

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

[2022] SGHC 166

Criminal Case No 33 of 2019

Between

Public Prosecutor

And

Tan En Jie Norvan

JUDGMENT

[Criminal Law — Offences — Sexual offences]

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Public Prosecutor

v

Tan En Jie Norvan

[2022] SGHC 166

General Division of the High Court — Criminal Case No 33 of 2019

Ang Cheng Hock J

29, 30 September, 1, 2 October 2020, 13–16, 28, 29 September, 1 October, 13, 14 December 2021, 8 April 2022

15 July 2022

Judgment reserved.

Ang Cheng Hock J:

1 The accused in this case faces four charges for various acts of sexual assault against the complainant that are said to have occurred in the early hours of 26 December 2016 at a flat in Block 941 Hougang Street 92 (“the Flat”), where he then resided. These charges are:

1st charge (TRC 900110/2019)

On 26 December 2016, between 5.42am and 9.28am, at [the Flat] did penetrate with your penis, the anus of [the complainant] (D.O.B.: [DD] [MM] 1997), a then 19-year-old female, without her consent, and you have thereby committed an offence under Section 376(1)(a) punishable under Section 376(3) of the Penal Code, Chapter 224 (2008 Rev Ed).

2nd charge (TRC 900111/2019)

On 26 December 2016, between 5.42am and 9.28am, at [the Flat] did penetrate with your finger, the vagina of [the complainant] (D.O.B.: [DD] [MM] 1997), a then 19-year-old female, without her consent, and you have thereby committed

an offence under Section 376(2)(a) punishable under Section 376(3) of the Penal Code, Chapter 224 (2008 Rev Ed).

3rd charge (TRC 900112/2019)

On 26 December 2016, between 5.42am and 9.28am, at [the Flat] did use criminal force on [the complainant] (D.O.B.: [DD] [MM] 1997), a then 19-year-old female, to wit, by touching the base of her breast, with intent to outrage the modesty of [the complainant], and you have thereby committed an offence under Section 354(1) of the Penal Code, Chapter 224 (2008 Rev Ed).

4th charge (TRC 900113/2019)

On 26 December 2016, between 5.42am and 9.28am, at [the Flat] did use criminal force on [the complainant] (D.O.B.: [DD] [MM] 1997), a then 19-year-old female, to wit, by kissing her lips, with intent to outrage the modesty of [the complainant], and you have thereby committed an offence under Section 354(1) of the Penal Code, Chapter 224 (2008 Rev Ed).

I will refer to each of these charges as the first, second, third and fourth charges respectively.

The Prosecution’s case

2 The complainant was 19 years of age at the time of the alleged offences.¹ She was close friends with one Tan En Ting Julniee (“Julniee”). The two had known each other since primary school and had also been classmates at a school for vocational instruction.² Julniee is the younger sister of the accused, who is two years older than her. At the time of the alleged offences, the accused was 21 years of age. Like the accused, Julniee also resided in the Flat at that time, together with their parents. It is not disputed that the

¹ Statement of Agreed Facts (“SOAF”) at para 2.

² SOAF at para 3.

complainant is known to Julniee and Julniee’s family (including the accused) by her first name, “[V]”.

3 On the night of 25 December 2016, the complainant and Julniee went out drinking to celebrate Christmas.³ They went to a bar where they met some of Julniee’s friends. The complainant had a few glasses of beer.⁴ The complainant and Julniee then went to a club where they met another group of Julniee’s friends where more drinking ensued. The complainant consumed several alcoholic drinks.⁵ At around 5.00am the next morning, the complainant and Julniee headed back to the Flat, where the complainant had planned to stay over.⁶ By this time, the complainant was feeling quite intoxicated. She indicated to Julniee in the car ride back that she felt like vomiting.⁷

4 They eventually arrived at the Flat at about 5.42am. When Julniee and the complainant got to the Flat, there were in total five other persons present there.⁸ Julniee’s parents were asleep in their room. The accused and two of his friends, Tsang Ching Rui, Ruben (“Ruben”) and Alexander Vicknesh Sneesby (“Alex”), were in the accused’s room. The accused, Ruben and Alex had also gone drinking at a club, and had arrived at the Flat shortly before the complainant and Julniee.⁹

³ SOAF at para 4.

⁴ SOAF at para 4.

⁵ SOAF at para 5.

⁶ SOAF at para 5.

⁷ SOAF at para 5.

⁸ SOAF at para 6.

⁹ SOAF at para 6.

5 Once the complainant and Julniee arrived at the Flat, the complainant immediately went to the toilet located at the Flat’s service balcony, which is next to the kitchen (“the Toilet”). The complainant went to the Toilet to vomit as she was feeling dizzy and nauseous. She had been to the Flat several times before and was familiar with its layout.¹⁰ When vomiting into the toilet bowl, the complainant was kneeling on the floor in front of it with her arms wrapped around it.¹¹ Julniee then came into the Toilet and helped the complainant change out of her dress, and into a red t-shirt (“the T-shirt”)¹² and a pair of shorts.¹³

6 Julniee then left the complainant in the Toilet and went to the accused’s bedroom. There, she asked to speak to Ruben in private. The accused then left the bedroom to allow his sister to speak with Ruben. Alex was asleep on the floor of the bedroom throughout all this time.¹⁴

The complainant’s evidence

7 The account of events relied upon by the Prosecution thus far is largely undisputed. I come now to the allegations of sexual assault in this case and the testimony given by the complainant.

8 Her evidence is that, when she was in the Toilet vomiting, in the same kneeling position as before, she heard a male voice coming from someone

¹⁰ Transcript, 30 Sep 2020, p 8 lines 5–7.

¹¹ Transcript, 30 Sep 2020, p 10 lines 25–31, p 11 lines 1–10.

¹² Exhibit P4.

¹³ Exhibit P6; Prosecution’s Opening Address (“POA”) at para 6; Transcript, 30 Sep 2020, p 12 lines 6–28, p 14 lines 5–6.

¹⁴ POA at para 7.

standing behind her.¹⁵ She testified that she heard the male voice saying “[V], are you okay?” a few times, but she did not reply¹⁶ as she was still trying to vomit while bent over the toilet bowl.¹⁷ The male person then lifted her up by placing his forearms under her armpits.¹⁸ The complainant testified that, as she was being lifted up, she fell and this caused her body to turn to face the front of the male person.¹⁹ At that point, she opened her eyes briefly and saw this male person wearing a dark blue-coloured shirt, although she did not see his face clearly.²⁰ The male person then supported her from the service balcony area through the kitchen and headed towards the living room of the Flat.²¹ Along the way, the complainant fell twice because her legs felt weak.²² One fall was somewhere in the middle of the kitchen and the other fall was at the exit of the kitchen leading to the living room.²³ During the second fall, she hit her head against the kitchen door frame.²⁴ The male person helped her up after the second fall and brought her to the sofa in the living room, where he laid her on her back.²⁵ The man then gave the complainant a short kiss on her lips. In her words, she felt a “peck” on her lips.²⁶ The complainant’s eyes were closed when

¹⁵ Transcript, 30 Sep 2020, p 15 lines 14–15; 1 Oct 2020, p 15 lines 18–23.

¹⁶ Transcript, 30 Sep 2020, p 14 lines 25–26.

¹⁷ Transcript, 30 Sep 2020, p 14 lines 29–30.

¹⁸ Transcript, 30 Sep 2020, p 15 lines 14–15; 1 Oct 2020 p 50 lines 15–16.

¹⁹ Transcript, 30 Sep 2020, p 15 lines 14–17.

²⁰ Transcript, 30 Sep 2020, p 15 lines 17–24.

²¹ Transcript, 30 Sep 2020, p 17 lines 10–11.

²² Transcript, 30 Sep 2020, p 17 line 14, p 20 line 15.

²³ Transcript, 30 Sep 2020, p 17 line 23, p 18 lines 6–8, p 19 line 30.

²⁴ Transcript, 30 Sep 2020, p 20 lines 15–16.

²⁵ Transcript, 30 Sep 2020, p 20 lines 21–22 and 25–27.

²⁶ Transcript, 30 Sep 2020, p 22 lines 11–17.

she was kissed, and she was not expecting it.²⁷ This kiss was done without her consent.²⁸ This kiss forms the basis of the fourth charge against the accused (see [1] above).

9 Almost immediately after getting kissed, the complainant felt the urge to vomit again.²⁹ She got up from the sofa and ran back to the Toilet, where she continued to vomit into the toilet bowl.³⁰ While doing so, she was kneeling on the floor in front of the toilet bowl with her arms wrapped around the toilet bowl,³¹ roughly in the same position which she had been earlier (see [5] above). After vomiting, the complainant remained in the Toilet.³² She then heard the same male voice from behind her, asking “[V], are you okay?”. Again, she did not respond.³³ The male person then lifted her up with his forearms under her armpits (in the same way as he had done so earlier (see [8] above))³⁴ and brought her out of the service balcony area, through the kitchen and the living room, and into Julniee’s room.³⁵ The complainant recognised that she was being brought into Julniee’s room because of the pink-coloured walls in that room, which she saw when she opened her eyes briefly after being brought to the entrance of the room.³⁶ On the way from the Toilet to Julniee’s bedroom, the complainant had

²⁷ Transcript, 30 Sep 2020, p 24 lines 2–6.

²⁸ Transcript, 30 Sep 2020, p 22 lines 26–27.

²⁹ Transcript, 30 Sep 2020, p 23 lines 6–7.

³⁰ Transcript, 30 Sep 2020, p 23 lines 14–15 and 20–24.

³¹ Transcript, 30 Sep 2020, p 24 line 18.

³² Transcript, 30 Sep 2020, p 24 line 12.

³³ Transcript, 30 Sep 2020, p 24 lines 12–13 and 23.

³⁴ Transcript, 1 Oct 2020, p 51 lines 4–8.

³⁵ Transcript, 30 Sep 2020, p 24 lines 28–29, p 25 lines 1–5, 10 and 26–30.

³⁶ Transcript, 30 Sep 2020, p 27 lines 21–31.

also opened her eyes briefly to see where she was being brought, and she saw that she had passed by the accused's room, where the room door was shut.³⁷ The complainant testified that she had wanted to remain in the Toilet to vomit but she did not think of telling him that and also did not have the strength to resist or say anything to the male person at the time when she was brought out of the Toilet.³⁸

10 The male person laid the complainant on Julniee's bed.³⁹ The complainant then opened her eyes and saw that the lights of Julniee's room were switched on and that she was alone in Julniee's room.⁴⁰ She then closed her eyes again.⁴¹ Shortly after, she felt a hand underneath the T-shirt that she was wearing, touching the base of her breasts her briefly.⁴² She then felt the hand being removed and being placed under the shorts and panties that she was wearing, and two fingers being inserted into her vagina briefly.⁴³ Both the touching of her breast and the digital penetration happened suddenly while the complainant's eyes were closed, and each time it prompted her to open her eyes for a brief moment.⁴⁴ The complainant testified that she knew it was the same person who inappropriately touched her on both instances because, after the person (who had touched the base of her breasts) removed his hand from under

³⁷ Transcript, 30 Sep 2020, p 26 lines 14–15 and 19–28.

³⁸ Transcript, 30 Sep 2020, p 25 lines 16–22.

³⁹ Transcript, 30 Sep 2020, p 28 line 2.

⁴⁰ Transcript, 30 Sep 2020, p 28 lines 3–4, 26–31, p 29 lines 1–8.

⁴¹ Transcript, 30 Sep 2020, p 28, line 4.

⁴² Transcript, 30 Sep 2020, p 29 line 24.

⁴³ Transcript, 30 Sep 2020, p 29 lines 29–31, p 30 lines 1–6.

⁴⁴ Transcript, 30 Sep 2020, p 29 lines 21–24, p 30 lines 25–27.

the T-shirt, the hand was immediately placed under her shorts and panties.⁴⁵ The complainant also testified that, when she opened her eyes briefly upon feeling this person inserting two fingers into her vagina, she saw this person wearing the same dark blue-coloured shirt that had been worn by the male person who approached her in the Toilet on the first occasion (see also [8] above).⁴⁶ On both occasions when she was inappropriately touched, she did not have the strength to physically resist what the male person was doing, or to say anything to him.⁴⁷ She did not consent to the touching of her breast or the digital penetration.⁴⁸ These acts form the basis of the second and third charges (see [1] above).

11 When the complainant opened her eyes again, she found that she was alone in Julniee's room.⁴⁹ She again felt the urge to vomit, and managed to get up and make her way back to the Toilet.⁵⁰ There, she continued to vomit.⁵¹ She then heard the same male voice again, asking her, "[V], are you okay?", to which she did not respond.⁵² At that time, she was kneeling on the floor in front of the toilet bowl with her arms over the toilet bowl.⁵³ She felt that the male person had positioned himself behind her.⁵⁴ The complainant then felt the male person

⁴⁵ Transcript, 30 Sep 2020, p 30 lines 23–31, p 31 lines 1–6.

⁴⁶ Transcript, 30 Sep 2020, p 30 lines 25–29; p 31 lines 25–28.

⁴⁷ Transcript, 30 Sep 2020, p 32 lines 1–13.

⁴⁸ Transcript, 30 Sep 2020, p 32 lines 14–16.

⁴⁹ Transcript, 30 Sep 2020, p 33 lines 20–21.

⁵⁰ Transcript, 30 Sep 2020, p 33 lines 21–22.

⁵¹ Transcript, 30 Sep 2020, p 34 line 16.

⁵² Transcript, 30 Sep 2020, p 34 lines 17–18.

⁵³ Transcript, 30 Sep 2020, p 34 line 24.

⁵⁴ Transcript, 30 Sep 2020, p 35 line 6.

pulling down her shorts and panties together at the same time,⁵⁵ and trying to insert his penis into her vagina.⁵⁶ All this while, the complainant remained kneeling in front of the toilet bowl.⁵⁷ She tried to push him away with her left hand,⁵⁸ which resulted in her falling to the right side of the toilet bowl.⁵⁹ There, she remained in a kneeling position, with her upper body supported by her arms on the floor.⁶⁰ The male person then placed his hands on her hips while behind her, lifted her up and inserted his penis into her anus.⁶¹ She cried out loud that she was in pain.⁶² Despite this, the male person thrust his penis in and out several times, before stopping.⁶³ He then left the Toilet, leaving the complainant there alone.⁶⁴ The complainant did not consent to the act of penetration by the male person.⁶⁵ This act of penetration forms the basis of the first charge (see [1] above).

12 Throughout the events described (see [8]–[11] above), the complainant’s evidence is that she did not get a good look at the face of the assailant.⁶⁶ However, she was able to say that he was about the same build as

⁵⁵ Transcript, 30 Sep 2020, p 34 lines 17–18 and p 35 lines 9–10.

⁵⁶ Transcript, 30 Sep 2020, p 35 lines 12–13, p 36 lines 2–5.

⁵⁷ Transcript, 30 Sep 2020, p 35 line 3.

⁵⁸ Transcript, 30 Sep 2020, p 35 line 14, p 37 lines 4–6; 1 Oct 2020, p 139 lines 21–25.

⁵⁹ Transcript, 30 Sep 2020, p 35 lines 14–17.

⁶⁰ Transcript, 30 Sep 2020, p 35 lines 27–29.

⁶¹ Transcript, 30 Sep 2020, p 37 lines 17–19.

⁶² Transcript, 30 Sep 2020, p 37 lines 19–20.

⁶³ Transcript, 30 Sep 2020, p 39 lines 14–15.

⁶⁴ Transcript, 30 Sep 2020, p 41 lines 13 and 25–27.

⁶⁵ Transcript, 30 Sep 2020, p 40 lines 21–22.

⁶⁶ Transcript, 30 Sep 2020, p 15 lines 17 and 23–24, p 26 lines 29–31, p 27 lines 1–3.

the accused, and was wearing a dark blue-coloured shirt.⁶⁷ She believed that the accused was her assailant, but could not be sure.⁶⁸

13 The complainant continued to vomit in the Toilet until Julniee came to the Toilet to check on her.⁶⁹ Julniee helped her up and brought her back to her room.⁷⁰ According to her evidence, the complainant did not tell Julniee then about what had happened because she did not have the strength to do so.⁷¹ They both fell asleep on Julniee’s bed.⁷²

14 Later that morning, after 8.00am, the complainant woke up and felt pain in her anus.⁷³ She then called a close friend, “[D]”, and told her that she had been assaulted.⁷⁴ More specifically, she told [D] that she had been penetrated in the anus.⁷⁵ [D] told the complainant to tell Julniee what happened.⁷⁶ The complainant explained in her testimony that she did not dare to do so because she believed that it was the accused who was responsible for the assault and she was afraid of how Julniee would react.⁷⁷ [D] told the complainant to pass the

⁶⁷ Transcript, 30 Sep 2020, p 15 line 18, p 30 lines 26–27, p 31 lines 12–15.

⁶⁸ Transcript, 30 Sep 2020, p 15 lines 27–31, p 24 lines 8–10 and 24–25, p 27 lines 4–8, p 30 lines 25–29, p 32 line 23, p 34 line 16, p 41 lines 22–24.

⁶⁹ Transcript, 30 Sep 2020, p 41 lines 27–29.

⁷⁰ Transcript, 30 Sep 2020, p 41 lines 29–30.

⁷¹ Transcript, 30 Sep 2020, p 42 lines 7–12.

⁷² Transcript, 30 Sep 2020, p 42 lines 14–17.

⁷³ Transcript, 30 Sep 2020, p 42 lines 23–27.

⁷⁴ Transcript, 30 Sep 2020, p 42 line 28, p 43 lines 16–25.

⁷⁵ Transcript, 30 Sep 2020, p 44 line 6.

⁷⁶ Transcript, 30 Sep 2020, p 43 lines 24–25.

⁷⁷ Transcript, 30 Sep 2020, p 43 line 31, p 44 lines 20–25.

phone to Julniee.⁷⁸ The complainant woke Julniee up, and passed the phone to her.⁷⁹ After speaking with [D] on the phone, Julniee passed the phone back to the complainant and went back to sleep.⁸⁰ The complainant was not aware of what Julniee and [D] spoke about over the phone.⁸¹ The complainant could not remember what Julniee had said while on the phone with [D], or what Julniee had told her after speaking with [D] on the phone.⁸² She also could not remember if she told Julniee anything after the phone call ended.⁸³ The complainant then changed out of the T-shirt and shorts into her dress from the night before, and left the Flat at about 9.28am.⁸⁴ As she lived within walking distance from the Flat, she then walked home.⁸⁵ She did not see anyone in the Flat that morning, except for Julniee.⁸⁶

15 After reaching her home, the complainant took a shower.⁸⁷ While showering, she felt soreness in her anus, which persisted for a few hours.⁸⁸ That day, she also spoke to and exchanged messages over WhatsApp with a few close friends. She informed [D] that she was having a panic attack and also about the

78 Transcript, 30 Sep 2020, p 43 lines 26–27, p 44 line 2.

79 Transcript, 30 Sep 2020, p 43 lines 26–27, p 44 lines 16–17.

80 Transcript, 30 Sep 2020, p 45 lines 30–31.

81 Transcript, 30 Sep 2020, p 44 lines 17–18.

82 Transcript, 30 Sep 2020, p 45 lines 24–30, p 46 lines 2–4.

83 Transcript, 30 Sep 2020, p 46 lines 21–23.

84 Transcript, 30 Sep 2020, p 46 lines 26–27, p 47 lines 1 and 10–12.

85 Transcript, 30 Sep 2020, p 48 lines 6–12.

86 Transcript, 30 Sep 2020, p 47 line 24, p 48 lines 3–5.

87 Transcript, 30 Sep 2020, p 49 lines 23–24.

88 Transcript, 30 Sep 2020, p 49 lines 28–29, p 50 lines 6–9.

pain she was feeling from a bruise on her forehead.⁸⁹ She also told her then-boyfriend, “[E]”, that she had been penetrated in the anus while at the Flat, and that she suspected that it was the accused who was responsible for that.⁹⁰ The complainant also called another friend, “[F]”, and told him about the assault.⁹¹

16 On 26 and 27 December 2016, the complainant and Julniee exchanged many WhatsApp messages concerning the details of what had happened during the early hours of 26 December 2016. Among the many things that were said over these messages, Julniee told the complainant that she would find out who was responsible for the assault.⁹² Julniee also repeatedly asked whether the complainant intended to make a police report, and expressed the hope that the complainant would not do so.⁹³ In her reply to one of those messages sent at around 5.16pm, the complainant said “[b]ecause you want [to protect] your brother if it was him that did it?”⁹⁴

17 Then, at around 6.01pm on 27 December 2016, Julniee told the complainant over WhatsApp messages that she had found out who the assailant was.⁹⁵ Julniee said that it was the accused,⁹⁶ and that he had admitted to having “fingered” the complainant, but that “[h]e say that he didn’t fuck you”.⁹⁷ She

⁸⁹ Agreed Bundle (“AB”) at pp 192 and 208–209.

⁹⁰ AB at pp 156–157.

⁹¹ Transcript, 29 Sep 2020, p 106 lines 19–32, p 107 lines 1–6.

