(c)]). This was evinced by his decision to claim trial to the charges; conjure a narrative of alleged consensual behaviour by the Complainant; and cast "baseless aspersions" against her by accusing her of falsely accusing him.[211] As such, the Prosecution argued that there should not be

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208 PSS at paras 16–17.

209 PSS at para 18; NE dated 11 October 2023 at p 19 lines 13–16.

210 PSS at para 18.

211 PSS at para 19.

any further adjustments to the indicative starting point, and sought a total sentence of ten to 12 years' imprisonment and eight strokes of the cane for each SAP Charge.

123 Conversely, the Accused contended that the present case fell in Band 1 of the framework, with an indicative starting sentence of seven to seven and a half years and four strokes of the cane for each SAP Charge.[212]

124 Although the Accused did not appear to dispute that there was a breach of trust,[213] he strongly denied that the Complainant suffered significant harm. From Dr Lee's medical report and assessment, it was clear that the Complainant suffered no physical injuries, either to her vagina or to any other part of her body.[214] Additionally, the Complainant did not suffer any psychological harm as there was no evidence in support of any such lingering effects.[215] To further bolster this point, the Accused pointed to various acts of the Complainant: such as not informing her father about the assault; bringing dinner to the Accused and sleeping with him in the same bed that night, as well as not calling the police immediately; and Dr Lee's report stating that the Complainant appeared normal and not distressed.[216] In particular, the Accused highlighted the Complainant's messages with CM on the night of the incident on 13 July 2023, where the former discussed not going to work, the Children and not having dinner yet. He

212 DSS at paras 45–46.

213 DSS at para 45.

214 DSS at paras 8(a), 10 and 14.

215 DSS at paras 8(b) and 16.

216 DSS at para 17.

argued that if these events occurred *after* the incident, they indicate that the Complainant was not seriously affected by what happened.[217]

125 Accordingly, in light of the limited aggravating factors, the present case fell within Band 1 of the *Pram Nair* framework, with an indicative starting sentence of seven to seven and a half years' imprisonment with four strokes of the cane for each SAP Charge.[218]

My decision on sentence

126 I now set out my analysis, and first address the issue of an abuse of trust. Although the parties did not appear to dispute the presence of this aggravating factor, this appears to be the first case which considers a *spousal relationship*, and whether it gives rise to an abuse of position and breach of trust in cases involving sexual offences. Thus, I find it important to explain why I agreed with the parties, particularly the Prosecution, that this factor was made out, albeit to a limited degree in the present case.

127 When determining if there was an abuse of trust by an offender, the court will generally look into the "substance of the relationship between the victim and the [offender to determine] if a position of trust existed", as well as whether the offender occupied such a position which allowed them "to commit the … offence" (*BWM v Public Prosecutor* [2021] SGCA 83 at [12] and [20]). As explained in *Terence Ng*, the dual wrong in such cases is not only the commission of a serious crime of sexual assault, but the violation of "the trust placed in [the offender …] by the victim" (at [44(b)]). Along a similar vein, in *Public Prosecutor v NF* [2006] 4 SLR(R) 849, the court observed that the

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217 DSS at paras 18–20.

218 DSS at paras 25 and 45.

psychological trauma inflicted by sexual offences are *especially* exacerbated when "the perpetrator is a family member or a person in a position of trust" (at [48]).

128 I round off with *Mohammed Liton*, where the court acknowledged that the "trauma caused to women who have been raped by a non-stranger may in fact be worse than if they had been raped by a stranger, primarily because the element of *breach of trust* makes the act even more hurtful" [emphasis added] (at [115]). The court also cited Prof Kate Warner's article, "Sentencing in cases of marital rape: towards changing the male imagination" (2000) 20 Legal Studies 592, in which the learned professor opined that "if sexual intercourse is abused by one with whom the victim has experienced sexual intercourse as an act of love, the violation is greater rather th[a]n less. Certainly, the element of breach of trust makes the act more hurtful". Ultimately, the court concluded that the effect of "any prior relationship between the parties will depend on all the circumstances of the case". Thus, the prior relationship between the parties may be treated as a neutral factor as a starting point, which could then be either aggravating or mitigating, depending on the facts of the case (at [116]).

