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

[2022] SGHC 262

Criminal Case No 24 of 2022

Between

Public Prosecutor

And

Mustapah bin Abdullah

GROUNDS OF DECISION

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

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Public Prosecutor
v
Mustapah bin Abdullah

[2022] SGHC 262

General Division of the High Court — Criminal Case No 24 of 2022
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19 October 2022

See Kee Oon J:

1 The accused was convicted after trial on three charges of sexual assault by penetration in respect of three teenaged males. The offences occurred in the late night of 17 October 2018 or early hours of 18 October 2018 at a playground. The three charges were as follows:

> 1st charge
>
> between at or about 10.30 p.m. on 17 October 2018 and the early hours of the morning on 18 October 2018, at the playground located at [address], Singapore, did penetrate, with your penis, the mouth of one [V1], a male then aged 16 years old (D.O.B.: XX November 2001), without his consent, and you have thereby committed an offence under section 376(1)(a) and punishable under section 376(3) of the Penal Code (Cap 224, 2008 Rev Ed).
>
> 2nd charge
>
> between at or about 10.30 p.m. on 17 October 2018 and the early hours of the morning on 18 October 2018, at the playground located at [address], Singapore, did penetrate, with your penis, the mouth of one [V2], a male then aged 17 years

> old (D.O.B.: XX December 2000), without his consent, and you have thereby committed an offence under section 376(1)(a) and punishable under section 376(3) of the Penal Code (Cap 224, 2008 Rev Ed).
>
> 3rd charge
>
> between at or about 10.30 p.m. on 17 October 2018 and the early hours of the morning on 18 October 2018, at the playground located at [address], Singapore, did penetrate, with your penis, the mouth of one [V3], a male then aged 17 years old (D.O.B.: XX February 2001), without his consent, and you have thereby committed an offence under section 376(1)(a) and punishable under section 376(3) of the Penal Code (Cap 224, 2008 Rev Ed).

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

The Prosecution's case

3 At the time of the offences, the accused was 46 years of age, while the three victims ("the victims") were students at various technical institutions.[1] They resided in the same neighbourhood as the accused. The victims were friends, and often met at a hut, which was near the accused's residence.[2] The victims would "hang out" together at the hut with a friend ("[M1]"), who was 16 years old at the time of the alleged offences. [M1] first got to know the accused and then introduced the victims to the accused sometime in the latter half of 2017.

4 The victims knew the accused as "Nick" and the accused began to join the victims at the hut when they met. The accused was friendly with the victims and often shared about his past experiences, including his views on religion and

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1 Prosecution's Opening Address at para 3.

2 Prosecution's Opening Address at para 6.

adult life.[3] The accused sometimes purchased beer and cigarettes for the victims. Sometime in late 2017, a mutual friend of the victims, [M2] joined the accused, the victims and [M1] when they met to hang out at the hut.

5 Through their conversations, the victims came to know that the accused was an ex-convict and had purportedly been involved in a gang in the past.[4] [V2] and [V3] were formerly also in another gang and the accused had helped them to leave their gang. [V2], [V3] and [M1] testified that there was a meeting where the accused assisted to "talk things out" with their headman.[5] They were allowed to leave their gang after that meeting.

6 Sometime in 2018, the victims heard a rumour that [M2] was made to suck the accused's penis. The victims then decided to avoid the accused. [V1] testified that he distanced himself as he was worried that the accused would make him perform a similar act.[6] The accused was unhappy when he found out that the victims were avoiding him due to this rumour.

Initial communications with the victims on 17 October 2018

7 [V1] testified that at or around midnight on 17 October 2018, he received a call from [M1].[7] When he answered the phone call, the accused spoke to him and told [V1] in a serious tone to meet him and [M1] at the fitness corner near the hut, otherwise he would "*potong*" (a Malay word meaning "cut" in English)

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3 Transcript, 12 Apr 2022, p 79 lines 21–31.

4 Transcript, 12 Apr 2022, p 79 lines 10–13.

5 Transcript, 12 Apr 2022, p 82 lines 4–6; Transcript, 21 Apr 2022, p 39 lines 25–26; Transcript, 26 Apr 2022, p 13 lines 12–14.

6 Transcript, 12 Apr 2022, p 6 lines 30–31.

7 Agreed Bundle ("AB") at p 2 ([V1]'s statement at para 6); Transcript, 12 Apr 2022, p 7 lines 14–15.

him.[8] This made [V1] feel afraid and he decided to go to the fitness corner immediately.[9]

8 When [V1] reached the fitness corner, the accused appeared aggressive and angry.[10] He came up to [V1] and began to scold him. He also squeezed [V1]'s face near his jawline and slapped him. While [V1] suffered no injuries from this, he testified that it was painful.[11] The accused also took [V1]'s handphone to extract [V2] and [V3]'s phone numbers.[12] The accused then started sending them text messages containing offensive words, but [V1] was unable to recall the exact words used.[13] The accused then allowed [V1] to go home.

9 At around 12.20am on 17 October 2018, the accused sent [V2] a series of WhatsApp messages[14] with vulgarities directed towards [V2].