⁹² AB at pp 230 and 242–244; Transcript, 13 Sep 2021, p 20 lines 10–24.

⁹³ AB at pp 250–251 and 255–261.

⁹⁴ AB at p 250.

⁹⁵ AB at p 263.

⁹⁶ AB at p 264.

⁹⁷ AB at p 265.

also told the complainant that she was ashamed to face the complainant after finding out that her brother was responsible for the assault.⁹⁸ Later that evening, at 10.38pm, the complainant made a police report.⁹⁹

The evidence of the complainant's friends

18 [D], [E] and [F] were all called by the Prosecution to give evidence. They testified as to their phone conversations and WhatsApp exchanges with the complainant on 26 December 2016. All of them provided consistent accounts that the complainant was emotional, anxious and upset about what had happened to her.

19 Of particular note is [D]'s evidence. She testified that the complainant had called her at about 8.00am on the morning of 26 December 2016.¹⁰⁰ The complainant told [D] that she felt pain at the area of her anus.¹⁰¹ The complainant told [D] that she thought that she “was anal[led]”, meaning that she had been sexually penetrated in the anus.¹⁰² The complainant also told [D] that she believed that the accused was responsible for the assault because she recognised his voice.¹⁰³ [D] testified that she asked the complainant to pass the phone to Julniee.¹⁰⁴ [D] then told Julniee what had happened to the complainant.¹⁰⁵

⁹⁸ AB at p 269.

⁹⁹ AB at p 14.

¹⁰⁰ Transcript, 29 Sep 2020, p 70 lines 9–10.

¹⁰¹ Transcript, 29 Sep 2020, p 70 lines 18–22.

¹⁰² Transcript, 29 Sep 2020, p 70 lines 22 and 32, p 71 lines 8–9.

¹⁰³ Transcript, 29 Sep 2020, p 70 lines 26–29.

¹⁰⁴ Transcript, 29 Sep 2020, p 71 lines 22–24, p 72 lines 2–3 and 16–17.

¹⁰⁵ Transcript, 29 Sep 2020, p 72 lines 19–22.

Julniee's evidence

20 Julniee was also called as a witness by the Prosecution. As the Deputy Public Prosecutor (“DPP”) said in his oral closing submissions, Julniee’s evidence plays “a very important role” in the Prosecution’s case.¹⁰⁶ Given the WhatsApp messages she had sent to the complainant on 27 December 2016 (see [17] above), this was hardly surprising.

21 Julniee’s evidence was consistent with that of the complainant’s in describing the events leading up to the alleged assault. She confirmed the complainant’s evidence that the latter was groggy and nauseous by the time they reached the Flat.¹⁰⁷ She described how she was initially with the complainant at the Toilet while the complainant was vomiting.¹⁰⁸ Julniee also helped change the complainant out of her dress, and into the T-shirt and boxer shorts that the complainant came to be wearing when she was sexually assaulted.¹⁰⁹

22 Julniee gave evidence that, after she helped the complainant change, the complainant continued vomiting.¹¹⁰ She then left the complainant in the Toilet to vomit.¹¹¹ She went to the accused’s room and asked to speak to Ruben in private.¹¹² She had a misunderstanding with Ruben concerning their relationship, and wanted to speak to Ruben to clear things up.¹¹³ The accused

¹⁰⁶ Transcript, 8 Apr 2022, p 8 lines 27–29.

¹⁰⁷ Transcript, 13 Sep 2021, p 5 lines 24 and 25–28, p 6 line 3.

¹⁰⁸ Transcript, 13 Sep 2021, p 6 lines 3–20.

¹⁰⁹ Transcript, 13 Sep 2021, p 7 lines 21–23.

¹¹⁰ Transcript, 13 Sep 2021, p 8 lines 14–15.

¹¹¹ Transcript, 13 Sep 2021, p 8 line 20.

¹¹² Transcript, 13 Sep 2021, p 8 lines 20–22.

¹¹³ Transcript, 13 Sep 2021, p 9 lines 8–21.

left the room so that she and Ruben could speak in private.¹¹⁴ At that time, Alex was asleep on the floor of that room.¹¹⁵ At this juncture, I should add that Julniee also testified that she was in the accused's room speaking with Ruben for five minutes.¹¹⁶ Julniee also testified that when the accused left his room, he had left the room door slightly open.¹¹⁷ This is consistent with the accused's evidence.¹¹⁸ This may suggest that, when Julniee had her private conversation with Ruben in the accused's room (during which the alleged sexual assault had taken place), the accused's room door had been *open* and not shut as the complainant has testified (see [9] above). However, I note that there is evidence to the contrary. In an investigation statement recorded from Julniee on 28 April 2017, Julniee stated that after she had "talked to Ruben for a while", the accused returned to his room to check if she and Ruben were done. When she informed the accused that they were not done, the accused then closed his room door and left.¹¹⁹ Thus, according to Julniee's investigation statement, the accused had initially left his room door ajar but later shut it after he returned to the room and saw that Ruben and Julniee were still talking. When Julniee was cross-examined by the Prosecution on this part of her investigation statement (see [29] below), she testified that she could not recall that the accused had returned to his room to check on her and Ruben and shut the room door.¹²⁰ Her oral evidence is that the accused's room door had been left open throughout the entire duration of her

¹¹⁴ Transcript, 13 Sep 2021, p 9 line 7.

¹¹⁵ Transcript, 13 Sep 2021, p 8 lines 30–32.

¹¹⁶ Transcript, 13 Sep 2021, p 11 lines 14–32; p 12 line 1.

¹¹⁷ Transcript, 13 Sep 2021, p 9 lines 22–24.

¹¹⁸ Transcript, 29 Sep 2021, p 32 lines 27–28.

¹¹⁹ Exhibit P22.

¹²⁰ Transcript, 14 Sep 2021, p 72 lines 18–32, p 73 lines 1–5.

private conversation with Ruben.¹²¹ For reasons that will be explained later in this judgment (see [102] and [131] below), I prefer Julniee’s evidence as set out in her investigation statement and reject her oral testimony as an untruth, and I find that the accused’s room door had in fact been closed during part of Julniee’s private conversation with Ruben.

23 After their private conversation in the accused’s room, Julinee and Ruben went to the kitchen to smoke.¹²² There, they saw the accused standing near the sink area.¹²³ According to Julniee, the accused said words to the effect that her friend was “damn drunk”.¹²⁴ After Ruben finished his cigarette and left the kitchen, Julniee checked on the complainant, and found that the complainant was still vomiting into the toilet bowl while in the same kneeling position as she had left her.¹²⁵ Julniee’s evidence is that the complainant appeared to be in a worse state than before as she could not stand up or even respond to Julniee.¹²⁶ Julniee then helped the complainant up, cleaned up the complainant’s mouth, and brought the complainant to her bedroom.¹²⁷ They then fell asleep on Julniee’s bed.¹²⁸

¹²¹ Transcript, 14 Sep 2021, p 19 lines 18–21.

¹²² Transcript, 13 Sep 2021, p 12 lines 3–4.

¹²³ Transcript, 13 Sep 2021, p 12 lines 5–7.

¹²⁴ Transcript, 13 Sep 2021, p 12 line 18.

¹²⁵ Transcript, 13 Sep 2021, p 12 lines 31–32, p 13 lines 1–5.

¹²⁶ Transcript, 13 Sep 2021, p 13 lines 9–18.

¹²⁷ Transcript, 13 Sep 2021, p 14 lines 1–2.

¹²⁸ Transcript, 13 Sep 2021, p 14 lines 10–16.

24 Julniee also gave evidence that she was woken up a few hours later by the complainant, who told her that [D] wanted to speak to her.¹²⁹ [D] told Julniee over the phone that something had happened to the complainant, and that the complainant’s “ass” hurts.¹³⁰ Julniee brushed off [D] and said that they would talk later.¹³¹ Julniee said that she reacted that way because she was still sleepy.¹³² Julniee’s evidence is that did not ask [D] for the details of what happened to the complainant.¹³³ Julniee also did not ask the complainant about what happened after she was done speaking with [D].¹³⁴ Julniee told the complainant that they would speak about what happened later.¹³⁵ After hearing this, the complainant did not say anything to her, but wanted to leave the Flat and return home.¹³⁶ Julniee tried to get the complainant to go back to sleep.¹³⁷ However, the complainant was insistent on leaving, and she left the Flat soon thereafter.¹³⁸

25 After the complainant left the Flat, Julniee tried to go back to sleep but was unable to do so.¹³⁹ Julniee said that she remained lying on her bed and

¹²⁹ Transcript, 13 Sep 2021, p 14 lines 17–29.

¹³⁰ Transcript, 13 Sep 2021, p 14 lines 31–32.

¹³¹ Transcript, 13 Sep 2021, p 15 line 4.

¹³² Transcript, 13 Sep 2021, p 15 line 4.

¹³³ Transcript, 13 Sep 2021, p 15 lines 13–15 and 21–24.

¹³⁴ Transcript, 13 Sep 2021, p 16 lines 3–8.

¹³⁵ Transcript, 13 Sep 2021, p 16 lines 22–24.

¹³⁶ Transcript, 13 Sep 2021, p 16 lines 29–30, p 17 line 1.

¹³⁷ Transcript, 13 Sep 2021, p 17 line 2.

¹³⁸ Transcript, 13 Sep 2021, p 17 lines 2–3 and 15–16.

¹³⁹ Transcript, 13 Sep 2021, p 18 lines 11–12.

eventually only got out of bed sometime before lunch.¹⁴⁰ Julniee also testified that after she got up, she did not follow up with [D] and the complainant about what [D] had told her earlier that morning.¹⁴¹

26 In court, Julniee was showed a WhatsApp message which she sent to the complainant at 9.56am on 26 December 2016, in which she told the complainant, “I’ll get shit settled when everyone’s sober ok?”¹⁴² She testified that, after having heard what [D] had told her over the phone, she knew that something serious had happened to the complainant.¹⁴³

27 Julniee sent WhatsApp messages to the complainant later that day (on 26 December 2016), in which she told the complainant that she had tried to speak to her brother, Ruben, and Alex to ascertain who was responsible for assaulting the complainant. According to Julniee’s WhatsApp messages, none of them knew anything about what had happened.¹⁴⁴ However, in her testimony, Julniee claimed that this was all a lie, because she did not actually speak to any of the three of them.¹⁴⁵ She said in court that she had lied because she was hoping that, by telling the complainant that she did not know who was responsible for the assault, the complainant would come to the view that there was “no conclusion” and so would not continue to pursue the matter.¹⁴⁶ Julniee claimed that she did not want to find out what had happened to the complainant

¹⁴⁰ Transcript, 13 Sep 2021, p 18 lines 13–21.

¹⁴¹ Transcript, 13 Sep 2021, p 18 lines 21–23.

¹⁴² Transcript, 13 Sep 2021, p 20 lines 4–8.

¹⁴³ Transcript, 13 Sep 2021, p 21 lines 1–12.

¹⁴⁴ AB at pp 231–232.

¹⁴⁵ Transcript, 13 Sep 2021, p 24 lines 18–24, p 25 lines 9–11.

¹⁴⁶ Transcript, 13 Sep 2021, p 25 lines 4–7; p 26 lines 22–26.

because in her view, it was “very hard for something that big to happen ... during that few minutes”.¹⁴⁷ In this regard, she was referring to the period of time in which the complainant had been out of her sight and while she was in the accused’s room speaking to Ruben.

28 As for the WhatsApp message to the complainant sent in the evening of 27 December 2016, where Julniee said that she found out that the accused had been responsible for the assault, but that the accused only admitted to “fingering” the complainant (see [17] above), her evidence in court was that she was lying in this and her other messages to the complainant. She did this so that the complainant would drop the idea of reporting the assault to the police, which the latter had said she wanted to do.¹⁴⁸

29 In the light of Julniee’s evidence in court, the Prosecution applied to cross-examine her on two investigation statements that she had given to the police. There is no dispute that these statements were voluntarily given by Julniee.

30 In Julniee’s investigation statement recorded by Assistant Superintendent Christine Tai (“ASP Tai”) on 28 December 2016 (“the 28 Dec Statement”)¹⁴⁹, she stated that she was in the accused’s room speaking to Ruben in private for about *eight to ten minutes*. She recounted that, when she later saw the accused in the kitchen after speaking to Ruben, the accused had told her that the complainant was very drunk and that he had tried to help her up when “he

¹⁴⁷ Transcript, 13 Sep 2021, p 26 lines 31–32, p 27 lines 1–13.

¹⁴⁸ Transcript, 13 Sep 2021, p 32 lines 24–26.

¹⁴⁹ Exhibit P21.

heard her falling down”. While doing so, the accused said that the complainant “hugged” him.

31 In the 28 Dec Statement, Julniee also stated that she had been woken by the complainant at around 8.00am on 26 December 2016. The complainant passed her mobile phone to Julniee so that she could speak to [D]. The 28 Dec Statement recorded Julniee’s recollection of the conversation with [D] as follows:

[D] told me that something had happened to [the complainant] last night and she felt pain in her butt but she don’t know how to tell me so [D] told me briefly what happened.

32 Julniee also stated in the 28 Dec Statement that, on the evening of 26 December 2016, she had called Ruben to find out what happened, but the latter said he had no idea. The statement also recorded her as saying that she had spoken to the accused, who said that he could not remember anything. Then, on 27 December 2016, Julniee questioned the accused again. The accused told her that, while he was smoking in the kitchen, he heard the complainant fall, so he went into the Toilet to help her up, and while he was helping her get up from the floor of the Toilet, the complainant had thrown herself at him, and they “make out” [*sic*]. Julniee also stated that the accused told her that he and the complainant were kissing, but that he could not remember what happened after that. In the statement, Julniee went on to explain that, in the evening of 27 December 2016, she had told the complainant, through a message, that the accused was responsible for what had happened to her, and she also tried to persuade the complainant not to make a police report.

33 Julniee gave a further investigation statement to ASP Tai on 28 April 2017 (“the 28 Apr Statement”),¹⁵⁰ which I have referred to earlier in this judgment (see [22] above). ASP Tai had shown her the WhatsApp messages which she exchanged with the complainant on 26 and 27 December 2016. These messages had been extracted from the complainant’s mobile phone. ASP Tai then asked Julniee a series of questions and recorded her answers.

Q5) How did you manage to ascertain that it was your brother?

A5) My brother was with me at home and I told him what happened to [V] that morning and he told me that he wants to talk things out.

Q6) What did you brother admit to you?

A6) He cannot recall what he did but he told me that he was drunk too and he say that he didn’t fuck [V] and he only can recall that he fingered her.

...

Q10) I refer to s/r 434 [referring to a WhatsApp message that Julniee had sent to the complainant on 27 December 2016]. You mentioned ‘My brother was hoping you’d talk things out’. [W]hat did your brother tell you?

A10) He wants to settle the matter privately with [V] as both of them were drunk.

Q11) I refer to s/r 437-439 [referring to three WhatsApp messages that Julniee had sent to the complainant on 27 December 2016]. You mentioned ‘He was drunk too’, ‘He say that he didn’t fuck you’, And he only fingered you’. Did your brother admit all these to you?

A11) Yes.

...

Q13) I refer to s/r 479-487 [referring to another series of WhatsApp messages that Julniee had sent to the complainant on 27 December 2016]. You mentioned ‘I’m so ashamed to face you’, ‘After knowing that my

¹⁵⁰ Exhibit P22.

brother did it', 'And I feel like I'm a fucking shitty friend', 'Because I couldn't protect you', 'When it was my own house', 'And my own people', 'I'm so sorry', 'I'm begging you, please don't report police because I don't want my brother to go jail', 'You can do anything else but please don't go to the police. I beg you'. Tell me what you brother has done to [the complainant]?

A13) He cannot what clearly [sic] what happened but he is certain that he didn't penetrate her and other stuff he is not sure and the worst is to finger her so I took the worst.

Q14) I refer to s/r 517 [referring to another WhatsApp message that Julniee had sent the complainant on 28 December 2016]. You mentioned 'My brother just told my family and I his side of story that he didn't penetrate into you. And that you throw yourself at him and yall made out. Max he did was that he fingered you.' Elaborate what do you mean?

A14) After my parents came home, my brother told us he didn't penetrate [V] and [V] had thrown himself at him and they made out and the most he only fingered her.

Q15) How long did you left the complainant in the toilet alone after you changed her out?

A15) Around 5-10 minutes. After I changed her out into my home attire, I went to my brother's room to talk to Ruben. Alex was sleeping in the room so I told my brother to leave as I want some privacy with Ruben. After I talked to Ruben for a while, my brother came in to check if we were done. When I told him that we were not done. He closed the door and left. ...

34 After having reviewed the 28 Dec Statement and the 28 Apr Statement, I accepted that there were material inconsistencies between Julniee's evidence in court and what she had said in her investigation statements. I thus allowed the Prosecution to proceed with their cross-examination of Julniee under s 147(1) of the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA").

35 Under cross-examination by both the Prosecution and later the Defence, Julniee kept to her version of events, which can be summarised as follows.

(a) She insisted that she spoke to Ruben in the accused’s room for less than five minutes.¹⁵¹ She also testified that, when she went to the kitchen after speaking to Ruben, she could not recall that the accused had told her that he tried to help the complainant up from the floor, or that the complainant had hugged him in the process of doing so.¹⁵² She testified that all the accused told her was “your friend damn drunk”.¹⁵³

(b) Julniee also denied that she had been told by [D] over the phone that the complainant had been sexually penetrated in her anus, while the latter was in the Toilet. Julniee claimed that she could only remember that [D] had told her that the complainant had informed [D] that “her [the complainant’s] butt hurts” and that she could not remember anything else that [D] might have told her over the phone.¹⁵⁴

(c) She testified that she did not believe that the complainant had actually been assaulted,¹⁵⁵ but she had sent messages to the complainant that gave the impression that she was trying to find out who the assailant was only to show the complainant that she was concerned.¹⁵⁶ She insisted that she never spoke to Ruben to ask him whether he knew what happened.¹⁵⁷

¹⁵¹ Transcript, 13 Sep 2021, p 38 lines 12–17.

¹⁵² Transcript, 13 Sep 2021, p 38 lines 23–27.

¹⁵³ Transcript, 13 Sep 2021, p 38 lines 28–31.

¹⁵⁴ Transcript, 13 Sep 2021, p 39 lines 5–11; 14 Sep 2021, p 29 lines 20–32, p 30 lines 1–18.

¹⁵⁵ Transcript, 14 Sep 2021, p 41 lines 20–21.

¹⁵⁶ Transcript, 14 Sep 2021, p 41 lines 7–9, p 42 lines 7–8.

¹⁵⁷ Transcript, 13 Sep 2021, p 40 lines 14–19; 14 Sep 2021, p 43 lines 13–16.

(d) She repeatedly denied that the accused had admitted to her or their parents that he had “fingering” the complainant or that he had kissed the complainant.¹⁵⁸ She claimed that, when she showed the accused the complainant’s message about her (Julniee) wanting to protect the accused if he was indeed responsible for the sexual assaults (see [16] above), the accused brushed her off and told her words to the effect that she should “manage [her] own problems”.¹⁵⁹

(e) She claimed that she had subsequently identified the accused as the assailant in her WhatsApp messages to the complainant (see [17] above) because the latter had already assumed that it was him¹⁶⁰ and she wanted to assuage the complainant. She claimed that the complainant had assured her that no police report would be made once the assailant was identified.¹⁶¹

(f) Julniee also testified that she had lied to ASP Tai in many parts of her two investigation statements, or that she could not recall many of the things she told ASP Tai in those statements.

36 On the basis of her inconsistent evidence in court, the Prosecution submits that Julniee’s credit should be impeached pursuant to s 157(c) of the EA, and full weight should be given to the 28 Dec Statement and the 28 Apr Statement under s 147(3) of the EA. This is an important issue in this case, which I will return to later in the course of this judgment.

¹⁵⁸ Transcript, 13 Sep 2021, p 51 lines 9–14; 14 Sep 2021, p 67 lines 23–31.

¹⁵⁹ Transcript, 13 Sep 2021, p 40 lines 28–32; pp 41–43; p 44 lines 1–27.

¹⁶⁰ Transcript, 13 Sep 2021, p 49 lines 24–32, p 50 lines 1–12.

¹⁶¹ Transcript, 13 Sep 2021, p 50 line 1.

Forensic and medical evidence

37 Two medical professionals, who had examined the complainant at various times after she had made the police report (see [17] above), were also called by the Prosecution to give evidence. These were Dr Koh Meiling Serena (“Dr Koh”) from KK Women’s and Children’s Hospital, and Dr Zheng Zhimin (“Dr Zheng”) from the Institute of Mental Health. The Prosecution relies on the complainant’s account of the events in relation to the alleged offences given to Dr Koh and Dr Zheng, and as recorded in their medical reports,¹⁶² and submits that the complainant has maintained a consistent version of the events throughout.

38 The Prosecution also called a senior forensic scientist from the Health Sciences Authority (“HSA”), Mr Ping Shueh Yang (“Mr Ping”), to give evidence. He had examined, amongst other items, the T-shirt and the boxer shorts worn by the complainant at the time of the assault and prepared a report on his findings.¹⁶³ Mr Ping’s evidence is that the exterior back of the T-shirt worn by the complainant tested positive for acid phosphatase, prostate-specific antigen, and semenogelin. From this result, Mr Ping could confirm that semen was present at the exterior back of the T-shirt. Further, from an examination of the DNA, the semen found matched the DNA profile of the accused.