129 In this case, the Accused was the Complainant's husband and thus a close family member. Despite the tumultuous nature of their relationship, I agreed with the Prosecution that the Complainant did repose some degree of trust in the Accused. On the facts, the Complainant ultimately acceded to the Accused's return to the Flat, and willingly stayed in the master bedroom alone with him.[219] In my view, the trust which she vested in the Accused was illustrated by her agreeing to enter and remain in the intimate and private space of her bedroom alone with him, *despite* the estranged nature of parties'

[219] NE dated 10 October 2023 at p 103 lines 12–30.

marriage. Having said that, while there was certainly an abuse of trust in the present case, it could not be said that the abuse was of the most egregious nature or of the highest severity.

130 In contrast to the paradigm categories of relationships in abuse of trust cases (such as parent and child, teacher and student as well as doctor and patient), the power imbalance, and with it the abuse of position, symptomatic of those relationships, is absent here. This is not to say that such power imbalances can *never* be present in spousal relationships. Indeed, it is not hard to imagine that in situations where an offender employs methods of financial coercion, psychological manipulation or uses the parties' children as means of controlling their spouse – that such instances could engender the types of power imbalances that are likely to carry a finding of a severe abuse of trust. However, I found that on the facts of the present case, these additional aggravating aspects were not made out. Regardless of the events which transpired in the immediate lead up to, and aftermath of the assault on 13 July 2020, it must be stressed that the Accused's behaviour that night was uncharacteristic and shocking to the Complainant as he had never sexually assaulted her before.[220] This was not a case involving a power imbalance between a couple where the husband persistently abused, isolated and mistreated his wife or abused her trust and dependency by repeatedly assaulting her.

131 Thus, I did not find the Accused's culpability to have been particularly heightened by his abuse of the Complainant's trust. I should add that the court has accepted that "evidence of consensual sexual activity *shortly* before the offending … could go towards lessening the offender's culpability" (*Terence Ng* at [46]). In *Mohammed Liton*, the court took note of the fact that parties

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220 NE dated 11 October 2023 at p 79 line 30 to p 80 line 14.

appeared to have been deeply in love with one another, that the series of events prior to the rape had the characteristics of a lovers' quarrel, and that parties had engaged in intimate and consensual sexual activities just before and after the rape itself. This context allowed the court to view the assault that transpired as resulting from impulse, and to accord parties' prior relationship some mitigating value (at [119]–[120]).

132 Admittedly, the time lapse between the Accused and the Complainant's last act of intimacy and the sexual assault (*ie*, at best two weeks prior to the date of the assault)[221] is significantly longer than what was present in *Mohammed Liton*. However, it is notable that parties appeared to have a pattern of using sex to resolve their marital issues,[222] and the Accused's sexual assault on 13 July 2020 was an atypical act (see above at [130]). Moreover, even the Prosecution appeared to accept that the Accused likely engaged in the sexual assault offences in a misguided attempt to repair his relationship with the Complainant, and not with any specific intent to victimise or harm her.[223] For the purposes of liability, I did not find it necessary to make any finding on the Accused's motives and intentions (see above at [104]). That said, taking into account the backdrop of the parties' relationship, and the Prosecution's position as to the Accused's possible motives and intentions, the point to be made is that his assault of the Complainant appeared to have been "wholly unplanned and unforeseen", much like in the case of *Mohammed Liton* (at [119]). This militated against a finding of significant culpability arising from a severe abuse of trust.

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221 See, *eg*, NE dated 12 October 2023 at p 30 line 2.

222 NE dated 11 October 2023 at p 30 lines 20–27.

223 PCS at para 108.

133 That said, given that the Accused and the Complainant's prior consensual sexual activity was far less temporally proximate to the assault and their relationship was much more fraught with difficulties, as compared to the facts of *Mohammed Liton*, it would be wrong to regard their prior relationship as a mitigating factor as the court did in *Mohammed Liton*. I must also emphasise that my comments in this respect should not be interpreted as downplaying or minimising the seriousness of the Accused's actions and the trauma experienced by the Complainant. While the Accused's assault of the Complainant was not premeditated and likely the result of his desperation to mend their marriage, it was nevertheless reprehensible.