10 At around 12.31am on 17 October 2018, the accused similarly sent [V3] a series of WhatsApp messages with vulgarities directed towards [V3].[15] The accused told [V3] that if he was not in the wrong, he would not need to feel scared and also demanded that [V3] call him.[16] [V3] testified that he felt that

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8 AB at p 2 ([V1]'s statement at para 6); Transcript, 12 Apr 2022, p 7 lines 23–26.

9 Transcript, 12 Apr 2022, p 7 lines 28–31.

10 Transcript, 12 Apr 2022, p 8 lines 11–14.

11 Transcript, 12 Apr 2022, p 8 lines 23–31.

12 Transcript, 12 Apr 2022, p 9 lines 12–15.

13 AB at p 2 ([V1]'s statement at para 6); Transcript, 12 Apr 2022, p 9 lines 25–27.

14 AB at p 80.

15 AB at p 62.

16 AB at p 8 ([V3]'s statement at para 6).

"something wasn't right at that point of time" and immediately called the accused.[17] [V3] then went to the hut to meet the accused.

11 When [V3] arrived at the hut, he saw the accused there. [M1] arrived shortly after. The accused questioned [V3] on whether he knew about the rumour, to which [V3] answered that he did. The accused then asked [V3] who he had heard the rumour from, and [V3] told him that he had forgotten.[18] The accused got angry as he thought that [V3] was "trying to defend" the person who had spread the rumour.[19] The accused threatened to harass [V3] at his house and to "*potong*" his family members if he found out that [V3] was defending the person who had spread the rumour.[20] The accused also pulled hard on [V3]'s hair and threatened to hit him with a beer bottle he was holding.[21] [V3] testified that this was the first time that he had seen the accused angry. He felt afraid and cried.[22] The accused told [V3] not to spread the rumour anymore and allowed [V3] to go home.[23]

Calling the victims to the hut

12 The accused later instructed [M1] to arrange for the victims to meet him at 10.00pm on 17 October 2018. That evening, at about 6.00pm to 8.00pm, the victims and [M1] met at a coffeeshop to discuss why the accused wanted to meet. They also wanted to calm each other down before meeting with the

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17 Transcript, 21 Apr 2022, p 42 lines 14–16.

18 AB at p 9 ([V3]'s statement at para 7).

19 Transcript, 21 Apr 2022, p 44 lines 1–3.

20 AB at p 9 ([V3]'s statement at para 7).

21 AB at p 9 ([V3]'s statement at para 7); Transcript, 21 Apr 2022, p 89 lines 9–10.

22 Transcript, 21 Apr 2022, p 44 line 15.

23 AB at p 9 ([V3]'s statement at para 7).

accused.[24] [V2] testified that during the meeting, he recalled seeing a friend of the accused walk past the coffeeshop and glance towards the table where they were seated.[25] [V2] was afraid that the accused's friend would beat them up.[26] [V1] decided to head home first.

13 At around 10.30pm, [M1], [V2] and [V3] headed to the hut near the playground to meet the accused. When the accused arrived, he was holding on to a bottle of beer.[27] The accused kicked [V2] lightly on the back.[28] The accused also kicked [M1].[29] [M1], [V2] and [V3] tried to explain to the accused that they were not responsible for spreading the rumour, but the accused refused to listen.[30] The accused became angry and said that he had been involved in gang fights and had beaten up others before.[31] This was not the first time that the accused had mentioned this to [M1], [V2] and [V3].[32] The accused also said that he would go to their homes to do "something bad". [V2] understood this to mean that the accused would hit him in front of his family. The accused also said that he would "*potong*" their family members.[33] [V2] testified that the accused knew his younger brother, who also hung out in the same area.[34]

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24 Transcript, 26 Apr 2022, p 24 lines 6–7.

25 Transcript, 12 Apr 2022, p 89 lines 3–23; AB at p 13 ([M1]'s statement at para 7).

26 Transcript, 12 Apr 2022, p 90 lines 19–21.

27 AB at p 5 ([V2]'s statement at para 6).

28 AB at p 5 ([V2]'s statement at para 6); AB at p 9 ([V3]'s statement at para 9).

29 AB at p 13 ([M1]'s statement at para 8).

30 AB at p 5 ([V2]'s statement at para 6).

31 AB at p 5 ([V2]'s statement at para 6).

32 AB at pp 5 ([V2]'s statement at para 11) and 8 ([V3]'s statement at para 3); Transcript, 12 Apr 2022, p 92 lines 3–10.

33 AB at p 5 ([V2]'s statement at para 6); p 12 ([V3]'s statement at para 7)

34 Transcript, 12 Apr 2022, pp 92–93 line 28 to line 2.

14 The accused told [M1], [V2] and [V3] to follow him to the playground. [V1] then arrived at the playground.[35] The accused slapped [V3], causing his spectacles to fall and also tried to "scratch" [V3]'s eye.[36] [V3] was afraid as the accused seemed angry, violent and drunk,[37] and his behaviour was much worse as compared to the previous night.[38] As there were a few children at the playground, the accused told [M1], [V2] and [V3] to return to the hut.[39] The accused then told them that they could "settle" the score with him by speaking to him one by one.[40]

Events that occurred at the playground

15 I now deal chronologically with the events that occurred at the playground, from which the first, second and third charges against the accused arose.