39 At the conclusion of the Prosecution’s case, I called for the Defence.

¹⁶² Exhibits P32 and P24.

¹⁶³ Exhibit P31A.

The Defence's case

40 The accused elected to give evidence. He testified that he is the managing director and co-founder of a food and beverage chain, the owner of a retail footwear business, and a partner in a bar and bistro business.¹⁶⁴ He was 21 years-old at the time of the alleged offences.

41 From 2014 up to sometime in 2017, his girlfriend at that time was living with him at the Flat, where he stayed with his parents and his sister.¹⁶⁵ His girlfriend was a flight attendant, and was referred to by him (and others) as “Pang”.¹⁶⁶ She stayed in the same room as him.

42 On the night of 25 December 2016, he had gone drinking with his business partner in the retail footwear business, one Kelvin Tan (“Kelvin”), and Ruben and Alex. They went to a club at Jalan Sultan, which he described as a “Thai disco”.¹⁶⁷ They were at the club from around midnight until around 4.00am, chatting and playing drinking games.¹⁶⁸ When the club closed, Ruben and Alex headed back home with the accused as they had decided to stay over with him at the Flat.¹⁶⁹ Pang was working on a flight at that time. She had flown off on a flight to Australia on the night of 25 December 2016.¹⁷⁰

¹⁶⁴ Transcript, 29 Sep 2021, p 13 lines 12–31.

¹⁶⁵ Transcript, 29 Sep 2021, p 14 lines 26–27, p 17 lines 3–16.

¹⁶⁶ Transcript, 29 Sep 2021, p 15 lines 29–31.

¹⁶⁷ Transcript, 29 Sep 2021, p 18 lines 6–31, p 19 lines 1–29.

¹⁶⁸ Transcript, 29 Sep 2021, p 19 lines 30–31, p 20 lines 5–29.

¹⁶⁹ Transcript, 29 Sep 2021, p 21 lines 27–28, p 22 lines 1–4.

¹⁷⁰ Transcript, 29 Sep 2021, p 26 lines 3–10.

43 Once in the accused's bedroom, Alex fell asleep almost immediately on the floor.¹⁷¹ The accused and Ruben were planning to share the bed.¹⁷² Before he and Ruben fell asleep, Julniee knocked on the room door¹⁷³ to inform the accused that she had just come home.¹⁷⁴ Julniee then shut the door and left.¹⁷⁵

44 Not long after, Julniee knocked again on the door.¹⁷⁶ This time she asked to speak to Ruben alone, and for the accused to give them some privacy.¹⁷⁷ The accused testified that he was aware that Julniee and Ruben had an "affair" while Julniee was dating someone else.¹⁷⁸ The accused then came out of his room, and left the door slightly ajar.¹⁷⁹ He decided to go to the kitchen to smoke.¹⁸⁰ He was dressed at this time in a dark blue-coloured shirt, and his boxer briefs.¹⁸¹

45 While he was sitting in the kitchen smoking, the accused claimed that he heard a "thud" coming from the toilet at the service balcony area (*ie*, the Toilet).¹⁸² He made his way to the area outside the Toilet to take a look,¹⁸³ and

¹⁷¹ Transcript, 29 Sep 2021, p 25 lines 12–15.

¹⁷² Transcript, 29 Sep 2021, p 25 lines 26–28.

¹⁷³ Transcript, 29 Sep 2021, p 27 lines 16–17.

¹⁷⁴ Transcript, 29 Sep 2021, p 27 lines 29–31, p 28 lines 1–6.

¹⁷⁵ Transcript, 29 Sep 2021, p 28 lines 26–28.

¹⁷⁶ Transcript, 29 Sep 2021, p 28 lines 29–31.

¹⁷⁷ Transcript, 29 Sep 2021, p 29 lines 7–17.

¹⁷⁸ Transcript, 29 Sep 2021, p 30 lines 7–31, p 31 lines 1–9.

¹⁷⁹ Transcript, 29 Sep 2021, p 32 lines 24–28.

¹⁸⁰ Transcript, 29 Sep 2021, p 33 line 14.

¹⁸¹ Transcript, 29 Sep 2021, p 35 lines 2–4.

¹⁸² Transcript, 29 Sep 2021, p 41 lines 30–31, p 42, p 43 lines 1–3.

¹⁸³ Transcript, 29 Sep 2021, p 43 lines 13–31, p 44 lines 1–4.

saw a “girl” there who was sprawled on the floor of the Toilet¹⁸⁴ on the right side of the toilet bowl.¹⁸⁵ She had her limbs and body in contact with the floor, her face facing towards the floor of the Toilet (the accused’s evidence is that her face was near to the floor but he could not see if it was actually touching the floor), and her back facing the entrance of the Toilet.¹⁸⁶ He further testified that she looked disoriented.¹⁸⁷ The impression he had was that she had fallen to the floor.¹⁸⁸ The accused’s evidence is that he remembered her knees leaning towards the floor but that he could not determine if she had been sitting down or kneeling on the floor of the Toilet.¹⁸⁹ He assumed that she was the complainant because Juniee had earlier sent a message to their family’s WhatsApp group chat that the complainant would be staying over at the Flat that night.¹⁹⁰

46 According to the accused, he first stood outside the Toilet and called out to the complainant to ask whether she was okay, but there was no response.¹⁹¹ He then went into the Toilet, tapped on her right shoulder, and asked her again whether she was okay. Again, there was no response.¹⁹²

¹⁸⁴ Transcript, 29 Sep 2021, p 43 lines 22–23, p 44 lines 7–10.

¹⁸⁵ Transcript, 29 Sep 2021, p 47 lines 12–16.

¹⁸⁶ Transcript, 29 Sep 2021, p 44 lines 12–31, p 45 lines 1–24.

¹⁸⁷ Transcript, 29 Sep 2021, p 44 line 12.

¹⁸⁸ Transcript, 29 Sep 2021, p 44 lines 12–16.

¹⁸⁹ Transcript, 29 Sep 2021, p 47 lines 1–3.

¹⁹⁰ Transcript, 29 Sep 2021, p 49 lines 29–31, p 50 lines 1–24.

¹⁹¹ Transcript, 29 Sep 2021, p 49 lines 10–12.

¹⁹² Transcript, 29 Sep 2021, p 49 lines 12–28.

47 The accused’s testimony was that he then used the palm of his hands and placed them under the complainant’s armpits to support her into an upright position.¹⁹³ In the process of doing so, he said that the complainant’s right arm swung around towards him, and she hugged him for support.¹⁹⁴ When this happened, their faces came very close together, almost into contact.¹⁹⁵ The complainant was using her right arm to hold on to his left shoulder for support, and their bodies were in physical contact.¹⁹⁶ The accused then managed to rest the complainant in a “comfortable” sitting position, next to the toilet bowl, with her back against the wall of the Toilet.¹⁹⁷ He then left the Toilet and went back to the kitchen to carry on smoking.¹⁹⁸

48 After a short time, Julniee and Ruben came to the kitchen. The accused’s evidence is that he told Julniee that her friend was “damn drunk”.¹⁹⁹ The accused testified that Julniee did not say anything in response.²⁰⁰ After that, he finished up smoking his cigarette and went back to his room to sleep.²⁰¹ He woke up sometime between 9.00am to 10.00am.²⁰² He then left the Flat for work at around 10.00am.²⁰³ He did not see anyone at the Flat after he woke up

¹⁹³ Transcript, 29 Sep 2021, p 50 lines 26–27.

¹⁹⁴ Transcript, 29 Sep 2021, p 50 lines 27–31, p 51 lines 1–5.

¹⁹⁵ Transcript, 29 Sep 2021, p 51 lines 23–31, p 52 lines 1–2.

¹⁹⁶ Transcript, 29 Sep 2021, p 52 lines 13–31, p 53, p 54 lines 1–3.

¹⁹⁷ Transcript, 29 Sep 2021, p 54 lines 4–6, p 55 lines 1–19.

¹⁹⁸ Transcript, 29 Sep 2021, p 56 lines 15–16.

¹⁹⁹ Transcript, 29 Sep 2021, p 57 lines 28–31, p 58 lines 1–11.

²⁰⁰ Transcript, 29 Sep 2021, p 58 lines 21–23.

²⁰¹ Transcript, 29 Sep 2021, p 58 lines 26–30.

²⁰² Transcript, 29 Sep 2021, p 60 lines 1–15.

²⁰³ Transcript, 29 Sep 2021, p 61 lines 2–4.

and before he left, other than Ruben and Alex, who were still sleeping in his room.²⁰⁴ The accused's evidence is that the rest of the day passed uneventfully with him being at work as was usual.²⁰⁵

49 On 27 December 2016, Pang returned to Singapore in the afternoon.²⁰⁶ The accused and Pang were in his room at the Flat discussing what happened when she was away. According to the accused, when he told Pang that he had gone drinking with his friends at a "Thai disco", she flew into a rage.²⁰⁷ They had a heated argument in his room.²⁰⁸ While this was happening, Julniee knocked on the door of his room, and asked to speak to him.²⁰⁹ Julniee told him that someone "fucked" the complainant,²¹⁰ and showed him some WhatsApp messages exchanged between her and the complainant.²¹¹ The accused testified that the gist of the WhatsApp message shown to him was the complainant questioning Julniee that "if it was your brother, you want to protect him".²¹² As the accused was preoccupied with his ongoing argument with Pang, his evidence is that he was not bothered or concerned about what Julniee was telling him. He told Julniee that this had nothing to do with him and told Julniee to go

²⁰⁴ Transcript, 29 Sep 2021, p 60 lines 16–31, p 61 lines 1–15.

²⁰⁵ Transcript, 29 Sep 2021, p 81 lines 30–31, p 82 lines 1–6.

²⁰⁶ Transcript, 29 Sep 2021, p 82 lines 12–21.

²⁰⁷ Transcript, 29 Sep 2021, p 83 lines 12–24.

²⁰⁸ Transcript, 29 Sep 2021, p 83 lines 28–31, p 84 lines 1–3.

²⁰⁹ Transcript, 29 Sep 2021, p 84 lines 15–18.

²¹⁰ Transcript, 29 Sep 2021, p 84 lines 19–27.

²¹¹ Transcript, 29 Sep 2021, p 84 lines 29–31, p 85 lines 1–5.

²¹² Transcript, 29 Sep 2021, p 85 lines 22–24.

and “settle” things with the complainant.²¹³ In short, he brushed off what Julniee said to him.

50 Not long after, when he left his room to take a break from his argument with Pang,²¹⁴ Julniee told him that she had told the complainant that he was the one who was responsible for the assault on the complainant.²¹⁵ The accused’s evidence is that he was a bit “lost” when he heard this.²¹⁶ Julniee showed him some WhatsApp messages that she had sent to the complainant, which identified him as the assailant.²¹⁷ The accused said that he then shouted at Julniee, “you crazy? Do you know what you are even doing”,²¹⁸ He testified that he hurled some vulgarities at Julniee, and told her she was ruining his future.²¹⁹ He then returned to his room to get a cigarette so he could calm himself down.²²⁰ After he told Pang about what Julniee had done, he and Pang started having another heated argument.²²¹ The accused then decided to leave the Flat.²²² The accused also testified that, all this while, his parents were at work and not in the Flat.²²³

²¹³ Transcript, 29 Sep 2021, p 85 lines 9–31.

²¹⁴ Transcript, 29 Sep 2021, p 87 lines 7–16.

²¹⁵ Transcript, 29 Sep 2021, p 88 lines 12–28.

²¹⁶ Transcript, 29 Sep 2021, p 88 line 29.

²¹⁷ Transcript, 29 Sep 2021, p 88 line 30.

²¹⁸ Transcript, 29 Sep 2021, p 89 lines 1–3.

²¹⁹ Transcript, 29 Sep 2021, p 89 lines 3–11.

²²⁰ Transcript, 29 Sep 2021, p 89 lines 11–13.

²²¹ Transcript, 29 Sep 2021, p 89 lines 21–25, p 90 lines 7–28.

²²² Transcript, 29 Sep 2021, p 92 lines 3–8.

²²³ Transcript, 29 Sep 2021, p 92 lines 1–2.

51 The accused testified that he got into his car and drove around aimlessly for a few hours.²²⁴ He had a lot on his mind. He was angry because Julniee had framed him with this serious allegation. He was also upset with Pang, who appeared to believe that he was responsible for something that happened to the complainant. He felt very disappointed and lost.²²⁵

52 The accused testified that he eventually stopped his car somewhere in Kallang, and stood by the roadside.²²⁶ During this time, he had received several phone calls and messages on his mobile phone from Pang, his parents and his business partner, Kelvin.²²⁷ He did not answer any of the calls,²²⁸ although it appears that he replied to some of the messages he received. The accused spent a significant portion of his evidence-in-chief explaining the context of some of the WhatsApp messages he had exchanged with his father and Pang during this period after he left the Flat and before he eventually returned to home. I will delve into his explanations and the contents of his WhatsApp message exchanges in more detail later in the course of this judgment.

53 The accused returned to the Flat past midnight on 28 December 2016, after he was informed by his father that some police officers were at the Flat waiting for him.²²⁹

²²⁴ Transcript, 29 Sep 2021, p 94 lines 1–2.

²²⁵ Transcript, 29 Sep 2021, p 94 lines 1–11.

²²⁶ Transcript, 29 Sep 2021, p 94 lines 14–23.

²²⁷ Transcript, 29 Sep 2021, p 94 lines 26–31.

²²⁸ Transcript, 29 Sep 2021, p 95 lines 1–2.

²²⁹ Transcript, 1 Oct 2021, p 27 lines 28–31, p 28 lines 1–27.

54 There are two other aspects of the accused’s evidence that bears mention.

55 The first involves his explanation for the presence of his semen on exterior back of the T-shirt (see [38] above). The accused gave evidence that he and Pang lived like “husband and wife” in the Flat. According to him, he and Pang would have sex on a daily basis whenever she was not working on a flight.²³⁰ They would do so at various locations in the flat, including in the Toilet while they were showering together.²³¹ When he did so, he would ejaculate on the floor or wall of the Toilet.²³² The case for the Defence is that the accused’s semen might have been on the floor or wall of the Toilet, or on some other article of clothing in the laundry basket, and from there, the semen was transferred to the exterior back of the T-shirt. That might have happened when the T-shirt came into contact with the floor or wall of the Toilet or some other article of clothing in the laundry basket. The police had seized the T-shirt from the laundry basket in the service balcony area, when they searched the Flat in the early hours of 28 December 2016.

56 The other aspect of the accused’s evidence that bears mentioning is that he denied having admitted to Julniee or his parents on 27 December 2016 that he had “fingered” or kissed the complainant. He disputed the account given by Julniee in the 28 Apr Statement that he had admitted to “fingering” the complainant. He insisted that Julniee was trying to frame him. As for her motive for doing so, the accused explained that he often acted in a controlling

²³⁰ Transcript, 29 Sep 2021, p 80 lines 15–22.

²³¹ Transcript, 29 Sep 2021, p 80 lines 24–27, p 81 lines 20–21.

²³² Transcript, 13 Dec 2021, p 60 lines 27–31.

manner over Julniee by setting curfews for her and limiting how much alcohol she could drink.²³³ This was because she was very “mischievous”.²³⁴

57 There were two other witnesses called for the Defence. The first was the accused’s and Julniee’s father, Tan Keck Kuan. He is also known as “Alson” and I will refer to him as such in the course of this judgment. His evidence is that he first learnt of the allegations against the accused when he came home from work on 27 December 2016, at about 7.00pm. Julniee told him that the complainant was going to make a police report against the accused for having sexually assaulted her.²³⁵ He tried to find out more details from Julniee and the accused as to what had happened.²³⁶ He denied that the accused had admitted to him about being responsible for the sexual assault.²³⁷ Alson also denied that Julniee had told him that the accused had admitted to being the assailant.²³⁸

58 The second other witness for the Defence was Ruben. The gist of his evidence is that he spoke to Julniee in the accused’s room (while the accused had left his room) for about five minutes or less.²³⁹ He could not remember very

²³³ Transcript, 13 Dec 2021 p 107 lines 20–23.

²³⁴ Transcript, 1 Oct 2021 p 48 lines 10–11.

²³⁵ Transcript, 14 Dec 2021, p 15 lines 26–32, p 16 lines 1–7.

²³⁶ Transcript, 14 Dec 2021, p 16 lines 22–29, p 17 lines 28–32,

²³⁷ Transcript, 14 Dec 2021, p 57 lines 14–32, p 58 lines 1–25.

²³⁸ Transcript, 14 Dec 2021, p 31 lines 19–32, p 32 lines 1–8.

²³⁹ Transcript, 14 Dec 2021, p 70 lines 8–21.

much else about what had happened that night,²⁴⁰ but he was certain that he had spoken to Julniee for not more than five minutes.²⁴¹

The law

59 Section 376(1)(a) of the Penal Code (Cap 224, 2008 Rev Ed) then-in-force at the material time and pursuant to which the accused has been charged (“the Penal Code”), reads as follows:

Any man (A) who —

- (a) penetrates, with A’s penis, the anus or mouth of another person (B); ...

shall be guilty of an offence if B did not consent to the penetration.

60 Section 376(2)(a) of the Penal Code reads as follows:

Any person (A) who —

- (a) sexually penetrates, with a part of A’s body (other than A’s penis) or anything else, the vagina or anus, as the case may be, of another person (B); ...

shall be guilty of an offence if B did not consent to the penetration.

61 From these provisions, the elements of the first and second charges which the Prosecution must prove beyond a reasonable doubt are: (a) that the accused had sexually penetrated the complainant; and (b) the penetration was not consented to by the complainant. Given the evidence of the accused and the complainant, the only issue in contention in relation to these two charges is

²⁴⁰ Transcript, 14 Dec 2021, p 71 lines 17–32, p 72 lines 1–20, p 81 lines 31–32, p 82 lines 1–12.

²⁴¹ Transcript, 14 Dec 2021, p 83, p 84 lines 1–24.

whether he had indeed sexually penetrated the complainant as she has alleged. If the accused had indeed done so, it is not the Defence's case that the complainant had consented to these acts.

62 Section 354(1) of the Penal Code, pursuant to which the accused been charged in respect of the third and fourth charges, reads as follows:

Whoever assaults or uses criminal force to any person, intending to outrage or knowing it to be likely that he will thereby outrage the modesty of that person, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with caning, or with any combination of such punishments.

63 "Criminal force" is defined in s 350 of the Penal Code as follows:

Whoever intentionally uses force to any person, without that person's consent, in order to cause the committing of any offence, or intending by the use of such force illegally to cause, or knowing it to be likely that by the use of such force he will illegally cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

64 From these provisions, the elements of the third and fourth charges which the Prosecution must prove beyond a reasonable doubt are: (a) that the accused had used criminal force on the complainant; and (b) the accused intended by the use of such criminal force to outrage the modesty of the complainant. It is not in dispute that the act of kissing the complainant's lips and the touching of the complainant's breast, both without her consent, constitute acts of criminal force, and if indeed so perpetrated by the accused, would have been intended by him to outrage the modesty of the complainant (see, eg *Teo Keng Pong v Public Prosecutor* [1996] 2 SLR(R) 890). Thus, in respect of the third and fourth charges, the only issue before this court is whether the accused had indeed kissed her lips and touched her breast as the complainant has alleged.

65 An accused person can be convicted *solely* on a complainant’s testimony alone but only when it is so “unusually convincing” as to overcome any doubts that might arise from the lack of corroboration (see *AOF v Public Prosecutor* [2012] 3 SLR 34 (“*AOF*”) at [111]). While the “unusually convincing” standard does not change the rule that the Prosecution must prove its case beyond a reasonable doubt, it does set the threshold for the complainant’s testimony to be preferred over the accused’s evidence where the case is one that boils down to one person’s words against another’s (see *XP v Public Prosecutor* [2008] 4 SLR(R) 686 (“*XP*”) at [31]). The emphasis is on the sufficiency of the complainant’s testimony, and the threshold would be met only if the testimony, when weighed against the overall backdrop of the available facts and circumstances, contains that ring of truth which leaves the court satisfied that no reasonable doubt exists in favour of the accused (see *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 (“*Liton*”) at [39]).

66 A witness’s testimony may only be found to be “unusually convincing” by weighing the demeanour of the witness alongside both the internal and external consistencies found in the witness’s testimony (see *AOF* at [115]). The demeanour of the witness is not invariably determinative, and if the witness fails to recall or satisfactorily explain material facts and assertions, her credible demeanour cannot overcome such deficiencies (see *XP* at [71]). Finally, even if the witness’s testimony is found to be “unusually convincing”, it does not automatically lead to a guilty verdict and does not dispense with the need for the court to consider the other evidence and the factual circumstances peculiar to each case, as well as the need to assess the complainant’s testimony against that of the accused’s (see *AOF* at [114(d)]). An “unusually convincing”

testimony does not overcome materially or inherently contradictory evidence (see *AOF* at [114(d)]).