134 As a final point, I noted that it was not the Prosecution's case before me that a spousal relationship ought to be recognised as an established category where an abuse of trust by a husband is *automatically* recognised. Indeed, the Prosecution accepted as much at the sentencing hearing before me.[224] The courts have generally been quite cautious in finding that certain relationships presumptively carry with them an abuse of trust. In *Mustapah bin Abdullah v Public Prosecutor* [2023] SGCA 30, the court held that the factor of an abuse of trust was not made out, despite the fact that the victims saw the offender as a "big brother", as he did not occupy "a *position of responsibility* in relation to the [v]ictims" [emphasis added]. The court went on to elaborate that as "the relationship between the [offender] and the [v]ictims was different from that found in the familial context where a *clear hierarchy exists* between family members" and the offender could not be said to have stood "in a quasi-parental position", the aggravating factor of an abuse of trust was not made out [emphasis added] (at [122]). While a spousal relationship is certainly familial,

224 NE dated 22 July 2024 at p 2 lines 8–25.

in the modern context, it could not be definitively said that "a clear hierarchy exists" in all, or even most, martial relationships such that the husband assumes "a position of responsibility" towards the wife. Indeed, arguably, there is mutual trust and confidence between the spouses. More importantly, as discussed above (at [130]), the power imbalance symptomatic of the established categories of relationships would not be automatically present in all spousal relationships.

135 Further to the above, in reviewing the past cases, the court appears to be reticent in treating the existence of a prior relationship as automatically representing an aggravating factor (see *Mohammed Liton* at [116]). Thus, I had reservations as to whether a spousal relationship ought to be a recognised category of relationship (like a parent and child or teacher and student) which would automatically carry with it, a presumptive finding of an abuse of position and breach of trust by a husband. As this issue, of whether the court may broadly recognise spouses as an established category, was ultimately not before me, I make no further observations, except to say that I agreed with the Prosecution that such an abuse had been made out on the facts of this *particular* case.

136 I turn next to whether the Complainant suffered severe harm. When ascertaining if the aggravating factor of "severe harm" is made out, the court in *Terence Ng* observed the following (at [44(h)]):

> … every act of rape invariably inflicts immeasurable harm on a victim … It seriously violates the dignity of the victim by depriving the victim's right to sexual autonomy and it leaves irretrievable physical, emotional, and psychological scars. Where the rape results in especially serious physical or mental effects on the victim such as pregnancy, the transmission of a serious disease, or a psychiatric illness, this is a serious aggravating factor. In many cases, the harm suffered by the victim will be set out in a victim impact statement.

137 In *Public Prosecutor v Ong Soon Heng* [2018] SGHC 58, the court explained that while victims of sexual assault undeniably suffer as a result of the crime, "there needs to be a relatively severe state of psychological or physical harm shown in order for the Court to find that there is an additional offence-specific aggravating factor bringing the case to a higher sentencing band" (at [154]).

138 While it could not be seriously disputed that the Complainant suffered emotional harm, I agreed with the Accused that no evidence has been adduced to support a finding that the Complainant suffered from particularly severe or serious psychological harm. The court does not take an overly prescriptive and rigid approach towards evaluating the harm suffered by victims of sexual assault (see *CJH v Public Prosecutor* [2023] SGCA 19). However, the court must also be careful to distinguish between the types of harm which can be properly regarded as aggravating and warranting a sentencing uplift, from the harm that is invariably inflicted in any form of sexual assault. Here, while I accepted that the Complainant was likely fearful during the assault and that she may still be suffering from its psychological effects, there was insufficient evidence to support a finding that she suffered *severe* harm. In the medical report by Dr Lee, the Complainant was observed as "appear[ing] normal and not distressed [with] a normal mental state",[225] and her vagina did not sustain any injuries.[226] Thus, while I accepted that the Complainant undoubtedly suffered psychological harm, it did not constitute an aggravating factor.

139 From the foregoing, there was a single offence-specific aggravating factor present to a moderate extent. Thus, this case would fall within Band 1 in

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225 AB at pp 37 and 44.

226 AB at p 39.

the *Pram Nair* sentencing framework, which called for a sentence of seven to ten years' imprisonment and four strokes of the cane.