67 If the complainant’s testimony is not “unusually convincing”, then the accused’s conviction is unsafe unless there is some corroboration of the complainant’s evidence (see *AOF* at [173]). A liberal approach is adopted in determining whether a particular piece of evidence can amount to corroboration (see *Liton* at [43]). There is no need for the corroborative evidence to consist of independent evidence implicating the accused in a material particular, and what is important is the substance as well as the relevance of the evidence, and whether it is supportive or confirmative of the weak evidence which it is meant to corroborate (see *Liton* at [43]). However, it is clear that subsequent repeated complaints by a complainant cannot, in and of themselves, constitute corroborative evidence so as to dispense with the requirement for “unusually convincing” testimony (see *AOF* at [114(a)]; *XP* at [29]).

The issues

68 As I have mentioned earlier, the main question before this court is whether the complainant had indeed been sexually assaulted by the accused as she has alleged (see [61] and [64] above). From the parties’ respective cases, there are two starkly conflicting accounts of events given by the complainant and the accused. The task of the court is to weigh the evidence of the both of them against the various other pieces of evidence that have emerged in this case, in order to determine whether the Prosecution has successfully proven its case against the accused on the four charges beyond a reasonable doubt. In carrying

out this task, it appears to me that the court has to grapple with the following key issues:

- (a) whether the account of events given by the complainant as to the alleged sexual assaults is “unusually convincing”;
- (b) the relevance of Julniee’s evidence and her credibility as a witness; and
- (c) whether the accused’s account stands up to scrutiny in the light of the evidence before the court.

69 It is to these issues that I now turn.

Assessment of the complainant’s evidence

70 The Prosecution’s case is that the complainant’s testimony is “unusually convincing”, although it also takes the position that the “unusually convincing” standard is not necessarily applicable in this case because the complainant’s evidence does not form the sole basis of their case against accused. As corroboration, the Prosecution has referred to the evidence of the presence of the accused’s semen on the exterior back of the T-shirt, as well as Julniee’s evidence.²⁴²

71 The Defence attacks the complainant’s credibility in various respects and argues that her testimony falls short of being “unusually convincing”. First, it points out that the complainant had not been able to positively identify the

²⁴² Prosecution’s Closing Submissions (“PCS”) at para 45.

accused during the time of the alleged assaults.²⁴³ Also, as the complainant had been drinking heavily, her memory of the events that occurred at the material time was affected. This led to her having memory gaps as to who might have been responsible for the assault.²⁴⁴ The Defence submits that the complainant had filled up her memory gaps with whatever she believed transpired and thus simply assumed that the accused was the one who had assaulted her, and this started with her conversation with [D] on the morning of 26 December 2016, several hours after the alleged assault had taken place.²⁴⁵ The Defence also points to what it says are inconsistencies in the accounts which the complainant had provided to [D], [F] and later to the court about the identity of her assailant.²⁴⁶

72 Second, the Defence argues that there are several problems with the complainant's testimony: (a) it is unbelievable that she had been unable to physically resist the assailant or shout for help during each of the sexual assaults, despite having the ability to rush to the Toilet to vomit whenever she had the urge to do so;²⁴⁷ (b) the complainant's recounting of the facts relating to each of the four charges in her investigation statement, and in the accounts which she provided to the two medical professionals who had examined her, and later in her testimony in court, had been inconsistent;²⁴⁸ (c) it is inconceivable that the accused would have been able to carry out the assaults

²⁴³ Defence's Closing Submissions ("DCS") at paras 13–18.

²⁴⁴ DCS at paras 68–72.

²⁴⁵ DCS at para 17; Defence's Reply Submissions ("DRS") at paras 23–24.

²⁴⁶ DRS at paras 7–13.

²⁴⁷ DCS at paras 25–27; DRS at paras 3 and 20.

²⁴⁸ DCS at paras 28–42; DRS at paras 14–18, 52–61.

without drawing the attention of the other persons residing in the Flat at the material time.²⁴⁹ Finally, the Defence also submits that the complainant has been an evasive witness who has, amongst other things, embellished her evidence.²⁵⁰

The complainant's identification of the accused as her assailant during the time of the assaults

73 I have carefully reviewed the evidence of the complainant (see [8]–[12] above). Having done so, I am unable to agree with the Defence's submission that the complainant had not been able to positively identify the accused as her assailant during the time of the assaults. Her evidence was candid and direct. She was quite intoxicated at the time of the assaults. As such, she did not get a good look at the face of the male person who had assaulted her. In her memory, she had a blurred image of a face. She agreed that she might not have seen her assailant's face completely. However, she did think from the voice and the build of the male person in question that the assailant was the accused. In my judgment, it is clear from the complainant's evidence that she had been able to positively identify the accused as the assailant during the time of the assaults based on what she could perceive of her assailant *then*.

74 According to the complainant, when she was first approached by the male person in the Toilet and brought out onto the sofa in the living room (see [8] above), she had "assumed" from the voice of the male person that he was the accused.²⁵¹ The complainant explained that this was for a few reasons. First,

²⁴⁹ DRS at para 19.

²⁵⁰ DRS at paras 21–22.

²⁵¹ Transcript, 30 Sep 2020, p 15 line 27.

this male person knew her name.²⁵² Second, the voice of that male person, who had asked her “[V], are you okay?”, did not sound like Julniee’s father, with whom she had spoken before in an extended conversation.²⁵³ She had also met Julniee’s father in person before.²⁵⁴ Third, the complainant also explained that, from what she could feel of the build of that male person with whom she had come into contact, she knew that he was not Julniee’s father.²⁵⁵ At that time, the complainant also knew (from Julniee) that only Julniee’s parents were at home in the Flat that morning.²⁵⁶ In other words, the only other male person who could have come to the complainant’s mind *then* would have been the accused because, save for Julniee’s family, she would not have known that anyone else was also staying over in the Flat that morning. The complainant also explained that, as a result of her assuming that the male person was the accused, she did not ask him where he was bringing her to when she was first supported out of the Toilet, because she thought it was the accused helping her to go to the living room to rest.²⁵⁷ The complainant also noticed, when she opened her eyes briefly, that the male person who brought her out to the living room was wearing a dark blue-coloured shirt.²⁵⁸ It is not in dispute that the accused was wearing a dark blue-coloured shirt at the material time.

75 According to the complainant, the male person, whom she assumed to be the accused, gave her a kiss on the lips after placing her on the sofa in the

²⁵² Transcript, 30 Sep 2020, p 15 lines 27–28.

²⁵³ Transcript, 30 Sep 2020, p 15 lines 28–29, p 16 lines 12–17.

²⁵⁴ Transcript, 30 Sep 2020, p 16 line 31.

²⁵⁵ Transcript, 30 Sep 2020, p 15 lines 30–31, p 16 lines 22–26.

²⁵⁶ Transcript, 30 Sep 2020, p 16 lines 1–6.

²⁵⁷ Transcript, 30 Sep 2020, p 21 lines 16–20.

²⁵⁸ Transcript, 30 Sep 2020, p 15 lines 16–18.

living room.²⁵⁹ Almost immediately after the kiss, the complainant had the urge to vomit again, and she sat up and ran back to the Toilet to do so.²⁶⁰ After she finished vomiting, the male person again approached her in the Toilet, asking her “[V], are you okay?” (see [9] above). This male person then brought her out of the Toilet and supported her into Julniee’s bedroom.²⁶¹ The complainant recognised from the voice of the male person that it was the same person as before, and therefore she “assumed” it was the accused.²⁶²

76 After the complainant was supported into Julniee’s bedroom and placed on Julniee’s bed, she felt someone touching her breast, and a few seconds later, felt two fingers inserted into her vagina (see [10] above). The complainant testified that she knew it was the same person who had touched her breast and digitally penetrated her because, after this person touched her breast, he removed his hands from under her shirt, and inserted his fingers into her vagina almost immediately.²⁶³ The complainant also testified that, when she felt this person insert his fingers into her vagina, she opened her eyes briefly, and saw that he was wearing the same dark blue-coloured shirt which she had noticed earlier being worn by the male person who brought her out of the Toilet on the first occasion to the living room.²⁶⁴ The complainant therefore “assumed” that the male person who had touched her breast and digitally penetrated her vagina was the accused.²⁶⁵

²⁵⁹ Transcript, 30 Sep 2020, p 22 lines 10–17.

²⁶⁰ Transcript, 30 Sep 2020, p 23 lines 1–3.

²⁶¹ Transcript, 30 Sep 2020, p 24 lines 13–29, p 25 lines 1–10.

²⁶² Transcript, 30 Sep 2020, p 24 lines 12–25, p 27 lines 6–8.

²⁶³ Transcript, 30 Sep 2020, p 30 line 31, p 31 lines 1–6.

²⁶⁴ Transcript, 30 Sep 2020, p 30 lines 23–29, p 31 lines 7–9.

²⁶⁵ Transcript, 30 Sep 2020, p 32 lines 21–23.

77 Thereafter, the complainant remained on Julniee’s bed and the next time she opened her eyes, she noticed that she was alone. She felt an urge to vomit, and so she ran back to the Toilet to do so (see [11] above).²⁶⁶ Again, the male person approached her in the Toilet, asking her “[V], are you okay?”.²⁶⁷ The complainant felt him pulling down her shorts and panties, and first attempting to insert his penis into her vagina (but failed to do so), and later penetrating her anus with his penis before stopping and leaving the Toilet (see [11] above). Again, the complainant “assumed” that this male person was the accused because his voice was the same as that of the male person who had approached her in the Toilet on the first and second occasions.²⁶⁸

78 From the foregoing, it is clear that the complainant had formed the view that the accused was the assailant during each of those occasions when she had been sexually assaulted, based on the physical features that she could perceive of her assailant. Thus, I find that there is no merit in the Defence’s submission that the complainant had not been able to positively identify the assailant during the assaults and only later came to assume that her assailant was the accused. I also make an observation in respect of this part of the complainant’s testimony. It is significant that, when the complainant was asked during evidence-in-chief whether she knew who her assailant was, her response had been that she “assumed” that her assailant was the accused based on, amongst other things, the fact that she had heard the *same* voice on all three occasions when she was in the Toilet asking her “[V], are you okay?”. In my view, the complainant could easily have embellished her evidence to say that she saw the accused’s

²⁶⁶ Transcript, 30 Sep 2020, p 23 lines 10–15 and 23–24.

²⁶⁷ Transcript, 30 Sep 2020, p 34 line 17.

²⁶⁸ Transcript, 30 Sep 2020, p 41 lines 22–24.

face and remembered it, and thus positively identified the accused as the assailant during those assaults. However, I find that she was honest enough to admit that her eyes were closed for most of the time during the assaults, and she did not get a good look at who her assailant was. She also testified that she had not blacked out, but had been conscious throughout as to what was happening to her, though she did not have the strength to resist the assailant.²⁶⁹ As such, she could remember the details of the sexual assault and her assailant, and this aided her in identifying the accused as her assailant.

79 While it is true that, in the first information report (“FIR”) made by the complainant on the night of 27 December 2016 (see [17] above) and in her investigation statement recorded at 3.20am on 28 December 2016,²⁷⁰ she did not identify the accused as her assailant, that is because these two documents simply set out the facts as they happened. It appears that in neither of these documents was the complainant being asked or required to expressly identify her assailant (see [85] below).

80 In the investigation statement, the complainant stated that, when she was being brought out of the Toilet for the first time by the male person:

... I could feel that he was trying to lift me up from behind and bring me out of the toilet. He was holding my arms from behind and helped me to walk out of toilet [*sic*]. I don't know who the person was as I was tired and sleepy and could not open my eyes properly. ...

²⁶⁹ Transcript, 30 Sep 2020, p 22 lines 28–31, p 32 lines 1–8, p 38 lines 9–10, p 91 lines 22–24.

²⁷⁰ Exhibit D3.

The Defence relies on the above quoted portion of the complainant's statement as evidence that she could not be sure who her assailant was.²⁷¹ In my view, the sentence where the complainant says that she did not know who the male person was must be read in its proper context. I find that the complainant was simply explaining that she did not see who the person was because her eyes were not fully open, and as such, she could not say for sure that she knew that the assailant was the accused. This in no way detracts from the evidence which she had given in court that, from the voice and the build of the male person, and the fact that the male person seemed to know her, she knew that it must have been the accused, even though she did not see his face clearly.

81 The information which the complainant shared with [D] and [E] on the morning of 26 December 2016 about what had happened to her is also consistent with her having positively identified the accused as the assailant during the time of the assaults. The information which the complainant shared with them is consistent with her testimony in court – namely that she had come to the view, from the physical features of her assailant which she perceived of during the assaults, that it was the accused.

(a) According to [D]'s testimony, when the complainant called her on 26 December 2016 at around 8.00am (see [19] above), it was the complainant who had *first* told her that the accused had anally penetrated her. This led to [D] asking the complainant how sure she was that it had been the accused given that she had been in a drunken state. The complainant responded to [D] that she could recognise the voice of that

²⁷¹ DCS at para 15.

male person who assaulted her as the accused's voice.²⁷² In a WhatsApp message which the complainant sent to [D] while they were discussing the identity of the complainant's assailant, the complainant said on her own accord and without any suggestion from [D], "*I really keep thinking it's the brother*" [emphasis added],²⁷³ referring to Julniee's brother, the accused.

(b) On 26 December 2016 at 9.09am, the complainant sent a WhatsApp message to [E] informing him what had happened to her earlier that morning. The complainant said to [E], "*I feel ... That my friends brother did smth [sic] to me last night*" [emphasis added],²⁷⁴ referring to the accused.

82 I note that when [F] testified about what he had spoken on the phone with the complainant on 26 December 2016, he said that the complainant had told him that she had been anally penetrated, and that her assailant had called out her name, but other than that, she was not sure as to who that person was.²⁷⁵ I find that this in no way detracts from what I have said about the complainant's testimony. Her evidence is not that she knew with certainty who her assailant was, which might well have been the case if she had opened her eyes and saw her assailant's face. Instead, her evidence is that she had come to the view, as a result of the physical features which she could perceive of her assailant during the time of the assaults, that he was the accused. Thus, the complainant's identification of the accused as the assailant is based on what she had perceived

²⁷² Transcript, 29 Sep 2020, p 70 lines 14–32, p 71 lines 1–2.

²⁷³ AB at p 197.

²⁷⁴ AB at p 156.

²⁷⁵ Transcript, 29 Sep 2020, p 107 lines 7–9, p 108 lines 16–19.

during the assaults, and not any assumptions which she later made or what others might have told her.

83 The Defence also submits that the complainant could not have recognised, from the voice of the male person who had approached her in the Toilet, that the male person was the accused.²⁷⁶ This is because the complainant had testified during evidence-in-chief that she did not recognise the voice of this male person when he first approached her in the Toilet.²⁷⁷ Also, the Defence argues that, since the complainant had never engaged in any extended conversation with the accused, and only spoke to him prior to 26 December 2016 on a “hi/bye” basis,²⁷⁸ she would have been unfamiliar with the accused’s voice, and thus could not have recognised it.

84 I reject this submission, which misses the fundamental point about the complainant’s evidence entirely. It is not the complainant’s evidence that she had identified the accused as the assailant *only* because of the voice of the male person who had approached her in the Toilet. As the Prosecution correctly puts it, the voice of the male person was simply *one* of the reasons which contributed to the complainant identifying the accused as her assailant during the time of the assaults (see [74] above).²⁷⁹ The complainant considered that this male person, who was able to call out her name, must have known her, yet he did not sound like Julniee’s father, nor did the build of this male person fit that of Julniee’s father. The complainant therefore formed the view *then* that it could

²⁷⁶ DCS at para 19.2.

²⁷⁷ Transcript, 30 Sep 2020, p 15 lines 9–10.

²⁷⁸ Transcript, 30 Sep 2020, p 16 lines 8–11.

²⁷⁹ Prosecution’s Reply Submissions (“PRS”) at para 11.

only have been the accused. As such, even if I were to accept the Defence's submission that the complainant was unfamiliar with the accused's voice and so could not have recognised it, this in no way undermines the fact that there had been a series of reasons that led to the complainant forming the view that her assailant was the accused.

85 By the time the complainant gave her investigation statement, she had already identified the accused as her assailant. That explains why the FIR stated that she had been "raped by a 22-year-old male". Also, shortly after the accused returned home in the early hours of 28 December 2016, he was placed under arrest and brought to the Police Cantonment Complex for further investigation under the instructions of ASP Tai.²⁸⁰ As such, the proper context of the investigation statement is that she was being asked to recount the sexual assaults, and she did not have to specifically identify the accused in her statement, since she had already informed the police who had assaulted her. No significance can therefore be attached to the complainant's omission to specifically identify the accused as the assailant in the complainant's investigation statement as identified by the Defence (see [80] above).

86 On the question of identification, another piece of evidence which has not been satisfactorily dealt with by the Defence is the complainant's testimony that her assailant was wearing a dark blue-coloured shirt. I reiterate that it is undisputed that the accused was wearing a dark blue-coloured shirt at the material time. This part of the complainant's testimony is therefore externally consistent. The Defence argues that the complainant had embellished her evidence when she mentioned the dark blue-coloured shirt in her evidence-in-

²⁸⁰ AB at pp 10–11.

chief because this fact had not been mentioned in her earlier conversations with her friends, including Julniee. However, I am not able to accept this submission because, in her conversations with her friends, it did not appear that she had been asked to describe the details of precisely what had happened, or what she had observed, and none of the complainant's friends had questioned her claim that she had been sexually assaulted. There was thus no reason for the complainant to point out to her friends that she saw her assailant wearing a dark blue-coloured shirt. In her evidence-in-chief, however, she had to explain in minute detail, step-by-step, what happened, and what she could remember as to what she saw and heard. That was when she mentioned that she saw her assailant was wearing a dark blue-coloured shirt. I also noted that the Defence did not suggest to the complainant that she had embellished her evidence about having seen that her assailant was wearing a dark blue-coloured shirt.

87 More fundamentally, though, I find that the Defence's submission as to the identification of the accused does not really assist the court. There were only four other male persons in the Flat at that time, and all of them, save for the accused, have been accounted for. This is accepted by the Defence. The accused's father, Alson, was asleep in his bedroom with his wife. Alex was asleep on the floor of the accused's bedroom. Ruben was in the accused's room speaking to Julniee. As such, the only male person who could have had the opportunity to assault the complainant, while she was out of Julniee's sight, was the accused. Further, it was the accused's own evidence that he was the person who had approached the complainant in the Toilet and helped lift her up from the floor.

The internal and external consistency of the complainant's testimony

88 The Defence attacks the consistency of the complainant's account of the sexual assaults (see [72] above), but I find the inconsistencies that have been pointed out to be rather immaterial. Some of these inconsistencies include: (a) the complainant had mentioned to Dr Koh that there might have been a second kiss while she was on the sofa in the living room, contrary to her initial testimony during evidence-in-chief where she said that there had only been one kiss;²⁸¹ (b) the complainant was unable to remember during her evidence-in-chief whether one or both her breasts had been touched during the assault, and the fact that her breasts had been touched was not recorded in Dr Koh's report;²⁸² and (c) the complainant failed to say until her evidence-in-chief that she had fallen to the side of the toilet bowl when the accused was about to insert his penis in her anus.²⁸³

89 I find that these minor inconsistencies do not detract from the fact that, from an overall assessment of the complainant's evidence, she has been materially consistent when describing the account of the assaults, right down to the details as to what she could *not* remember. Her account of the sexual assaults, from the time she was first brought out of the Toilet up to the time she was sexually penetrated in the anus after she returned to the Toilet for the second time, was largely unshaken under cross-examination. What she told her friends, [D], [E], [F] and Julniee, a few hours after she was assaulted, was consistent with her evidence in court as to what transpired during the assault, in particular, that she had been sexually penetrated in the anus, and that the accused was the

²⁸¹ DCS at paras 41–42.

²⁸² DCS at para 37.

²⁸³ DCS at para 30.

one who was responsible (see [81]–[82] above). The evidence of these four friends confirms that the complainant’s account of the events that occurred never changed.

90 Further, the omission of these somewhat peripheral facts by the complainant, whether while she was examined by Dr Koh or when her investigation statement was recorded, does not detract from my assessment that the complainant’s testimony has been materially consistent. The proper context in which the complainant had been asked to provide those accounts (whether to Dr Koh or ASP Tai) should be borne in mind (see also [85] above). On those occasions, the complainant was not asked to recount in minute detail what had happened to her, like she was during her evidence-in-chief. The fact that she had omitted particular details did not in and of itself render her account inconsistent.

91 The Defence also attacks the internal consistency of the complainant’s evidence on two other grounds. First, it submits that it is unbelievable that the complainant did not have the strength to physically resist her assailant despite being able to rush to the Toilet whenever she had the urge to vomit. On this point, I accept the evidence of Dr Zheng that the complainant’s ability to do the latter but not the former can be explained by the fact that the biological urge to vomit was familiar to her and so she was able to maintain control over that urge and react by vomiting only in a socially appropriate place as she was accustomed to doing. On the other hand, the experience of sexual assault would have been foreign to the complainant. The incoordination in motor responses and sensory perceptions from which the complainant suffered as a result of her alcohol consumption the night before might have affected her ability to respond

to the sexual assault and call for help.²⁸⁴ Dr Zheng had come to this assessment by reference to what the complainant had told her about the physical and cognitive symptoms which she had experienced on previous incidents of alcohol intoxication, and in particular, her habit of making sure that she vomited in a socially appropriate place no matter how uncomfortable she felt.²⁸⁵

92 The Defence does not challenge the correctness of Dr Zheng's assessment but it did, in cross-examination, suggest to Dr Zheng that her assessment would be entirely dependent on the accuracy of the subjective account which the complainant had provided (including what the complainant says is her usual response to her biological urge to vomit).²⁸⁶ The Defence also appears to make a submission that, given the complainant's ability to run to the Toilet to vomit, her motor and sensory functions would not have been so seriously affected that she could not physically resist her assailant and as such, her account of what had happened is unbelievable.²⁸⁷ The Defence relies on: (a) Dr Zheng's agreement that the complainant would still have been in a position to shout and scream for help even if the complainant had been suffering from a delay in responding to stimuli;²⁸⁸ and (b) Dr Zheng's agreement that, if the complainant's motor coordination had been affected, then it would have hampered her ability to run to the Toilet to vomit.²⁸⁹

²⁸⁴ Transcript, 15 Sep 2021, p 23 lines 26–32, p 24, p 25 lines 23–32, p 33 lines 20–31, p 34 lines 1–2.

²⁸⁵ Transcript, 15 Sep 2021, p 7 lines 19–31, p 24 lines 24–30.

²⁸⁶ DCS at para 69.

²⁸⁷ DCS at paras 70 and 72.

²⁸⁸ Transcript, 15 Sep 2021, p 39 lines 10–16.

²⁸⁹ Transcript, 15 Sep 2021, p 40 lines 1–27.

93 I do not find any merit in the Defence's submission. It is not the Defence's case that the account which the complainant had provided to Dr Zheng, in particular, about her habit of vomiting in a socially appropriate place, even when she was intoxicated, is untrue. Also, Dr Zheng's evidence was not that the complainant's sensory and motor functions had been completely incapacitated, but only that there had been some impairment and so her responses would have been delayed.²⁹⁰ In those circumstances, the complainant would still have been in a position to call out or shout for help, though she would have taken a longer time to perceive the stimuli, comprehend what was going on, and respond.²⁹¹ That would explain why the complainant had not been able to physically resist her assailant and shout for help as the stimuli arising from her being sexually assaulted was foreign to her and so she had not been able to respond in time and call for help. On the other hand, the complainant was able to respond more quickly to her biological urge to vomit because that was a sensation that was familiar to her.

94 Second, the Defence argues that the complainant's account is unbelievable because there is no way in which the accused could have sexually assaulted the complainant in the Flat without drawing the attention of its other occupants. I do not see how this renders the complainant's account inconsistent. It is not the complainant's evidence that she had screamed or shouted out loud for help at any point in time, and as such, the fact that none of the other occupants in the Flat were alerted to the assault does not render her account unbelievable. Also, the Defence's submission on this point is essentially premised on the fact that the complainant had failed to react in a particular way

²⁹⁰ Transcript, 15 Sep 2021, p 41 lines 13–16.

²⁹¹ Transcript, 15 Sep 2021, p 38 lines 22–28, p 39 lines 1–8.

which it says she ought to have, *ie*, screaming and shouting for help and thus alerting the other occupants in the Flat, and as such, the Defence submits that her testimony is not believable. As a matter of principle, this cannot be correct. There is no basis for any submission that is premised on the complainant of a sexual offence being expected to behave in any particular way. This is because it cannot be supposed that victims of sexual offences will act in a stereotypical way (see, *eg Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749 at [30]–[34]).²⁹² Whether the complainant’s testimony is unusually convincing and is to be believed depends on the sufficiency of that testimony alone and the other evidence before the court. The fact that the complainant had failed to behave in a particular way in which one may ordinarily expect does not undermine her account. Thus, I find that, the fact that the complainant never shouted for help does not render her account unbelievable. More importantly, there is a good explanation for why she never did so – the complainant’s alcohol intoxication meant that her ability to respond to unfamiliar stimuli like a sexual assault was impaired.

95 Finally, I also find that the complainant’s testimony is externally consistent in various ways. First, the account which the complainant provided as to how she came to be assaulted is consistent with the bruises that were later found on her left and right knees and her forehead, which had been noted by Dr Koh when she examined the complainant at 12.04am on 28 December 2016.²⁹³ In the complainant’s evidence-in-chief, she explained how she had fallen twice, when she was being brought out of the Toilet for the first time by her assailant, and while they were making their way through the kitchen (see [8] above). The

²⁹² PRS at para 41.

²⁹³ AB at pp 289–290.

first time was in the middle of the kitchen, when she fell to the floor and the accused had also fallen, partially landing on top of her.²⁹⁴ The second time was when she was near the doorway between the kitchen and the living room. When she fell the second time, she hit her head against the door frame.²⁹⁵ The bruises found on the complainant are consistent with her account of these two falls.

96 On this point, I note the Defence’s submission that those bruises might have been sustained while Julniee supported the complainant from the Toilet into her bedroom to rest for the night after the complainant had finished vomiting (that is, after Julniee returned to the Toilet following her conversation with Ruben in the accused’s room).²⁹⁶ However, it was not Julniee’s evidence that the complainant and her had fallen when they were moving from the Toilet to her bedroom;²⁹⁷ her evidence was simply that she and the complainant would have “stumbled” or “knocked” into things on their way out, although she could not precisely remember what these things were,²⁹⁸ and she only agreed, at the Defence’s suggestion, with the *possibility* that she and/or the complainant might have knocked into the kitchen door frame, or kitchen cabinet, or the table, on their way out.²⁹⁹ Put simply, I do not think that there is enough evidence for the Defence to postulate that the complainant had sustained her bruises while she was moving from the Toilet to Julniee’s bedroom with Julniee, and so I reject

²⁹⁴ Transcript, 30 Sep 2020, p 19 line 25.

²⁹⁵ Transcript, 30 Sep 2020, p 20 lines 15–16.

²⁹⁶ DCS at para 52.

²⁹⁷ Transcript, 15 Sep 2021, p 79 lines 6–11.

²⁹⁸ Transcript, 15 Sep 2021, p 78 lines 28–32, p 79 lines 1–5.

²⁹⁹ Transcript, 15 Sep 2021, p 80 lines 5–31, p 81, p 82 lines 1–15.

the Defence's alternative explanation about the bruises that were found on the complainant.

97 Second, that the complainant had been assaulted in the way she says she was, is also corroborated by the way she acted after she woke up in Julniee's bedroom slightly before 8.00am (which was when she called [D] (see [19] above)), a few hours after the incident involving the accused. In the aftermath, she had contacted her friends, and expressed her feelings of distress and anxiety as to what had happened. She was also emotional and panicky. [E], [D] and [F] gave evidence as to the complainant's conduct and what she said. As I have considered earlier, their evidence was consistent with the complainant's (see also [81]–[82] above). In my view, this adds credibility to the complainant's evidence that she had been assaulted.

98 Third, and most critically, the forensic evidence showed that the accused's semen was found on the exterior back portion of the T-shirt that the complainant had been wearing at the time of the assaults. This corroborates her testimony that she had been sexually penetrated in the anus by the accused with his penis. This DNA evidence emerged well after the complainant made the police report and gave her investigation statement, and there is thus no danger of the complainant having made tailored her accusations of sexual assault to match the forensic evidence. The Defence submits that there are other explanations for why the accused's semen came to be found on the exterior back of the T-shirt (see [55] above). This is a point which I will return to later in this judgment (see [180]–[183] below).

The complainant's demeanour

99 I also accept the Prosecution's submission that the complainant's evidence was textured, precise and clear. She described carefully and with details how she was brought out of the Toilet on two occasions, how she made her way back to the Toilet twice, and how she was then sexually penetrated in the anus while in the Toilet. This sequence of events carried with it a ring of truth, in that it is difficult to conceive why such details would be provided if the complainant simply wanted to fabricate allegations against the accused. In short, I find her evidence to be rather compelling.

100 I also find that the complainant was candid and forthcoming, and she did not take the opportunity to embellish her evidence at times when she could have easily done so. In particular, she admitted that she did not have a clear look at the face of her assailant, and thus could not visually identify him. She testified that her eyes were shut when she was kissed on the lips, and later when she was digitally penetrated in her vagina, and hence did not see the face of her assailant clearly. She only said that, when she briefly opened her eyes after the digital penetration, she saw the same dark blue-coloured shirt. These were all instances where the complainant could have easily said that she saw that it was the accused who was assaulting her (see also [78] above).

101 I find that the complainant is an honest witness who was prepared to admit to details that she could not remember, *eg*, how she got dressed again after she had been sexually penetrated in her anus while in the Toilet.³⁰⁰ However, as for the details that she could remember, she did not waver in her testimony that they did in fact happen. She maintained her evidence that she had used her left

³⁰⁰ Transcript, 30 Sep 2020, p 41 lines 17–20.

hand to try to push her assailant away when he tried to insert his penis into her vagina (see [11] above), even though she agreed with the Defence during cross-examination that her right hand would have been stronger and using her right hand would have been more effective in pushing her assailant away.³⁰¹ She explained that she used her left hand because of how she had been positioned over the toilet bowl, and that it had been a natural reaction for her to use her left hand.³⁰² She was also able to give a proper explanation as to why she did not physically resist her assailant during the assaults, and why she did not cry out for help. She felt too weak and sleepy from all the drinking and vomiting to be able to push the accused away or call for help. She was also able to explain how, when she felt the urge to vomit, she managed to summon the strength to get up and make her way back to the Toilet. I accept her evidence as being credible and believable. In short, I find that she has given unusually convincing testimony about the sexual assaults by the accused.

Assessment of Julniee's evidence

102 The contrast between Julniee's WhatsApp messages that she exchanged with the complainant on 26 and 27 December 2016, and her investigation statements (the 28 Dec Statement and the 28 Apr Statement), on the one hand, and her oral evidence in court on the other, could not be more stark. She was lying either in her statements and WhatsApp messages, or in her oral testimony. In my judgment, the truth is found in her investigation statements and her

³⁰¹ Transcript, 1 Oct 2020, p 140 lines 8–31, p 141 lines 1–25.

³⁰² Transcript, 1 Oct 2020, p 141 lines 6–31, p 142, p 143 lines 1–10.

contemporaneous WhatsApp messages. Large parts of her oral testimony must be rejected as blatant untruths.

The WhatsApp messages exchanged between the complainant and Julniee

103 An examination of the veracity of Julniee’s evidence must start with a close review of the many WhatsApp messages that she exchanged with the complainant starting from the afternoon of 25 December 2016 up to the time the complainant made her police report late in the night of 27 December 2016.

104 It is clear from the messages on 25 December 2016 that Julniee and the complainant were excited about their planned evening out.³⁰³ They talked about what they were going to wear and what time they would meet. It is clear to me, from the tone and content of the messages sent, that both of them were close friends.

105 The Prosecution also put into evidence a POLCAM footage which captures a video of the complainant and Julniee returning to the flat at around 5.40am in the morning of 26 December 2016.³⁰⁴ The footage shows them interacting while walking towards the lift lobby at the ground floor of the HDB block and also inside the lift. While there is no audio, this video shows the physical interaction between the complainant and Julniee, which is consistent with my view that they were close friends.

106 I turn now to the WhatsApp messages that were sent after the complainant left the Flat at about 8.00am to 9.00am on the morning of 26

³⁰³ AB at pp 226–229.

³⁰⁴ Exhibits P19 and P20.

December 2016. This was several hours after the alleged sexual assaults on the complainant, and not long after Julniee was told by [D] that the complainant had been sexually assaulted. It is clear from the messages sent by Julniee that she was upset by what she heard had happened to the complainant. Julniee told the complainant that she would find out who was responsible and sort things out.³⁰⁵

107 Right from then, the messages between the two of them carried an underlying tension because of their close friendship. From the perspective of the complainant, she did not want to make an outright accusation that Julniee's brother was the assailant, and perhaps she was hoping against hope that he might not be the person who was actually responsible. She did not want her friendship with Julniee to be destroyed. From the perspective of Julniee, she was quite distressed by what had happened to her close friend, and the fact that the person responsible might be her own brother. She wanted to do what was right by getting at the truth, but she was also afraid as to what the complainant would do and the consequences for her brother.

108 At around 10.00am, Julniee sent the complainant WhatsApp messages to the effect that she had tried speaking to the accused, Ruben and Alex, and that all of them did not say anything.³⁰⁶ Julniee's messages showed a genuine concern for her friend's well-being. Throughout the rest of that day (26 December 2016), she reminded the complainant to rest, drink water and to eat something.³⁰⁷ She offered to go over to the complainant's home to see how she

³⁰⁵ AB at p 230.

³⁰⁶ AB at pp 231–232 and 242.

³⁰⁷ AB at pp 237–238.

was and to buy food over for her.³⁰⁸ She apologised more than once for what had happened to the complainant.³⁰⁹ She readily agreed that the complainant give her number to [E] so that he could contact her about what had happened,³¹⁰ and also for [F] to call her to discuss what could be done for the complainant.³¹¹

109 In the late afternoon of 27 December 2016, the messages from Julniee turned to focus more on her concern that the complainant might make a police report about the sexual assaults. For the first time, at about 5.15pm, Julniee asked the complainant if she “intend[ed] to report police?”³¹² In more than one WhatsApp message, Julniee said she “sincerely hope[d]” that the complainant would not report the matter to the police.³¹³ She said that doing so would make things “messy”.³¹⁴ At the same time, however, in her messages, she empathised with the complainant’s feelings of being hurt and traumatised, and recognised that the complainant wanted to “find justice”.³¹⁵ Julniee repeatedly told the complainant that she would help find out who the assailant was.

110 I find that, by this stage, Julniee already knew that her brother was responsible for the sexual assaults which the complainant complained of, though the messages exchanged between Julniee and the complainant up until that point and which I have referred to earlier may suggest otherwise. In my judgment, it

³⁰⁸ AB at pp 238 and 245.

³⁰⁹ AB at p 239.

³¹⁰ AB at p 234.

³¹¹ AB at p 235.

³¹² AB at p 250.

³¹³ AB at p 250.

³¹⁴ AB at p 250.

³¹⁵ AB at pp 250–251.

would have been clear in Julniee’s mind that the only person who could have been responsible for the assaults on the complainant must be the accused. On Julniee’s own account, during the time in which she had left the complainant alone in the Toilet after changing her into the T-shirt and shorts, she *knew* that her parents were already asleep in their room, Ruben was speaking to her, and Alex was asleep in the accused’s room. It would have been obvious to her that the accused was the only male person in the Flat who could have been responsible for the assaults on the complainant. Indeed, the fact that Julniee knew that the accused was the complainant’s assailant must have been the reason she wanted to know whether the complainant was going to make a police report and why she tried to dissuade the complainant from going to the police. I should add that, as Julniee continued to press the complainant not to make a police report because they were “good friend[s]”, at one point, the complainant responded to Julniee in a message at 5.25pm that if Julniee could get the assailant to admit to his responsibility, apologise and to explain his actions, she would “let it go”.³¹⁶

111 In my view, a plain reading of the many WhatsApp exchanges at this time shows that Julniee was struggling between wanting to help her close friend, but also wanting to protect her family, whom she knew would be implicated if the complainant made a police report against the accused. The following exchange between Julniee (J) and the complainant (V) between 5.42pm and 5.45pm that day best illustrates Julniee’s state of mind at that time:³¹⁷

J: Like I wanna help you out so bad

J: But I don’t want to be legally involved

³¹⁶ AB 252.

³¹⁷ AB at pp 256–257.

- J: And like shit's gonna be damn crazy
- J: Cos my family will be involved since it's in my place
- V: You're stressed out over these and, I'm on the verge of fking killing myself
- J: THATS THE FUCKING THING.
- J: you are being helpless and I can't help you
- J: And I'm here trynna be the middle man of everything
- J: But it's so fucking hard to deal with all this
- V: And because there's no way for you to get them to admit anything
- J: I'm fucking trying dude
- J: What the fuck you want from me
- J: When I'm trying my best to help you
- J: Cos I don't wanna see you hurt like this
- J: When I already feel fucking bad cos it happened in my place and I was there

112 When it became clear that the complainant wanted to make a police report, Julniee asked (in a message sent at 5.51pm) that she be given some time to find “that person”.³¹⁸ As I mentioned earlier, at the time when Julniee began to ask if the complainant was going to make a police report and when she tried to dissuade the complainant from making a police report, she already knew that the accused was the complainant’s assailant (see [110] above). As such, by promising the complainant to find “that person”, Julniee intended to tell the complainant that she would try to get the accused to admit to what he had done, in the hope that this would help mollify the complainant and she would then not make a police report, or perhaps lead to some resolution of the matters between

³¹⁸ AB at p 260.

the accused and the complainant. Put another way, Julniee was trying to do what she could in the hope of averting an outcome where the complainant made a police report. I find that Julniee was desperately hoping to avoid such an eventuality. That this had been on Julniee's mind is especially evident from Julniee's subsequent message at 5.52pm, in which she tried to find out from the complainant as to what exactly the latter intended to do, namely, whether she only wanted to find out the identity of "that person" or if she still wanted to make a police report. Julniee was obviously concerned that, if she followed through with her promise to get the accused to admit to what he had done, the complainant would not then go to the police.

113 It appears that shortly after, the complainant changed her mind from earlier (see [110] above). She said in a WhatsApp message at 5.53pm to Julniee: "I want to find out and I want to go to the police as well".³¹⁹ Julniee asked the complainant what she was going to do if she went to the police. The complainant responded that she would go for a check-up and leave the investigations to the police.³²⁰ It thus became apparent from the complainant's response that she had made up her mind about making a police report. This alarmed Julniee, who in a message at 5.59pm, told the complainant that she was going over to the complainant's place immediately. The complainant told her not to do so because she was going out with her sister and no one would be at home. Then, between 6.01pm and 6.10pm, the following WhatsApp messages were exchanged between them:³²¹

J: I'll bring the person.

³¹⁹ AB at p 261.

³²⁰ AB at p 262.

³²¹ AB at pp 262–266.

V: So you alr know who is it
J: I just found out
J: Cos I called everyone up
J: Cos I say that you're gonna report police
V: Then
J: The person admit
J: So what do you want now?
V: Just wait
V: I'll tell you
J: You don't tell me after you've done something
J: You tell me when you're about to do something
J: Cos if fucking police wanna come in my house to flip,
I've to clear some stuffs
V: What's his name
V: What did he say
V: Tell me now
J: My brother.
J: He's getting whacked by pang now
V: *And you didn't believe me*
J: *I didn't know*
J: *I'm sorry.*
J: Truth's out
J: What are you gonna do now!
J: ?*
V: Maybe you shld clear some stuff at home
J: When are you going to the police?
V: Soon
J: Where are you?
J: My brother was hoping you'd talk things out

V: Yknow it was obvious I was drunk that night
V: And he did it to me still
J: He was drunk too
J: He say that he didn't fuck you
J: And he only fingered you.
V: That's a lie
J: We need to meet and explain
J: Legit
J: He's telling me that he can't remember and that he only fingered you.
J: Everyone was drunk.
[emphasis added]

114 The above quoted exchange is significant for two reasons. First, it is clear from the exchange that Julniee knew all along that the allegations of sexual assault made by the complainant involved her brother. That could have been the only reason the complainant would have said “and you didn’t believe me” after Julniee identified the accused as “that person”. Significantly, the complainant’s message was followed shortly after by Julniee’s apology. Second, it appears from those messages that the accused had made a partial admission to Julniee of the sexual assaults that occurred, a point which I will return to later in this judgment (see [158] below).

115 The WhatsApp messages that follow from the above quoted ones indicate that Julniee’s and the accused’s parents were not home yet, but were on the way back. Julniee asked the complainant in no less than three different WhatsApp messages whether she was still going to make a police report.³²² In

³²² AB at pp 266–267.

my view, it is clear from these messages that Julniee was hoping that, with her identifying the accused as the assailant and her communicating the accused's offer to "talk things out", the complainant would be mollified and so would not go ahead with making the police report. It also shows that, at this time, Julniee still thought that she could dissuade the complainant from going to the police. Julniee and the complainant then had the following exchange of WhatsApp messages between 6.22pm and 6.59pm, in which Julniee kept up her efforts:³²³

J: I've lost everyone
J: Pang and you
V: You haven't
J: I just fucking did dude
J: I'm so ashamed to face you
J: After knowing that my brother did it
J: And I feel like I'm a fucking shitty friend
J: Because I couldn't protect you
J: When it was my house
J: And my own people
J: I'm so sorry.
J: I'm begging you, please don't report police because [sic] I don't want my brother to go jail.
J: You can do anything else but please don't go to the police. I beg you.
V: I haven't blamed you for anyt from the start and you shldnt feel ashamed
V: If anyt it's your brother
V: If he don't learn this time he will do it again
J: I'm begging you
J: Don't go to the police CAN.