140 In determining the appropriate indicative starting sentence, it would be helpful and relevant to consider sentencing precedents which involved a similar offence and aggravating factor. In *Tan Wai Luen v Public Prosecutor* [2020] SGHC 267 ("*Tan Wai Luen*"), the appellate court affirmed the trial court's decision to impose a sentence of seven years and four months' imprisonment and four strokes of the cane on the offender for sexually penetrating the victim's vagina with his finger without her consent (at [103]–[105]). The offender was a Muay Thai instructor and the victim attended one of his sessions. The offender offered the victim a free Thai massage after the session and inserted his finger into her vagina during the massage (at [4]). The appellate court agreed with the trial judge's finding that there was a "only one offence-specific aggravating factor [which was] at best [a] limited abuse of trust" (at [99]).

141 The breach of trust in the present case was more aggravating than that present in *Tan Wai Leun*. Although the victim there likely placed her trust in the offender by virtue of his position as an instructor, it is relevant to note that that training session was the *first* time the victim had interacted with the offender and they did not have a relationship prior to that (*Tan Wei Leun* at [5]–[6]). In contrast, there was clearly a pre-existing relationship of trust between the Accused and the Complainant as they were husband and wife. As I explained above (at [129]), even though the abuse of trust here was not the *most* severe instance, it was still eminently present since the Complainant trusted the Accused enough to allow him to return to the Flat and sleep in the master bedroom with her. In view of *Tan Wai Luen,* I found an indicative starting sentence of eight years' imprisonment and four strokes of the cane to be appropriate.

142 I turn now to consider the offender-specific aggravating factors. I disagreed with the Prosecution that the Accused's conduct during the trial was of such a nature as to be regarded as an aggravating factor. In *Terence Ng*, the court explained that a finding that an offender's lack of remorse amounted to an aggravating factor would only be made if "the offender [conducted] his defence in an extravagant and unnecessary manner, and particularly where scandalous allegations are made in respect of the victim" (at [64(c)]). Indeed, while an offender does not "have license to make all sorts of scandalous allegations against the victim", an offender who relies on a defence of consent "should not be unduly penalised at the sentencing stage for putting uncomfortable questions and suggestions to the victim, so long as this is done in a reasonable manner and the questions … are necessary for the proper ventilation of the defence" (*Public Prosecutor v Jeffrey Pe* [2023] SGHC 313 at [273]).

143 I did not find the Accused's claims of the Complainant's alleged consensual behaviour and allegation that she had falsely accused him to be so egregious as to constitute an aggravating factor. These suggestions were relevant to the Accused's defence of consent and his assertion that the Complainant had a motive to falsely implicate him. Moreover, the Accused's submissions and the questions posed by his counsel did not cross the line of being done in a scandalising manner nor did they appear to be calculated to vilify, insult, or annoy the Complainant.

144 However, there were also no mitigating factors in favour of the Accused. The Prosecution had tendered a record of the Accused's other offences, but expressed the view that these were not relevant antecedents.[227] Indeed, I accepted that the Accused's prior antecedents ought not be given any weight.

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[227] NE dated 22 July 2024 at p 3 lines 1–5.

Although the Accused lacked a clean record, his past offences were unrelated to the present offences. Since there were no significant offender-specific aggravating or mitigating factors, I saw no need to adjust my indicative sentence of eight years and four strokes of the cane for each of the SAP Charges.

Sentencing for the Obstruction Charge

145 I turn to address the Obstruction Charge. For obstructing the course of justice, the Accused was liable to be punished with imprisonment for a term which may extend to seven years, a fine, or both pursuant to s 204A(*b*) of the Penal Code.

146 In *Parthiban a/l Kanapathy v Public Prosecutor* [2021] 2 SLR 847, the court observed that "general deterrence ought to be the primary sentencing consideration" as such offences "strike at the very *fundamental* ability of the legal system to produce order and justice" (at [27(a)]). It further highlighted several offence-specific and offender-specific factors that the court should consider in determining the appropriate sentence (at [27(c)]):

> (a) The nature of the predicate charge upon which the offender had sought to thwart the course of justice is relevant. The more serious it is, the more serious the act of perverting the course of justice will be.
>
> (b) The effect of the attempt to pervert the course of justice.
>
> (c) The degree of persistence, premeditation and sophistication in the commission of the offences may also indicate the culpability of the accused person.

147 With reference to the predicate offence, the Prosecution asserted that the offences which the Accused aimed to subvert (*ie*, the SAP Charges) were very

serious as a maximum punishment of 20 years' imprisonment is prescribed for such offences.[228] Taking into account the present facts and circumstances, the Prosecution submitted that a sentence of two years' to two years and six months' imprisonment was warranted for the Obstruction charge.[229] In response, the Accused contended that since the offences attracted Band 1 sentences, for which the upper limit is ten years' imprisonment, the severity of his predicate offence was analogous to offences with a statutorily prescribed maximum of ten years' imprisonment. As such, an overall sentence of nine to ten months' imprisonment would suffice.[230]

148 I disagreed with the Accused's attempt to downplay the severity of his predicate offences. In this regard, the Accused's reliance on the case of *Public Prosecutor v Tay Tong Chuan* [2019] SGDC 58 ("*Tay Tong Chuan*") and *Rajendran s/o Nagarethinam and another v Public Prosecutor* [2022] 3 SLR 689 ("*Rajendran (HC)*") was misplaced. The predicate offences in those cases involved a breach of the Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed) ("WSHA") and prostitution-related infractions (involving a consenting adult) under the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter"), respectively.

149 It could not be seriously contended that the violations of the WSHA and Women's Charter were of comparable severity to the SAP Charges. The WSHA and Women's Charter offences carried statutory maximum punishments of two and seven years of imprisonment, respectively, for first time offenders. These terms of imprisonment are substantially shorter than the statutory maximum of

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228 PSS at para 23(a).

229 PSS at para 24.

230 DSS at para 51.

20 years' imprisonment for digital penetration offences. Even if I accepted that the statutorily prescribed maximum imprisonment sentence may not be the *sole* basis upon which to compare the relative severity of different offences, it was clear from the fact that Band 1 sentences under the *Pram Nair* framework generally carried four strokes of the cane, that the present predicate offence was much more serious than the WSHA and Women's Charter offences, neither of which provides for caning for a first-time offender.

150 As for the effect of the Accused's attempt to pervert the course of justice, and the degree of persistence, premeditation and sophistication present, I agreed with the Prosecution that these aggravating factors were present in this case. The Prosecution submitted that the Accused's attempts could have led to him escaping with impunity. Although he was ultimately unsuccessful, the "potential harm of his actions [was] extremely high".[231] The Prosecution further submitted that there was extensive planning and premeditation as the Accused purchased the prepaid card and new Phone with the intention to avoid detection. The Accused was also persistent in his course of conduct by making four calls over the course of a week.[232] As I had determined above, the Accused's preparatory steps of obtaining the prepaid card and Phone were done with the intent of avoiding detection and indicated a degree of premeditation (see above at [111]). Moreover, the Accused had committed the offences while on bail which, as the Prosecution rightly pointed out, is a recognised aggravating factor (citing *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 75323 at [61]).

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231 PSS at para 23(b).

232 PSS at para 23(c).

151 Having said that, I considered the Accused's culpability to be tempered in light of the surrounding circumstances. The Accused argued that he had made the calls with the hope of saving the parties' marriage, and if not, to discuss the divorce, PPO and children's issues with the Complainant and CM. In support of this, the Accused pointed to the messages between him and a mutual friend, as well as the initial points of discussion between him and CM, especially during the first conversation on 11 October 2020 using AS's home phone.[233] I agreed with the Accused that it did appear that he had made the calls to CM with the hope of preserving his marriage with the Complainant, and resolving their issues, albeit by getting her to drop the SAP Charge. In the Accused's messages with the parties' mutual friend, the Accused appeared to be focused on addressing the Complainant's application for a PPO and DEO as well as determining "what's best for [the Complainant] and the kids".[234] When the Accused asked to speak with the Complainant, she intimated to him to call CM as she was not "ready to speak to [him]".[235] Additionally, the Accused started out his call with CM inquiring about the divorce.[236] Although the Accused did ultimately intend to get the Complainant to drop the SAP Charges against him, the context surrounding his calls remained relevant.