³²³ AB at pp 269–270.

J: Can*

116 Following this, the complainant told Julniee that her sister had found out what happened. The complainant said that she had to make a police report, despite Julniee’s pleas not to do it. Eventually, the complainant said: “I can’t not go”, to which Julniee responded: “You should go but I can’t bear to see my brother going to prison”. This message from Julniee was sent at 7.18pm.

117 To complete the picture, I should add that, several hours later, at around 12.16am on 28 December 2016, Julniee sent the following WhatsApp message to the complainant:³²⁴

J: My brother just told my family and I his side of story that he didn’t penetrate into you. And that you throw yourself at him and yall made out. Max he did was that he fingered you.

118 Then, at about 5.18am that same day, after the accused had been arrested and brought away by the police for further investigations, Julniee sent the following WhatsApp messages to the complainant:³²⁵

J: [V], my whole family is begging you to drop the charge because my whole family is upside down now.

J: I really sincerely hope that you can drop the charge.

J: Because this house is a shithole now and my brother’s future is gone already.

J: Can you please drop the charge. And give us any other option.

J: My parents are begging you.

³²⁴ AB at p 273; Transcript, 29 Sep 2021, p 9 lines 20–32, p 10 lines 1–6.

³²⁵ AB at p 273.

The Defence's case about Julniee having lied to the complainant in the WhatsApp messages

119 The Defence submits that I should accept Julniee's oral testimony that she had lied repeatedly to the complainant in her WhatsApp messages on 26 and 27 December 2016 (see [27]–[28] above). In particular, the Defence urges me to accept her evidence that she did not ask the accused, or his friends, on 26 December 2016 to check on what happened to the complainant, and that on 27 December 2016, the accused never admitted to having “fingered” the complainant, to either her (see [114] above) or her family (see [117] above). According to Julniee's testimony, she had made up all these lies in the hope that the complainant would somehow be satisfied knowing that she (Julniee) was trying to find out who the complainant's assailant was, when she actually was hoping to brush off the complainant's concerns. On 27 December 2016, she had also purportedly lied to the complainant about her brother being the assailant, thinking that the complainant would then drop this idea of making a police report.

120 I have quoted *in extenso* portions of the relevant WhatsApp exchanges between the complainant and Julniee on 26 and 27 December 2016 above, and also set out the context of the discussions between the two of them, to demonstrate how utterly incredible Julniee's evidence in court is. It is obvious that Julniee was in a distressed state on 26 and 27 December 2016 because she had learnt about what had happened to the complainant. She was concerned as a friend, and she wanted to help the complainant (see [107]–[108] above). Given this, I reject her evidence in court that she did not actually check with the accused and his friends on 26 December 2016 about whether they knew of the assaults alleged by the complainant. I find it rather unbelievable for Julniee to have lied about wanting to find out who the assailant was, and about whether

her brother (the accused) was the person responsible for the assaults. In my judgment, given the circumstances in which Julniee had been placed, it is implausible that she would have wanted to just brush off the complainant's concerns. The complainant and Julniee were very close friends, and the WhatsApp messages shed light on Julniee's true state of mind at that time. In any case, I find Julniee's testimony rather unbelievable because I can see no reason for her to think that her lies could have succeeded in brushing off the complainant's concerns. The complainant was obviously very upset about what had happened and it would have been apparent to Julniee that the complainant would not have ceased pursuing the matter simply because someone had been identified as her assailant.

121 I also reject as utterly unbelievable Julniee's evidence that the accused had not admitted to her and her family on 27 and/or 28 December 2016 that he had "fingered" the complainant (see also [114] and [117] above). I have tried to set out the context of the discussions between Julniee and the complainant as much as possible so that one can understand that, through the late afternoon of 27 December 2016 until the early evening of that day, Julniee was trying to dissuade the complainant from making a police report, but at the same time struggling with her desire to help her friend confirm the truth as to what happened. That is clearly apparent from the content and tone of the WhatsApp messages that Julniee sent. At all times, it appears to me that Julniee was honest in her communications with the complainant, demonstrating concern for the complainant's well-being, and also hoping that she could dissuade the complainant from going to the police (see also [123] below). In my view, given the context in which Julniee had exchanged WhatsApp messages with the complainant, the contents of those messages would have been truthful. Thus,

Julniee’s message to the complainant about the accused’s admission (first to Julniee and later to their parents) is evidence that the admission did take place.

122 I find that there is no reason for Julniee to lie in these contemporaneous messages to the complainant about the accused’s admission to “fingering” her. By the time Julniee communicated the accused’s admission to the complainant (see [113] above), she already knew that the complainant appeared to have made up her mind about making a police report about the assaults, and she was hoping that telling the complainant the truth would persuade her to give them a chance to resolve things without the involvement of the police. It is also important to note that Julniee only identified the accused as the assailant *after* it seemed that the complainant had more or less made up her mind about going to the police (see [113] above). The severity of the situation would thus have been apparent to Julniee and I find there to be no plausible reason she would lie about the accused’s admission. By confirming that it was the accused who was responsible, Julniee must have known that there was a high risk that the complainant would identify the accused as the assailant in any police report that she might make.

123 I also find Julniee’s evidence that she made up a lie about the accused’s admission so that the complainant would *not* make a police report to be completely implausible. In the first place, I do not see how the identification of the accused, or indeed anyone, as the assailant would necessarily have stopped the complainant from making a police report. As the WhatsApp messages show, it was clear that the complainant had settled on the decision to make a police report whether Julniee came back with confirmation of the accused’s involvement or not. It was likely that Julniee proceeded with communicating the accused’s admission, and his offer to talk things out, in a desperate attempt

to dissuade the complainant from going to the police. In those circumstances, I find it all the more likely that Julniee would have been truthful in her messages to the complainant as she still believed that she was in a position to dissuade the complainant from going to the police.

124 Also, I accept the Prosecution’s submission that, if it were true that Julniee was simply making something up about the accused being the assailant, then she would have told the complainant the truth in her WhatsApp messages *after* it became clear to her that the latter was going to the police and identify the accused as her assailant.³²⁶ At the very latest, after the accused was taken away by the police in the early hours of 28 December 2016, Julniee would have sent a message to the complainant to tell her the “truth”. Instead, up to about 5.18am that morning, she appeared to be keeping up with the “lies” that the accused was responsible for the assault (see [118] above).

125 The Defence could offer no reason for Julniee wanting to frame her brother as the assailant, other than the fact that she is a “habitual liar”, and that Julniee wanted to stick to her lie after she made up a story to the complainant that the accused had admitted to having “fingered” her. I find it quite inconceivable that Julniee would have lied for this reason, especially about something as serious as an offence of sexual assault. I also noted that there is no evidence before me that Julniee has a habit of lying to her friends and family. In fact, the only evidence of alleged lying on the part of Julniee that the Defence can point to are these very WhatsApp exchanges with the complainant that incriminate the accused. The Defence points to Julniee’s admission during cross-examination by the Defence that she had an occasional habit of lying, and

³²⁶ PCS at para 76.

that it was this habit which had resulted in serious allegations of sexual assault being made against the accused.³²⁷ However, it is quite evident from the foregoing that large parts of Julniee’s oral testimony are blatant untruths directed at the sole purpose of assisting the accused’s defence. In my view, Julniee’s answer about her being a “liar” does not assist the Defence.

126 Also, the Defence could not give any sensible reason for Julniee wishing to make false accusations against her brother. There is no evidence that she and the accused had a strained or difficult relationship. Quite the contrary, the accused testified that the two of them had a loving relationship, and he was protective of his sister. While the accused did say that Julniee was “mischievous”, and that he would be controlling her over her consumption of alcohol and the hours that she stayed out at night, he stopped short of saying that Julniee had made false accusations against him because of such reasons.³²⁸ In my judgment, this punctures the entirety of the Defence’s submission that Julniee lied that the accused had admitted, at least partly, to the sexual assaults against the complainant.

127 The Defence also submits that Julniee lied to the complainant because she had been driven out of desperation to do so. They argue that the only options which the complainant presented Julniee with was for Julniee to identify the assailant and get him to apologise (and she would thereafter let the matter rest) or else she would make a police report. It was therefore out of desperation that Julniee lied about the accused having admitted to “fingering” the complainant.³²⁹

³²⁷ DCS at para 63; Transcript, 15 Sep 2021, p 90 lines 8–15.

³²⁸ Transcript, 13 Dec 2021, p 106 lines 18–31, p 107 lines 1–31.

³²⁹ DRS at paras 41–44.

I reject this submission entirely. As the above quoted WhatsApp messages exchanged between Julniee and the complainant show, the complainant never issued any such ultimatum to Julniee. The complainant was obviously distressed at what had happened to her, and did want Julniee to help her confirm who had been her assailant, but at no time did she present Julniee with an ultimatum to identify her assailant or else she would make a police report.

128 Instead, it had been Julniee who was concerned about the well-being of her friend. The idea that the complainant would possibly agree to let things go if “that person” admitted to the sexual assaults only surfaced *after* Julniee began asking the complainant if she was going to make a police report (see [112] above). As I have explained earlier, the fact that Julniee was trying to dissuade the complainant from making a police report can only be explained by the fact that she knew that it was her brother who had been responsible for sexually assaulting the complainant (see [110] above).

Julniee’s investigation statements

129 I now come to Julniee’s two investigation statements, the 28 Dec Statement and the 28 Apr Statement (see [30] and [33] above). The 28 Dec Statement was recorded less than two days after the events of 26 and 27 December 2016. What Julniee said in that first statement was largely consistent with the contents of her WhatsApp messages to the complainant. She told ASP Tai that [D] had told her (through the complainant’s phone) about the sexual assault on the complainant. Consistent with the complainant’s evidence about her reluctance to tell Julniee about what had happened to her (see [14] above), the 28 Dec Statement also records Julniee informing ASP Tai that [D] had informed her (Julniee) that the complainant did not know how to tell her what

had happened and that was why it had been [D] (instead of the complainant) who recounted to her what had happened. Julniee also said that she had checked with Ruben and the accused in the evening of 26 December 2016 to find out what had happened to the complainant. Significantly, she told ASP Tai that, on 27 December 2016, she had questioned the accused again, and this is what the accused told her:

... He told me that he could recall some parts of it and he claimed that while he was smoking in the kitchen, he heard [V] fell [*sic*] so he went in to help her up. He told me that [V] threw himself on him and they make out. He mentioned that they were kissing but could not remember what happened after that.

...

In the evening, I sent a message to [V] and informed her that my brother is responsible for what had happened and persuaded her not to lodge a police report. In my opinion, Alex and Ruben are not involved as Alex was in the room all the time and Ruben was with me when I left [V] alone in the toilet.

130 In my view, there was absolutely no reason for Julniee to have lied to ASP Tai in the account that she gave above. The Defence argues that Julniee had lied in her WhatsApp messages to the complainant the day before about the accused having admitted to be responsible for the assault, and so she continued to keep up with her lies in the 28 Dec Statement because she did not want to be seen as a liar.³³⁰ The Defence points to her evidence in court where she admits to having lied in the 28 Dec Statement to ASP Tai about her brother having admitted to kissing the complainant.³³¹

131 I do not accept the evidence of Julniee that she had lied in the 28 Dec Statement about the accused's partial admission. It was clear to me, from the

³³⁰ DCS at paras 64–65; DRS at paras 39–40.

³³¹ Transcript, 16 Sep 2021, p 9 lines 17–31, pp 10–14, p 15 lines 1–2.

way she gave her testimony in court, that she was a very reluctant witness for the Prosecution. She was being called to give evidence about her WhatsApp messages and statements which, at least partially, incriminated her brother in respect of the charges. It was obvious that she wanted to help her brother's case, and to do that, she had to recant what she said in her investigation statements. Her discomfort when confronted with those incriminating portions of her statements was patently clear to me. While she did say that she lied in her statements to ASP Tai, she could give no credible reason for doing so. I rejected the Defence's submission that she wanted to keep up with the lies in her WhatsApp messages from the past two days before the 28 Dec Statement because she did not want to be exposed as a liar. I have already found that Julniee did not lie in her WhatsApp messages to the complainant on 26 and 27 December 2016 (see [122] above), and as such, this submission by the Defence has no basis and must be rejected.

132 The same analysis applies to the 28 Apr Statement that Julniee gave to ASP Tai on 28 April 2017. For the recording of that statement, she was shown the specific WhatsApp messages she had sent to the complainant and asked to explain them. She confirmed that the accused had admitted to her on 27 December 2016 that he had "fingered" the complainant. She also confirmed, as per the WhatsApp messages sent to the complainant in the early hours of 28 December 2016 (see [117] above), that the accused had admitted to their parents after they returned home that he had "fingered" the complainant although the accused maintained that he did not penetrate the complainant. I find the contents of the 28 Apr Statement to be consistent with Julniee's WhatsApp messages to the complainant. I do not accept Julniee's oral testimony that she had lied to ASP Tai. As already explained, she could give no reason for lying to ASP Tai, save that she wanted to cover up her earlier lie to the complainant in the

WhatsApp messages, which is an explanation which I have already rejected (see [131] above). I find that she had given such untruthful oral testimony in a barefaced attempt to assist her brother in this criminal trial.

133 In sum, I find that Julniee's credit as a witness has been impeached. She came to court with a clear intent to give false testimony in order to help the accused. While she was giving her evidence, she was warned more than once that, if she admitted to lying in her investigation statements, and it was found by the court that she indeed had lied in those statements, she might well find herself the subject of criminal charges for lying in those statements.³³² Julniee's discomfort upon being warned was patently clear to anyone who was present in the courtroom to see. Nonetheless, she persisted in her testimony that she had lied to ASP Tai when her investigation statements were being recorded. Perhaps, in her mind, she had a misguided belief that she could sacrifice herself in order to save her brother. As it turns out, I find that Julniee was being truthful in her investigation statements, and it was in her oral testimony that she had decided to be less than forthright, which is to put things mildly.

Assessment of the accused's evidence

134 As I have already related earlier, the accused gave an account of what he did in the kitchen and service balcony area of the Flat in the early morning of 26 December 2016 that was at odds with the complainant's version of events (see [42]–[48] above). As I explain below, I find several difficulties with the accused's evidence which renders his account rather unbelievable and, more significantly, lacking in credibility. In my judgment, his oral evidence is an afterthought concocted as a defence to the charges. I also find that the other

³³² Transcript, 16 Sep 2021, p 59 lines 3–10.

evidence, in particular the WhatsApp messages the accused exchanged with Pang and Alson, and the presence of the accused's semen on the exterior back of the T-shirt, are consistent with the fact that he had, in the early hours of 26 December 2016, sexually assaulted the complainant in the manner which she has alleged.

Difficulties with the accused's evidence

135 The accused's evidence is that, after he was asked by Julniee for some privacy so she could speak with Ruben, he made his way to the kitchen. According to him, the Flat was in darkness and the kitchen lights were off. He testified that, as he entered the kitchen, he did not notice whether the lights at the service balcony area, which is at the other end of the kitchen, were on.³³³ He then sat on a chair in the kitchen and started smoking before he heard a "thud" from the service balcony area. He then went to check and found the complainant vomiting the toilet.

136 I find the accused's explanation of how he discovered the complainant rather odd. It appears to me quite unlikely that, if all the lights, including those of the kitchen, were off, the accused would not have immediately noticed that the lights in the service balcony area were on. Also, given that the complainant was vomiting, the accused would surely have heard some noise coming from the service balcony area.

137 Be that as it may, the accused's evidence is that he tried to help the complainant from the floor of the Toilet and, as he was lifting her up, her head and body turned such that she was facing him, and their faces almost came into

³³³ Transcript, 29 Sep 2021, p 41 lines 1–5.

contact. He then placed her on the floor of the Toilet in a comfortable position, with her back leaning against the wall. He then went back to the kitchen, sat on the chair there just a few metres away from the Toilet, and resumed smoking. Again, I find this account rather puzzling. According to the accused, he was concerned to see if the complainant was alright. The accused's evidence is that the complainant had not been able to respond to him when he asked if she was okay. Yet, after he placed her in a sitting position in the Toilet, he simply ignored her and went back to smoking, while sitting just a few metres away. He did not go back to his room and inform Julniee that her friend was in such a state.

138 Again, leaving this aside, the next part of the accused's evidence suffers from some serious difficulties. In his evidence-in-chief, the accused testified that, when he saw Julniee entering the kitchen, he said to her words to the effect that her friend was "damn drunk" (see [48] above). He also claimed that Ruben had come into the kitchen with Julniee.

139 However, this was not the accused's position during the Prosecution's case. When Julniee was cross-examined as a witness for the Prosecution, the Defence put the following case to her *about what the accused had told her after she entered the kitchen following her private conversation with Ruben in the accused's room*. That was: (a) the complainant had fallen in the toilet, and the accused had gone into the Toilet to take a look at her; (b) the accused then tapped the complainant on the shoulder to see if she was okay; (c) the accused then lifted her up from the back and in the process of doing so, the complainant had turned around and hugged him; (d) their faces were so close, that their lips might have touched; (e) he then placed the complainant in a sitting position, with her head and back resting against the wall; (f) he then tapped her on the

shoulder again, and asked if she was okay; (g) he then left her there in this comfortable position, with her arms wrapped around her own body.³³⁴ I pause here to reiterate that the Defence’s case that was put to Julniee was that *the accused said all these things to her when she came into the kitchen*.³³⁵ In other words, the accused allegedly described to Julniee the precise details of his encounter with the complainant in the Toilet, upon Julniee entering the kitchen with Ruben. When all this was put to her, Julniee’s response was that she did not recall the accused having said any of these things to her.³³⁶ She could only remember that the accused had said that her friend was “damn drunk”.³³⁷

140 I make two observations here. First, the Defence’s case that was put to Julniee appears rather implausible. To put things bluntly, it appears rather inconceivable that the accused would suddenly tell Julniee all these details about his encounter with the complainant in the Toilet, in particular, about the complainant hugging him and how their (the complainant’s and the accused’s) lips might have touched, in a completely unprompted manner. Further, if he did in fact blurt out all these details to Julniee, I find it quite impossible to believe that Julniee would not have remembered at least part of what the accused had said. It would have been so out of the ordinary that it surely would have left an impression on her mind. She would have then told the complainant of this later, since that would help provide some explanation for why the complainant might have thought she had been sexually assaulted in the toilet. Also, what the accused supposedly informed Julniee at the time when she came into the kitchen

³³⁴ Transcript, 15 Sep 2021, p 71 lines 16–32, p 72 lines 1–8 and 13–32, p 73 lines 1–11.

³³⁵ Transcript, 15 Sep 2021, p 72 lines 13–14.

³³⁶ Transcript, 15 Sep 2021, p 72 lines 13–32, p 73 lines 1–16.

³³⁷ Transcript, 15 Sep 2021, p 70 lines 5–8.

essentially provided an account for what might have happened during the period of time when the complainant was left alone in the Toilet, which is also when the alleged sexual assault had taken place. If the accused indeed informed Julniee about all these details of his encounter with the complainant, I find that Julniee would have told ASP Tai about them in the 28 Dec Statement because it would help explain any accusation of sexual assault made by the complainant. Yet, Julniee’s 28 Dec Statement (as well as the 28 Apr Statement) made no mention of this.

141 Second, it seems to me that the accused had changed his case between the time of Julniee’s cross-examination, and his own evidence-in-chief. After Julniee gave evidence that she did not remember the accused telling all these details about his helping the complainant in the Toilet and what transpired in the process, I find that he tailored his evidence to simply echo what Julniee said – that he told Julniee that her friend was “damn drunk” and that was all.³³⁸

142 I should add that, when the accused was cross-examined on the difference between the version of events that was put to Julniee and what he himself testified in his evidence-in-chief, the accused could not give any explanation at all for this material inconsistency.³³⁹ This is a severe dent in his credibility as a witness.

143 There is another aspect of this portion of the Defence’s case that is troubling. The Defence had put to Julniee that, when the accused was speaking to Julniee about his encounter with the complainant in the Toilet, the accused

³³⁸ Transcript, 29 Sep 2021, p 57 lines 19–31, p 58 lines 1–23; 13 Dec 2021, p 48 lines 8–21.

³³⁹ Transcript, 13 Dec 2021, p 47 line 29.

could *not* recall if Ruben was present and whether Ruben had come to the kitchen with Julniee.³⁴⁰ Julniee’s response was that she could not remember any detailed conversation with the accused in the kitchen,³⁴¹ although her evidence is that she had entered the kitchen *with Ruben*.³⁴² However, when the accused gave evidence, he said that *Ruben came into the kitchen with Julniee*.³⁴³ This bolsters my view that the accused does not have a consistent account as to what transpired at the material time. His version of events fluctuated over time.

144 The accused’s investigation statements suffer from the same deficiencies in terms of consistency. Some are minor differences, but others are materially different from what the accused’s testimony was in court. There are also unexplained material omissions in those statements as compared to the accused’s account in court of the encounter with the complainant.