152 To arrive at the appropriate sentence, it would be helpful to compare the present instance with prior precedents involving s 204A of the Penal Code. I turn to the two cases relied on by the Accused and address them in greater detail:[237]

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233 DSS at paras 54–55 and 58–59.

234 See generally, Exhibit P50 at pp 2–7.

235 Exhibit P50 at p 4.

236 AB at p 209 S/N 17.

237 DSS at para 50.

(a) In *Tay Tong Chuan*, the offender instigated another individual ("A") to take the blame, for a fatal workplace accident, in his stead (at [5]). In evaluating the seriousness of the predicate offences, the court agreed with the Prosecution that the offender had committed serious offences (at [41]). However, the court also accepted that the offender was *not* the reason A ended up taking the blame, and that he had not attempted to threaten, coerce or bribe A (at [50], [57] and [60]). The offender's attempt to persuade A also occurred only on *one* occasion, almost immediately after the accident occurred (at [51]). The court thus imposed a sentence of eight weeks' imprisonment (at [65]).

(b) In *Public Prosecutor v Rajendran s/o Nagarethinam and another* [2020] SGDC 156 ("*Rajendran (DC)*"), the offenders arranged for their accomplice to leave Singapore to evade arrest (at [4]). The court placed emphasis on the fact that the offenders carried out planning and arrangements to effect the accomplice's removal from Singapore. They also took further steps to ensure that the accomplice remained out of Singapore (at [272]). The court ultimately imposed a sentence of nine months' imprisonment, which it then reduced to eight months in light of the totality principle (at [274] and [277]). This sentence was upheld on appeal (see *Rajendran (HC)* at [115]).

153 I found *Tay Tong Chuan* to be unhelpful. Not only was the predicate offence in *Tay Tong Chuan* much less severe (as I have discussed above), but there was also no evidence of premeditation or planning and the offender ceased his efforts after one attempt. In contrast, the Accused clearly planned his purchase and disposal of the prepaid card and Phone. The Accused also made repeated attempts to convince the Complainant to drop her sexual assault allegations. As for *Rajendran (DC)*, while I accepted that the facts of that case

were more comparable to the present, there remained a few distinguishing features. Most significantly, similar to *Tay Tong Chuan*, the Accused's predicate offence was more severe than the predicate offence in *Rajendran (DC)*. Additionally, the Accused had committed his obstruction of justice offences whilst on bail, unlike the offenders in *Rajendran (DC)*. Also, while the offenders in *Rajendran (DC)* did not seek to implicate their accomplice by having him lie to authorities, the Accused sought to instigate the Complainant to lie to the police, even going so far as to offer to pay her fine if she were to be charged for withdrawing her allegation (see above at [111]).

154 Instead, I found a relevant precedent to be that of *Public Prosecutor v Yeo Jiawei* [2017] SGDC 11 ("*Yeo Jiawei*"), a case cited by the Prosecution. There the offender claimed trial to three charges of attempting to pervert the course of justice by, *inter alia*, asking two witnesses to provide authorities with false information, and one of them to dispose of his laptop and avoid travelling to Singapore. He also claimed trial to one charge of abetting, by instigating a witness to give false evidence (at [1]). The court accepted that the underlying predicate offences were undeniably serious as they involved cheating and illegal money laundering, which each carried up to ten years' imprisonment (at [69]). There was also substantial planning and premeditation as the offender "used "Telegram" and [a] secondary phone line belonging to 3rd party in facilitating the commission of the offences and avoiding detection" (at [71]). The offences were also committed whilst the offender was on bail (at [72]). Thus, the court imposed a sentence of 15 months' imprisonment for each of the obstruction of justice charges, and seven months' imprisonment for the last abetment charge. The global sentence imposed was 30 months of imprisonment.