145 In his first investigation statement recorded on 28 December 2016 (“the First Statement”) by ASP Tai,³⁴⁴ the accused said that, after he left Julniee and Ruben in his bedroom to talk privately, he could not remember whether he went to the living room or kitchen to smoke. In his evidence in court, the accused was quite clear that he headed straight to the kitchen to smoke, and there was no mention that he ever went to the living room to do so.³⁴⁵ The accused subsequently claimed that he had informed ASP Tai during the recording of the

³⁴⁰ Transcript, 15 Sep 2021, p 74 lines 24–26.

³⁴¹ Transcript, 15 Sep 2021, p 73 lines 13–16.

³⁴² Transcript, 15 Sep 2021, p 70 lines 9–11.

³⁴³ Transcript, 29 Sep 2021, p 58 lines 6–9.

³⁴⁴ Exhibit D4.

³⁴⁵ Transcript, 29 Sep 2021, p 33 lines 12–14; 1 Oct 2021, p 60 lines 1–4.

First Statement that he eventually went into the kitchen to smoke,³⁴⁶ although he does not appear to take the position that the First Statement had been inaccurately recorded. Further, in the First Statement, the accused stated that he *could not remember* whether the complainant responded when he asked if she was okay. In his oral testimony, he had no hesitation in saying that she never responded to his questions.³⁴⁷

146 While the above differences might be described as less significant, the accused did go on to say in the First Statement that he “remembered that [he] had tapped [the complainant’s] shoulder and at one point she had hugged me and I cannot remember [*sic*] we had kissed after that”, when describing what happened in the Toilet with the complainant. In his oral testimony, the accused tried to explain that what he meant to say to ASP Tai was that, at one point of time, there was “very close contact” between the complainant’s face and his, but he could not confirm whether their faces were in actual contact, and “[s]o, therefore” he also could not confirm if their lips had touched.³⁴⁸ He also clarified that he was *not* trying to tell ASP Tai that he might have possibly kissed the complainant but could not remember that he had done so.³⁴⁹

147 I note that this portion of the First Statement was specifically drawn to the accused’s attention during the recording of his further statement by ASP Tai on 11 January 2017 (“the Second Statement”).³⁵⁰ ASP Tai asked the accused if he could now recall what happened. In his answer as recorded in the Second

³⁴⁶ Transcript, 1 Oct 2021, p 60 lines 11–16.

³⁴⁷ Transcript, 29 Sep 2021, p 49 lines 10–13, p 50 line 26.

³⁴⁸ Transcript, 1 Oct 2021, p 62 lines 20–30, p 63 lines 14–15, p 64 lines 7–11.

³⁴⁹ Transcript, 1 Oct 2021, p 64 lines 12–20.

³⁵⁰ Exhibit D5.

Statement, the accused did not provide any clarification like that which he gave in his oral testimony. Instead, his answer was that he still could not remember, and he “[did not] have any impression”, even after he did “some reflection” and “went to the toilet and tried to analyse the scene”.

148 This, however, is quite different from the accused’s evidence in court. When he first described the incident, he did not express any doubt as to whether his and the complainant’s lips ever came into contact while in the Toilet. Given the accused’s initial testimony during evidence-in-chief that his and the complainant’s faces never came into actual contact but were only “close to contact”,³⁵¹ it follows that he must also have been certain that their lips also did not come into contact. Quite clearly, the import of this part of the accused’s testimony is that he was absolutely sure that the two of them never kissed. Later, however, when cross-examined by the Prosecution, the accused maintained that his and the complainant’s faces came close to contact, but he said that he could not actually remember whether their lips had touched.³⁵² The accused also explained that, whether his and the complainant’s faces came into actual contact is a “separate matter of fact” from whether their lips came into contact,³⁵³ in an attempt to justify his inability to remember the latter but not the former. I am not quite persuaded by that explanation because, if the accused’s and the complainant’s faces never came into actual contact, it would seem to follow that their lips would also not have come into contact. I also find it rather odd that the accused is unable to recall whether his and the complainant’s lips came into actual contact, despite him being so certain that their faces never came into

³⁵¹ Transcript, 29 Sep 2021, p 51 lines 23–31, p 52 lines 1–2.

³⁵² Transcript, 13 Dec 2021, p 8 lines 5–15, p 9 lines 12–14 and 20–22.

³⁵³ Transcript, 13 Dec 2021, p 9 line 11.

actual contact, and especially given his own evidence that it would have been “absolutely disgusting” to kiss someone who was vomiting, like the complainant was.³⁵⁴ I find that these slightly varying accounts over time cast some doubt on the credibility of the accused. In my view, the accused was clearly trying to avoid giving testimony that had any chance of implicating him (given the subject matter of the fourth charge) even if that meant saying something untrue.

149 What I find of more significance, though, is the complete absence in the First Statement and the Second Statement of the details of his encounter with the complainant in the Toilet. In his oral testimony, the accused gave a detailed description about how he had lifted the complainant up from behind, how she swung around, how her right arm was holding on to his left shoulder for support, how their bodies were in close contact, how their faces came very close to each other, and how he later placed her on the floor with her back against the wall in a comfortable position. However, he failed to give any of these details in his two investigation statements. Instead, his description in those statements was limited to saying that they had hugged in the Toilet and, leaving aside the issue of whether they kissed, that he could not remember anything else.

150 In my judgment, the accused’s failure to describe exactly what happened in the Toilet with the complainant in the First Statement and the Second Statement, as compared to his detailed description in his oral evidence in court, suggests that the accused’s oral evidence is not true. Although an accused person is allowed by s 22(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) to withhold mentioning any incriminatory fact, if the fact that is withheld

³⁵⁴ Transcript, 1 Oct 2021, p 65 lines 18–20.

will exculpate him from an offence, a court may justifiably infer that it is an afterthought and untrue, unless the court is persuaded that there are good reasons for his omission to mention it earlier (see *Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2021] 1 SLR 67 at [152]). An exculpatory fact or circumstance also has more credibility if it was disclosed to an investigating officer at the earliest opportunity after arrest (see *Kwek Seow Hock v Public Prosecutor* [2011] 3 SLR 157 at [19]). The details that the accused has provided in his oral evidence are exculpatory facts which provided an explanation of what exactly happened during his encounter with the complainant in the Toilet. When the First Statement and the Second Statement were recorded, the accused was also trying to explain to ASP Tai that no sexual assault had taken place. That being the case, I would expect the accused to have explained exactly how he came into physical contact with the complainant, at the latest, in the Second Statement after he had done “some reflection” and “tried to analyse the scene” where the alleged sexual assault had taken place.

151 The accused provided some explanation for why he had left out those details in his investigation statements. In respect of the First Statement, he says that he was not in a composed state and did not have enough rest when the statement came to be recorded, and also that, when he gave the statement, all that came to his mind was to explain the sexual assault allegations made against him and “nothing more about anything else”.³⁵⁵ The accused later explained that he had also omitted certain details from that statement because he had not been probed further by ASP Tai,³⁵⁶ and it did not occur to him that he had to be so

³⁵⁵ Transcript, 13 Dec 2021, p 10 lines 7–17.

³⁵⁶ Transcript, 13 Dec 2021, p 11 lines 1–24.

detailed in his statements as he was in his oral evidence.³⁵⁷ In respect of the Second Statement, the accused's explanation was very much the same, namely, that he did not think of providing more details because all he thought he had to do was to "explain myself" on a sexual assault allegation made against him.³⁵⁸ In substance, he claims that all he thought he had to do was to put forth an account that was contrary to that put forth by the complainant, which he thought he already did by stating in his investigation statements that he had not intentionally hugged the complainant and that he could not remember whether he had kissed the complainant.³⁵⁹

152 I do not find these explanations convincing. In my view, given the accused's evidence that he knew he had to "explain" himself for the sexual assault allegations made against him during the statement recording process, he must have known that it did not suffice for him to simply deny those allegations, and that he had to provide details of how the allegations made against him were untrue. It is thus inexplicable why the accused would have left out in his investigation statements the exculpatory details that he provided in his oral testimony. More importantly, the accused did not merely omit to provide those details to ASP Tai when his investigation statements were recorded. Instead, his position in those statements had been that he *could not remember* anything else about his interactions with the complainant that early morning other than what he had already told ASP Tai. The accused explained during cross-examination that what he meant by this was that nothing else had happened between him and the complainant other than whatever he had already told ASP

³⁵⁷ Transcript, 13 Dec 2021, p 12 lines 1–7.

³⁵⁸ Transcript, 13 Dec 2021, p 16 lines 11–15, p 17 lines 16–20.

³⁵⁹ Transcript, 13 Dec 2021, p 19 lines 5–30, p 20 lines 1–14.

Tai, and he did not mean to say that he could not remember if anything else might have happened between him and the complainant.³⁶⁰ I reject this explanation. It is clear from the accused's use of "I cannot remember what happened after that" in the First Statement that he meant to inform ASP Tai that he could not remember if anything else *might have happened*, especially since he also told ASP Tai that he "only remembered" that he had tapped the complainant's shoulder and at one point she had hugged him. The same may also be said of the accused's use of "I can't remember" in the Second Statement when he was asked if he could now recall what had happened during his encounter with the complainant in the Toilet.

153 In any event, the accused's explanation still does not provide a proper justification for why he would have failed to mention in his investigation statements those details which he now relies on in his oral evidence. If the accused had been innocent, then when faced with such serious allegations against him, he would have provided all the details which he could remember rather than simply maintaining his inability to recall anything that might have happened, a position that obviously leaves room for speculation. In my judgment, the version of events provided by the accused in his oral evidence is an afterthought concocted by him for his defence to the charges.

154 I come now to the accused's evidence on how he reacted when Julniee attempted to speak to him on 27 December 2016 as to what had happened between him and the complainant.

³⁶⁰ Transcript, 13 Dec 2021, p 21 lines 5–32, p 22 lines 1–16.

155 The accused’s evidence is that he was having an argument with Pang in his room in the late afternoon of 27 December 2016 when Julniee wanted to speak to him. Julniee told him that the complainant had claimed that “someone” had sexually assaulted her, and then Julniee showed him a message from the complainant that read: “Because you want [to protect] your brother if it was him that did it?” (see [49] above). The accused testified that he understood from what Julniee was telling him, and from the message shown to him, that the complainant was accusing him of sexual assault.³⁶¹

156 The accused testified that he was not really concerned or bothered about this allegation. His evidence is that he told Julniee that this had nothing to do with him, and told her to “settle” with her friend. He then went back into his room to talk with Pang (see [49] above). Not long after, the accused left the room and went to the kitchen. Julniee then told him that she had told the complainant that he was responsible for the sexual assault. The accused felt “lost” when he heard this, and then shouted at Julniee with words to the effect that she was “crazy”, and asked her whether she knew what she was even doing. He also told Julniee that she was ruining his future. He then returned to the room to calm down (see [50] above).

157 I find the accused’s account of this episode with Julniee on 27 December 2016 rather incredible. He was being told by his sister about a serious allegation of sexual assault, and that the victim was accusing him of being the perpetrator. Yet, his evidence was to the effect that he was rather unfazed by the accusation. I say this because, under cross-examination, the accused testified that he did not feel shocked by the complainant’s accusation, even though he was hearing it for

³⁶¹ Transcript, 13 Dec 2021, p 68 lines 19–21.

the first time.³⁶² He did not even ask Julniee for more details about the serious sexual accusation against him.³⁶³ He claims that his mind was preoccupied with his ongoing argument with Pang.³⁶⁴ In my view, the accused’s evidence defies belief and I reject it.

158 Julniee’s account of this episode in court was consistent with that of the accused’s. As I already found, Julniee was not telling the truth in so far as she testified that the accused did not admit to “fingering” the complainant. Her contemporaneous WhatsApp messages to the complainant, and the 28 Apr Statement (which explains those messages), detail what had actually happened. As mentioned earlier, Julniee asked the complainant for the first time, at 5.15pm, if she intended to make a police report (see [109] above). In the very next message sent by the complainant, she asked Julniee “Because you want [to protect] your brother if it was him that did it?” (see [16] above). From that time onwards, it became apparent that the complainant was intending to make a police report about the sexual assaults, where the accused would be named as her assailant. As I also mentioned earlier, after repeated requests by Julniee for the complainant to not make a police report on account of their friendship, the complainant said in a message sent at 5.25pm that she will “let it go” if Julniee could get “him” (which Julniee knew referred to the accused) to admit to his responsibility, apologise and explain his actions (see [110] above). I find that Julniee would have then informed the accused that the complainant was threatening to go to the police, and that the only way to possibly prevent this was for the accused to come clean about what had happened. It was in that

³⁶² Transcript, 13 Dec 2021, p 69 lines 1–16.

³⁶³ Transcript, 13 Dec 2021, p 69 lines 17–23.

³⁶⁴ Transcript, 13 Dec 2021, p 69 lines 5–7.

context that the accused eventually admitted that he “fingered” the complainant while in a drunken state. I therefore find that the accused did in fact admit to Julniee that he had “fingered” the complainant, but tried to explain that they were both drunk. He also told Julniee that he wanted to talk things through with the complainant, which Julniee later conveyed to the complainant in a WhatsApp message saying, “my brother was hoping you’d talk things out” (see [113] above). When Julniee was asked to explain that message during the recording of the 28 Apr Statement, she also told ASP Tai that the accused was hoping to “settle the matter privately” with the complainant (see [33] above).

159 As I have found earlier, at the material time, Julniee was trying to dissuade the complainant from making a police report, and Julniee still believed that she could stop the complainant from doing so if she could get the accused to admit and apologise to the complainant (see [115] above). That was why, shortly after it became clear to Julniee that the complainant had made up her mind about going to the police, Julniee told the complainant about the accused’s admission (see [113] above). Julniee would then have told the accused about what she did, and told him that the only way they could possibly avoid the complainant making a police report was for the accused to admit to what he had done and apologise to the complainant.

160 The accused’s evidence was that he was “lost” and then angry when he found out that Julniee had told the complainant about his admission. He was probably processing in his mind all the consequences that would follow if the complainant still went ahead to make a police report. That could explain why the accused felt “lost” initially. I accept that, at some point, the accused probably did get angry with Julniee, and also told her that she had ruined his future. Perhaps he did not actually expect Julniee to put it in writing, in the form

of a WhatsApp message to the complainant, what he had admitted to. Unlike Julniee, who genuinely believed (in large part on account of her friendship with the complainant) that communicating the accused's admission and getting him to apologise was the only way to possibly persuade the complainant not to make a police report, the accused was probably more sceptical about what the complainant would do.

161 There is one other aspect of the accused's evidence on his reaction to Julniee's revelation that she had communicated his admission to the complainant that I do not accept. According to the accused, after he shouted at Julniee, he simply went back to his room to speak to Pang.³⁶⁵ In my view, if the accused was innocent of any sexual assault as he claims, it beggars belief that he would not have immediately asked Julniee to tell the complainant that he was *not* actually responsible, and told Julniee that she should own up to the complainant about her lies about him *at once*. But, quite incredibly, the accused did no such thing. This is despite the accused agreeing in his oral evidence that it would have been important for him to immediately tell Julniee to clear his name if Julniee had indeed made a false allegation against him.³⁶⁶ According to the accused, he did not even ask Julniee why she had made up this accusation against him. I find his evidence in this regard to be quite unbelievable.

The accused's WhatsApp messages

162 I next deal with the accused's evidence as to what he did after he found out that Julniee had told the complainant about his admission. His evidence is that he told Pang about the accusation of sexual assault, and she exploded in

³⁶⁵ Transcript, 13 Dec 2021, p 72 lines 17–21.

³⁶⁶ Transcript, 13 Dec 2021, p 72 lines 22–26.

anger (see [50] above). He then decided to leave the Flat, and he then drove around aimlessly for some time (see [51] above). As I described earlier, during this period of time, which lasted from around 8.00pm until past midnight on 28 December 2016, the accused received from, and sent a number of WhatsApp messages to, Pang and his father (see [52] above). The accused spent a fair bit of time in his evidence-in-chief explaining away the contents of these messages. Let me highlight the key portions of these WhatsApp exchanges which would show why the accused felt the need to explain what he *actually* meant by them.

163 I start with his WhatsApp messages exchanged with Pang. After he left the Flat, Pang sent the accused multiple messages asking him to come back to the Flat. Two of those messages sent at around 8.12pm were: “U cant run away from the truth” and “If u didnt do it i will be here for u”.³⁶⁷ After numerous unanswered messages, the accused finally replied at 8.49pm to say, “I can’t face this”, and some seconds later, “I really can’t”.³⁶⁸ A few minutes later, in reply to numerous messages from Pang telling him to come back to the Flat, the accused sent a message at 8.51pm which stated, “I can’t accept the truth”.³⁶⁹ He then sent a series of messages to Pang which suggested that they run away together.³⁷⁰ Several minutes later at around 8.53pm, the accused sent messages to Pang which stated, “It was all an accident”, and then “I really didnt want it to

³⁶⁷ AB at p 77.

³⁶⁸ AB at p 80.

³⁶⁹ AB at p 82.

³⁷⁰ AB at p 82.

happen”.³⁷¹ He also sent two separate messages to Pang (at 8.55pm and 9.20pm respectively) which stated: “My parents know”.³⁷²

164 Throughout his evidence in court, the accused repeated that he was not in the right state of mind when he sent all these messages to Pang.³⁷³ That was his only explanation. I completely reject this as I am unable to understand how his state of mind could possibly explain the contents of these messages which suggests that he recognised that he had been responsible for sexually assaulting the complainant. If the accused had not assaulted the complainant, he would have simply denied the accusation and communicated that to Pang. Instead, these messages to Pang that I have referred to are consistent with an acceptance by the accused that he had assaulted the complainant, but that he could not accept the consequences of what he had done.

165 The accused’s WhatsApp exchanges with his father were also in the same vein. From around 9.00pm on 27 December 2016, the accused’s father, Alson, sent repeated WhatsApp messages to the accused asking him to come back so that they could talk things over. Alson gave evidence that he was worried about the accused, and that accused’s mother was on the verge of breaking down.³⁷⁴ After some frantic calls and messages, the accused finally replied at 11.04pm to say that he was “okay” and “let me think thru”.³⁷⁵ Alson sent a message to his son and asked him to share what was on his mind. The

³⁷¹ AB at pp 84–85.

³⁷² AB at pp 86 and 92.

³⁷³ Transcript, 29 Sep 2021, p 98 lines 8–9 and 13, p 99 lines 20–26, p 100 line 28, p 105 lines 18–20, p 107 lines 6–25, p 108 lines 5–14, p 110 lines 23–29, p 112 lines 4–7.

³⁷⁴ Transcript, 14 Dec 2021, p 26 lines 3–30.

³⁷⁵ AB at p 29.

accused (N) then had the following exchange of messages with his father (A) between 11.17pm and 11.27pm:³⁷⁶

- N: I just very lost, I cant accept the truth
- N: Its just like everything happened too fast, and when I wasnt in the right mind.
- A: The truth is that both of you're drunk and no clue what really happened.
- N: But if she's gonna report a rape, that's the end of me
- N: And the law doesnt care, the girl is always right
- N: Its not that simple
- A: Come on son! She don't even know what happened. How can she report a rape case.
- N: She told jul that she felt something and what if things really did happened?
- A: I've understood from Jul that she was out of sight from the 2 of you only for 10 mins and she was properly dressed when she went back to her.
- A: If you've penetrate her, her short will be down at her knee.
- A: The things I've heard so far doesn't seems to be the case 'things' had happened.
- N: But what if?
- A: There is no if.
- A: She is not that stupid to report it as rape case
- N: She told jul that she felt someone penetrate her
- N: Thats why Im freaking out
- N: Because I myself cant remember anything
- N: And if things really did happened, Im dead

³⁷⁶ AB at pp 29–30.

166 When the accused was cross-examined on the messages quoted above that he had sent, such as “I cant accept the truth” and “everything happened too fast”, he was unable to explain what he meant, save that he had self-doubts, was confused and was not in the right state of mind.³⁷⁷ In my view, the accused’s exchange with his father is consistent with his acceptance that he had sexually assaulted the complainant, and was now worried that she would make a police report. I find that he could not bring himself to admit to his father that he had penetrated the complainant with his penis, but he was very concerned that the police would not believe him even if he denied such an accusation. That is why the accused asked rhetorically in more than one of his messages to his father “what if” the “rape” accusation was true.

167 The accused also sent a series of WhatsApp messages to his mother at around 11.04pm which read: “Im sorry mama” and “Its was all an accident, but now that situation has came until so serious, I really cannot accept the truth”.³⁷⁸ As with his other messages to his father and Pang, this message to his mother is consistent with an acknowledgement that he was responsible for the assault on the complainant, although he did claim that it was an “accident”. When pressed in cross-examination by the Prosecution as to what he meant by an “accident”, the accused could not provide any credible explanation of what he meant.³⁷⁹

168 Eventually, the accused returned home. It appears that this was because he was told that the police were at the Flat. I find that the accused’s WhatsApp messages exchanged with Pang and his parents after he had left the Flat in the

³⁷⁷ Transcript, 1 Oct 2021, p 10 lines 29–31, p 11 lines 20–24, p 12 lines 12–20; 13 Dec 2021, p 92 lines 21–32, p 93 lines 1–5 and 17–30, p 94 lines 1–20.

³⁷⁸ AB at p 41.