155 Not only was the severity of the predicate offence in *Yeo Jiawei* more analogous to the present case, so was the degree of premeditation and planning

present. Additionally, much like the Accused, the offender in *Yeo Jiawei* had committed the obstruction of justice offences while on bail. That said, the offender in *Yeo Jiawei* committed a series of such offences and interfered with multiple witnesses. In contrast, the only individual whose evidence the Accused sought to tamper with was the Complainant's. Additionally, as previously stressed, the Accused's conduct must be viewed in light of the marital problems between the parties which he was also seeking to resolve. Therefore, I found a sentence of 12 months' imprisonment (which was slightly shorter than what was imposed in *Yeo Jiawei*) to be an appropriate punishment for the Accused, for the consolidated Obstruction Charge.

The global sentence

156 By s 307(1) of the CPC, the sentences for at least two of the Accused's three charges were to run consecutively. Parties submitted that that the imprisonment terms for the SAP charges should run concurrently.[238] The Prosecution sought a total of 12 to 14 years and six months' imprisonment with 16 strokes of the cane, and no further reduction on account of the totality principle. The Accused, on the other hand, sought a global sentence that would range from seven years and nine months' to eight years and four months' imprisonment and eight strokes of the cane (which he asked to be further reduced on account of the totality principle).

157 I saw no reason to depart from the parties' position that the sentences for the SAP charges should run concurrently. Given the proximity in time of those offences, I viewed them as forming a single transaction, such that the sentences for these related offences ought to run concurrently. On the other

238 PSS at para 4; DSS at para 25.

hand, the Obstruction Charge was an unrelated offence which infringed different legal interests, and it was thus appropriate that this sentence be ordered to run consecutively (*Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [41], [52] and [54]). With the sentence for one of the SAP charges and the sentence for the Obstruction charge running consecutively, this would give rise to a total sentence of nine years' imprisonment and eight strokes of the cane.

158 I now turn to consider the totality principle. As explained in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998, the "totality principle is a consideration that is applied at the end of the sentencing process" to allow the court to take a "last look" at all the facts and circumstances to determine if the sentence is appropriate (at [58]). At this stage, the court is concerned about proportionality, and considers whether the global sentence exceeds the offender's culpability. In accounting for the principle of totality, the court is entitled to re-assess which of the appropriate sentences ought to run consecutively as well as to recalibrate the individual sentences to arrive at an appropriate aggregate sentence (at [59]).

159 Throughout the trial, I was mindful of the fact that the Accused's various offences arose at a difficult point of a complex and tumultuous marital relationship. The parties' marriage had been kept in limbo for 11 months. Despite living apart, the couple continued to engage in sexual acts, and it was one means of resolving their marital conflicts. Around the material time of the offences, it appeared that the Complainant was bent on getting a divorce, while the Accused was still keen on trying to salvage the marriage. Under these circumstances, acting out of character, the Accused sexually assaulted the Complainant. Instead of addressing the multiple legal problems between the couple, the Accused further compounded his problems by telling the Complainant to withdraw the sexual assault allegations against him. Arising

from these events, as was evident through his evidence at trial, the Accused knows that he inflicted pain on the family (especially the Children, whom he dearly loves), and he has suffered by being separated from them. In light of these facts and circumstances, I was of the view that the aggregate sentence exceeded the Accused's overall culpability.

160 Accordingly, I adjusted the sentences for each of the SAP Charge to seven years' imprisonment and three strokes of the cane, each. This brought down the global sentence to eight years' imprisonment and six strokes of the cane. I found this to be a sufficient and appropriate punishment for the Accused.

Conclusion

161 By the above, I convicted the Accused of the three charges. I sentenced the Accused to seven years' imprisonment and three strokes of the cane for each of the SAP Charge, and 12 months' imprisonment for the Obstruction Charge. The sentence for the first SAP Charge and the sentence for the Obstruction Charge were ordered to run consecutively, while the sentence for the second SAP Charge was ordered to run concurrently. The global sentence imposed was eight years' imprisonment and six strokes of the cane.

162 The Accused is presently in remand. Upon the Accused's application, I granted a stay of execution of the sentence pending appeal, pursuant to s 383(1) of the CPC.

Hoo Sheau Peng
Judge of the High Court

Selene Yap, Jane Lim and Jonathan Tan (Attorney-General's Chambers) for the Prosecution;
Vinit Chhabra (Vinit Chhabra Law Corporation) (instructed), Gloria James-Civetta and Chong Xin Yi (Gloria James-Civetta & Co) for the accused.