³⁷⁹ Transcript, 13 Dec 2021, p 96 lines 27–29.

evening of 27 December 2016 support the Prosecution's case that he had admitted to Julniee about "fingering" the complainant (see [114] and [158] above), and when he learnt that the complainant was going to make a police report, he realised the serious consequences of his actions. He could not face up to what he had done, and he decided to leave the Flat to get away from the situation and think things through.

169 I should also add that the accused's WhatsApp messages exchanged with Alson also show that he was unhappy about Julniee having communicated his admission to the complainant, as I have mentioned earlier (see [160] above). These messages were exchanged sometime between 11.31pm and 11.33pm:³⁸⁰

- N: Jul words very untrustable.
A: Why Jul words very untrusable [*sic*]?
A: Untrustable
N: She went to admit to her
N: When I didnt even admit anything
A: She went to admit to her what?
N: Im not too sure, she just told her sorry
N: I saw the chat briefly

170 While the accused did, in those messages, convey to his father the impression that he had not made any admission to Julniee, I have already found that to be untrue (see [158] above). These messages exchanged with Alson are consistent with my earlier finding that the accused had been unable to bring himself to admit to his father that he had penetrated the complainant with his penis or had been responsible for any sexual assault perpetrated on the

³⁸⁰ AB at p 31.

complainant. That was why, when pressed by Alson as to what that admission was, the accused did not provide details and simply said that Julniee had “told [the complainant] sorry”. That is, however, untrue because the accused knew that Julniee had identified him as the assailant and did not merely apologise to the complainant (see [113] above).

171 Alson was called as a witness for the Defence. From his evidence, I could glean that the Defence’s main purpose of calling him as a witness was to debunk the Prosecution’s case that, at some stage during the night of 27 December 2016, or in the early hours of 28 December 2016, the accused admitted to his parents that he had “fingered” the complainant. This part of the Prosecution’s case was based on the WhatsApp messages sent by Julniee to the complainant shortly after midnight on 28 December 2016 (see [117] above), and the 28 Apr Statement in which Julniee confirmed that the accused had made this admission to his parents (see [132] above).

172 I have reviewed Alson’s evidence. He is clearly an interested witness, given that his son is facing these serious charges. But quite apart from that, there are aspects of his evidence which I do not find credible. He claims that he heard about the sexual assault allegations from Julniee when he got home from work at around 7.00pm on 27 December 2016.³⁸¹ He then wanted to speak to the accused about them, and that was why he called and messaged the accused repeatedly.³⁸² He claims, however, that up to the time the accused was arrested by the police in the early hours of 28 December 2016, he still had not heard the

³⁸¹ Transcript, 14 Dec 2021, p 15 lines 12–19, p 16 lines 2–7.

³⁸² Transcript, 14 Dec 2021, p 18 lines 20–24.

accused's side of the story in response to the sexual assault allegations.³⁸³ It is Alson's evidence that the accused never admitted to him (and his wife) about "making out" and having "fingered" the complainant (contrary to Julniee's WhatsApp message to the complainant and the 28 Apr Statement). Alson said that he had tried to find out from Julniee about the sexual assault allegations made against the accused,³⁸⁴ and agreed that he would have questioned Julniee about what the accused had to say about those allegations.³⁸⁵ However, he claimed in his evidence that he could not remember what Julniee had said about the latter.³⁸⁶ It is also Alson's evidence that Julniee never informed him about any admission in connection with the sexual assault allegations, and in particular, Julniee never told him that she had made an admission to the complainant about the allegations made against the accused.³⁸⁷ Despite having been informed by the accused in the above quoted WhatsApp exchange that Julniee had made an admission to the complainant (see [169] above), Alson also testified that he never asked Julniee what exactly she had told the complainant.³⁸⁸

173 I find that Alson has been selective in revealing the truth in this regard. Given the state of anxiety he was in after hearing about the sexual assault allegations when he returned home from work that evening, and also that the accused was not at home at that time, I cannot accept his evidence that he did

³⁸³ Transcript, 14 Dec 2021, p 38 lines 16–24, p 44 lines 4–11, p 57 lines 14–24, p 58 lines 17–25.

³⁸⁴ Transcript, 14 Dec 2021, p 17 lines 6–32, p 41 lines 29–31, p 42.

³⁸⁵ Transcript, 14 Dec 2021, p 48 lines 19–23, p 49 lines 25–31, p 50 lines 1–7.

³⁸⁶ Transcript, 14 Dec 2021, p 48 lines 25–26

³⁸⁷ Transcript, 14 Dec 2021, p 31 lines 19–32, p 32 lines 3–8, p 36 lines 25–30,

³⁸⁸ Transcript, 14 Dec 2021, p 34 lines 6–12.

not remember what Julniee had said about the accused's response to the accusations of sexual assault. In fact, the tenor of the WhatsApp messages that he had sent to the accused shows that he knew what the accused's position in relation to the sexual assault allegations were. Since the accused had left the Flat by the time Alson returned home, Alson would not have had the opportunity to speak to the accused between that time and until 11.04pm that day, which was when the accused started responding to the WhatsApp messages sent to him. During this period, the only person from whom Alson could find out about the accused's position on the sexual assault allegations was Julniee. I find that Julniee must have told Alson about the accused's admission to having "fingered" the complainant while he was drunk. That is why Alson's first WhatsApp message to the accused on the night of 27 December 2016 was "Norvan, papa is aware about the *whole situation*" [emphasis added].³⁸⁹ Alson then sent another message shortly after which stated that the accused had acted when he was "not sober", and also that: "[t]he truth is that both of you're [*sic*] drunk and no clue what really happened".³⁹⁰ This indicates that Alson must have been told by Julniee about what the accused had admitted to doing while he was drunk. It then appears that Alson was more concerned with the accusation that the accused had sexually penetrated the complainant with his penis, than the accusation of "fingering". Perhaps, in his mind, the allegation of digital penetration was less serious. Also, by the time Alson returned to the Flat on 27 December 2016, I find that Julniee would have been in a state of panic given the near certainty that the complainant was going to make a police report. In those circumstances, Julniee would surely have filled Alson in about the situation, and in particular, that the accused had admitted to "fingering" the

³⁸⁹ AB at p 28.

³⁹⁰ AB at p 29.

complainant while drunk. It is likely, however, that Julniee did not tell Alson that she had communicated the accused's admission to the complainant, as the WhatsApp messages exchanged between Alson and the accused show that Alson appeared to be unaware, at least initially, that Julniee had told the complainant about the accused's admission (see [169] above).

174 In sum, I find that Alson must have been told by Julniee that the accused had admitted to “fingering” the complainant. He had not been candid when he gave evidence as to what he knew from Julniee about the accused's admissions earlier that evening (see [172] above). I note that, despite maintaining that he absolutely could not remember whether Julniee had told him about what the accused had to say about the sexual assault allegations, Alson was very clear, when he questioned Julniee for more details on those allegations, that there was no mention by Julniee “of what she admitted to who or who admitted to who or who admitted to whoever” and that “[t]here wasn't any admission ... in the whole conversation that I had with her”.³⁹¹ I do not accept Alson's evidence in this regard and I find that he was not truthful in his claim that he had not learnt from Julniee about the accused's admission to having “fingered” the complainant while drunk.

175 I also find, based on the evidence of Julniee, that the accused had, at some point during the night of 27 December 2016, or just past midnight of 28 December 2016 before he returned to the Flat, admitted to his parents that he and the complainant “made out” while drunk and that he had “fingered” the complainant. In my judgment, this conversation between the accused and his parents would have taken place over the phone, after the last WhatsApp message

³⁹¹ Transcript, 14 Dec 2021, p 31 lines 19–32.

Alson sent to the accused at 11.41pm saying “Rememver [*sic*] this – the whole world can turn their back on you but not your family!” and before Alson sent another message at 12.21am, about 40 minutes later, asking the accused to “[c]all [him] urgent”.³⁹² As the accused testified, shortly after the message at 12.21am, Alson had told him over the phone that the police had arrived at the Flat.³⁹³ I also note that the WhatsApp message in which Julniee told the complainant about the accused having “just told” the family “his side of story and that he didn’t penetrate into [the complainant]”, and that he only “fingered” her, was sent at 12.16am (see [117] above).

176 I make one further note about the accused’s WhatsApp messages. In his evidence, while the accused was providing an explanation for the contents of the WhatsApp messages he exchanged with Pang and his father, he testified consistently that he had developed “self-guilt”, started to doubt himself and even began to think that he had been responsible for the sexual assault allegations made against him.³⁹⁴ I mention this to emphasise how incredible the accused’s evidence is. He testified that, at the time when he left the Flat in the evening of 27 December 2016, he had been very clear about his innocence, which was why he had berated Julniee for having framed him and “ruined” his life, and which was also why he felt especially hurt that Julniee was making such allegations against him.³⁹⁵ Given that, I do not see how the accused could subsequently come to be convinced by those WhatsApp messages from Pang

³⁹² AB at p 33.

³⁹³ Transcript, 1 Oct 2021, p 28 line 6.

³⁹⁴ Transcript, 29 Sep 2021, p 99 lines 10–23 and 27–30, p 100 line 1, p 101 lines 19–26, p 103 lines 13–20, p 106 lines 19–24, p 107 lines 6–25, p 117 lines 5–8; 1 Oct 2021, p 8 lines 13–18, p 10 lines 26–31, p 11 lines 20–24, p 12 lines 12–20.

³⁹⁵ Transcript, 1 Oct 2021, p 48 lines 7–16.

and his father that he was somehow responsible for the sexual assault on the complainant. Indeed, those messages were more concerned with his well-being rather than with the veracity of the sexual assault allegations *per se*. The truth can only be that Pang and his father knew, at the time of sending those messages, of his admission to Julniee about having assaulted the complainant. That was why the accused, when confronted with those messages, never defended his innocence, save for seeking assurances from Pang and his father, which he needed at a time when he was thinking things through.

The presence of the accused's semen on the T-shirt worn by the complainant

177 I deal now more specifically with the charge of sexual assault by the accused penetrating his penis into the complainant's anus. The accused denies this accusation. As I have already explained earlier, I find the complainant's evidence in relation to this charge to be clear, consistent and convincing (see [101] above). In addition, her account is consistent with the evidence of the accused's semen found on the exterior back of the T-shirt she was wearing (see [98] above).

178 The Defence has tried to explain the presence of his semen by arguing that his semen might have been present on the floor or wall of the Toilet, or on the clothes in the laundry basket, and then got transferred onto the T-shirt's exterior through physical contact.³⁹⁶ Further, to explain why his semen would have been present on the floor or wall of the toilet, the accused explained that he would sometimes have unprotected sexual intercourse with Pang in the Toilet and he would ejaculate on the wall or floor of the toilet (see [55] above). He agreed, under cross-examination, that he would try to clean up and wash away

³⁹⁶ DCS at paras 78–79.

his semen from these surfaces,³⁹⁷ but the Defence argues that he might not have been able to clean up the semen from these surfaces entirely.³⁹⁸

179 On this issue, I find that the Prosecution has provided a sensible and logical explanation as to how the accused's semen would have been found on the exterior back portion of the T-shirt. The complainant was wearing the T-shirt at the time of the sexual assault. Her evidence is that the shorts she was wearing and her underwear was pulled down by the assailant, who was positioned behind her. The assailant then thrust his penis into her anus a few times before stopping. She did not know whether her assailant ejaculated.³⁹⁹ The Prosecution's case is that the accused must have ejaculated and that is why his semen was found on the exterior back portion of the T-shirt.

180 In these circumstances, given the state of the evidence, I find that the evidential burden had shifted to the Defence to provide a plausible alternative explanation, backed up by evidence, for the presence of the accused's semen on the T-shirt. I find that the Defence has failed to discharge its evidential burden.

181 The Defence did not call any expert evidence on how long semen could *remain in a form* that allowed it to be transferred from one surface to another through physical contact. The evidence of the Prosecution's forensic expert on DNA, Mr Ping, did not assist the Defence. He agreed that it was possible for semen stains to be transferred from one piece of clothing to another piece of clothing, or from a physical surface to a piece of clothing. He also agreed that, if one is to assume that there is semen on the floor or wall of the Toilet, and that

³⁹⁷ Transcript, 13 Dec 2021, p 61 lines 12–30, p 62 lines 1–15.

³⁹⁸ DCS at para 146; DRS at para 31.

³⁹⁹ Transcript, 30 Sep 2020, p 40 lines 12–13.

if the T-shirt that the complainant was wearing came into contact with that, then the semen might be transferred onto the T-shirt. These answers are rather uncontroversial and commonsensical. However, what is critical is that Mr Ping was not asked any questions by the Defence as to how long semen found on such surfaces would remain in a form that could be transferred through physical contact. It is also unclear to me, even if he were so asked, whether he was suitably qualified to answer such a question as an expert.

182 Significantly, the accused was also not able to say when was the last time he had sexual intercourse with Pang in the Flat (before Pang flew off for her flight attendant duties on the night of 25 December 2016), or more specifically, whether that had taken place in the Toilet.⁴⁰⁰ Given this, I am unable to conclude on the evidence before me that the Defence has shown that there was any reasonable likelihood that the accused semen had gotten onto the T-shirt through physical contact with any surface in the Toilet or with another piece of clothing in the laundry basket, which is where the T-shirt had been found and seized by the police. On this point, I should also add that the accused gave no evidence whatsoever that could explain how his semen might be come to be present on another piece of clothing that was in the laundry basket.

183 I also accept the Prosecution's submission that, for the court to accept this theory of transfer of semen onto the T-shirt through physical contact with a surface which already had the accused's semen, it would require the court to accept that there was a concatenation of events that all transpired to implicate the accused of this offence. To explain, it would require the court to accept as a reasonable possibility that the accused had sexual intercourse with Pang

⁴⁰⁰ Transcript, 13 Dec 2021, p 63 lines 10–11, p 64 lines 27–31.

somewhere in the Flat, but had failed to completely clean up his semen after he ejaculated on some surface somewhere in the Flat. Thereafter, in those few hours that she was wearing the T-shirt while in the Flat, the complainant then happened to position her body in such a way that her back came into contact with the exact spot in the Flat where those traces of semen remained, and that the semen was still in a form that could be transferred through physical contact. Then, a few hours later, the complainant told four of her friends that she had been sexually penetrated in the anus by someone who she thought was the accused. This accusation was made before she even knew about the presence of the accused's semen on the exterior back of the T-shirt. With all due respect to the Defence, I do not agree that the court can reasonably come to such a conclusion to explain how the accused's semen might have been present on the exterior back portion of the T-shirt worn by the complainant during the assault.

Sufficiency of time in which the accused could have sexually assaulted the complainant

184 Finally, let me deal with the submission of the Defence that there was not enough time for the accused to have committed separate acts of assault on the complainant in the living room, Julniee's bedroom, and then in the Toilet.⁴⁰¹ This submission is predicated on Julniee's and Ruben's oral testimony that they spoke in the accused's room for five minutes or even less before heading out to the kitchen to smoke (see [22] and [58] above).

185 In the case of Julniee, the 28 Dec Statement recorded her as telling ASP Tai that she had spoken with Ruben for eight to ten minutes in the accused's room (see [30] above). In the 28 Apr Statement, she said that it was five to ten

⁴⁰¹ DRS at paras 91–94.

minutes (see [33] above). I also noted that, in one of Alson's WhatsApp messages to the accused on the night of 27 December 2016 that I have quoted above, he had mentioned that Julnee said to him that she had left the complainant alone with the accused for ten minutes (see [165] above). I do not accept Julnee's attempt in her oral testimony to now claim that her conversation with Ruben in the accused's room was only five minutes or less. I have already expressed my views about Julnee's credibility as a witness in court. She was clearly motivated to testify untruthfully in order to help her brother's defence (see [133] above).

186 As for the case of Ruben, I find that he has little credibility as a witness of truth. As his cross-examination by the Prosecution demonstrated, he had no memory of most of the events of the evening of 25 December 2016 and the early hours of 26 December 2016 (see [58] above). He could not remember how much alcohol he consumed or what type it was. He could not remember the name of the club that he and the accused had gone to, what time he was there, how long they stayed, and when they left.⁴⁰² He could not recall when they arrived back at the Flat, or when Julnee came into the room to speak to him.⁴⁰³ He could not remember seeing the accused when he later went to the kitchen with Julnee, or whether the accused was in his room when he returned to the room to sleep.⁴⁰⁴ Despite his generally poor recollection of that night, Ruben was somehow able to steadfastly insist that he spoke to Julnee for five minutes or less. In my view, he had come to court to assist in his friend's defence in court by insisting that he had spoken to Julnee for five minutes or less. His

⁴⁰² Transcript, 14 Dec 2021, p 80 lines 9–25.

⁴⁰³ Transcript, 14 Dec 2021, p 81 lines 2–3, p 82 lines 8–9.

⁴⁰⁴ Transcript, 14 Dec 2021, p 93 lines 28–30, p 94 lines 6–7.

evidence is not reliable. Put simply, Ruben was not able to testify on anything except for the duration of his conversation with Julniee, the very fact which the accused relies on in his defence. His explanation that he remembered the contents of the conversation he had with Julniee because it was “impactful”⁴⁰⁵ was neither here nor there. It does not follow from this that he would then be able to remember whether they had spoken for five minutes or less, or for longer. I also note that, when questioned during cross-examination as to what the conversation with Julniee was about and how that could have affected the length of that conversation, Ruben was not able to provide any meaningful answer.⁴⁰⁶

187 In any event, I find that the question of how long Julniee had been speaking to Ruben, *ie*, whether it was about ten minutes or five minutes, is not ultimately determinative of whether there was sufficient time for the accused to have carried out his assaults. As the Prosecution pointed out in their closing submissions, the complainant’s description of each of the sexual assaults suggested that each of them was brief. When she was brought to the living room, and laid on the sofa, she testified that she received a “peck” on the lips before she got up almost immediately to go back to the Toilet to vomit some more. When she was in Julniee’s room and laid on her bed, her evidence is that she briefly felt a hand at the base of one of her breasts, and “a few seconds” later, fingers being inserted into her vagina.⁴⁰⁷ She gave evidence that the digital penetration was quite brief, though she could not say what was the exact duration. Then, for the assault in the toilet, the complainant described in her investigation statement how her assailant had stopped “after a few thrusts” and

⁴⁰⁵ Transcript, 14 Dec 2021, p 84 lines 3–15.

⁴⁰⁶ Transcript, 14 Dec 2021, p 84 lines 28–32, p 85 lines 1–19.

⁴⁰⁷ Transcript, 30 Sep 2020, p 30 lines 17–21.

then left the Toilet.⁴⁰⁸ In my judgment, the acts of sexual assault described by the complainant could not have taken very long. Even including the two occasions which the accused had to bring the complainant out of the Toilet into the living room and then to Julnee's room, I find that a period of five to ten minutes would have been sufficient time for all those acts to have taken place.

Conclusion

188 In summary, I accept the complainant's evidence as being unusually clear and convincing. On the other hand, I find that the accused has not been a credible witness. His evidence is riddled with difficulties, and the shifting and inconsistent accounts which he provided about his encounter with the complainant at the material time make it clear that his oral evidence in court is an afterthought concocted as a defence to the charges. I therefore find that the Prosecution has, on the basis of the complainant's evidence alone, proven its case on all four charges against the accused beyond a reasonable doubt.

189 Further, in so far as the second and fourth charges are concerned, the complainant's evidence is supported by that of Julnee's, as found in Julnee's WhatsApp messages on 27 December 2016 and her two investigation statements (the 28 Dec Statement and the 28 Apr Statement). Julnee's credit as a witness has been impeached and substantial portions of her oral evidence, where she attempted to resile from the contents of her WhatsApp messages and her two investigation statements, are rejected. I also find from the WhatsApp messages which Julnee had sent to the complainant in the late afternoon of 27 December 2016 and her message sent to the complainant at 12.16am on 28 December 2016, as well as Julnee's two investigation statements, that the

⁴⁰⁸ Exhibit D3.

accused had admitted, first to Julniee, and later to his parents, that he had kissed and digitally penetrated the complainant. Further, the accused's WhatsApp messages to Pang and his parents on the night of 27 December 2016 are consistent with an acceptance that he was responsible for the sexual assaults on the complainant forming the subject matter of the second and fourth charges.

190 Finally, in so far as the first charge is concerned, I find that the complainant's evidence is supported by the forensic evidence that the accused's semen was present on the exterior back of the T-shirt worn by the complainant at the time of the assaults. I accept the Prosecution's case that the only reasonable explanation for how the accused's semen came to be found on the exterior back of the T-shirt is that he had anally penetrated the complainant and ejaculated. The Defence's submission about the accused's semen being transferred onto the T-shirt from some surface in the Flat is entirely speculative and not supported by the evidence before the court.

191 In the light of the evidence before the court and my findings, I find that the accused is guilty of all the charges.

192 I will deal separately with the question of sentencing.

Ang Cheng Hock
Judge of the High Court

Ng Yiwen, Sheryl Yeo Su Hui and Niranjan Ranjakunalan (Attorney-
General's Chambers) for the Prosecution;
Amarjit Singh s/o Hari Singh (Amarjit Sidhu Law Corporation) for
the accused.