[V3]'s first encounter at the playground

16 [V3] testified that the accused told him to follow him to the top of the slide at the playground while the rest remained at the hut.[41] At the top of the slide, the accused asked [V3] whether he wanted to settle the problem. The accused gave [V3] two options – to either suck his penis, or to walk away but "tables and chairs would fly if he saw [them] at the coffeeshop next time".[42]

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35 AB at p 5 ([V2]'s statement at para 7).

36 Transcript, 21 Apr 2022, p 46 lines 18–22.

37 AB at p 9 ([V3]'s statement at para 10).

38 Transcript, 21 Apr 2022, p 46 lines 29–31.

39 AB at p 2 ([V1]'s statement at para 8); p 5 ([V2]'s statement at para 8).

40 AB at p 14 ([M1]'s statement at para 10).

41 AB at p 10 ([V3]'s statement at para 11).

42 AB at p 10 ([V3]'s statement at para 11).

[V3] said that he inferred that the accused would throw a "tantrum" and "whack" the victims.[43] [V3] thought that the accused was capable of doing this as he had "friends around the area" and that he would "call them to do this kind of thing".[44]

17 As [V3] was unable to decide what to do, he decided to return to the hut first.[45] The accused told him to call [V2] to see him at the playground.[46]

[V2]'s encounter at the playground

18 [V2] testified that [V3] came back to the hut and told [V2] that it was his turn to go to the slide at the playground. [V2] did not consider running away or not meeting the accused at the playground, as he was feeling "too scared to … figure out anything".[47] Upon meeting the accused who was seated at the top of the slide, the accused asked [V2] if he wanted to settle this problem and gave him two options: to either "follow his way" or to walk away. However, if [V2] chose the latter, the accused would "give problems to [him] in public".[48] The accused then told [V2] to perform fellatio on him. [V2] testified that the accused had said something to him in Malay to the effect of "[*t*]*akde kau hisap aku punya, boleh tak?*"[49] ("the '*takde kau hisap* …' phrase") which translates into

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43 Transcript, 21 Apr 2022, p 47 lines 14–17.

44 Transcript, 21 Apr 2022, p 47 lines 19–20.

45 Transcript, 21 Apr 2022, p 48 lines 3–4.

46 AB at p 10 ([V3]'s statement at para 11).

47 Transcript, 12 Apr 2022, p 96 lines 19–24.

48 AB at p 6 ([V2]'s statement at para 12).

49 Transcript, 19 Apr 2022, p 18 lines 24–26.

English as, "If not, you suck my one (*ie*, my penis), can or not", and that the accused was not asking for oral sex, but was showing that he was "pissed off".[50]

19 [V2] thus decided "out of fear" to perform fellatio on the accused.[51] [V2] testified that he consented to the act[52] as he was afraid that the accused would look for him or his family if he did not perform the act and "beat [them] up".[53] He thus did not walk away as he was "too scared to do anything".[54]

20 [V2] testified that the act of fellatio lasted around two or three seconds[55] before the accused told him to stop.[56] The accused did not ejaculate.[57] Before leaving the playground, he asked the accused not to cause problems for his younger brother as the accused knew that his younger brother liked to loiter around the area.[58] [V2] then returned to the hut. He testified that at the point of his return, he did not know if any of his other friends had also been made to perform fellatio on the accused.[59]

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50 Transcript, 19 Apr 2022, p 19 lines 10–12.

51 AB at p 6 ([V2]'s statement at para 13).

52 Transcript, 12 Apr 2022, p 99 lines 12–18.

53 Transcript, 12 Apr 2022, p 99 lines 27–31.

54 Transcript, 19 Apr 2022, p 34 lines 28–29.

55 Transcript, 12 Apr 2022, p 100 lines 5–8.

56 AB at p 6 ([V2]'s statement at para 14).

57 AB at p 6 ([V2]'s statement at para 14).

58 AB at p 6 ([V2]'s statement at para 14).

59 Transcript, 12 Apr 2022, p 101 line 26–28.

[V1]'s encounter at the playground

21 Next, [V2] informed [V1] to go up to the top of the slide at the playground to see the accused.[60] When [V1] was there, the accused unzipped his pants and told [V1] in Malay in an angry tone that if he wanted to settle the problem, he had to suck the accused's penis.[61] The accused similarly said the "*takde kau hisap*…" phrase to [V1].[62] [V1] testified that he felt pressurised and had "no choice"[63] but to comply with the accused's instructions.

22 [V1] testified that he then proceeded to fellate the accused for a few seconds until the accused said to stop.[64] The accused did not ejaculate.[65] The accused then told him "[not to] tell anyone about this" and to go back to the hut.[66] [V1] then remained at the hut for some time and the accused called [V3] over to the playground again.

[V3]'s second encounter at the playground

23 [V3] testified that when he returned to the hut after his first encounter at the playground, he told [M1] and [V1] that the accused wanted him to suck his penis to settle the problem but he had yet to do so as he was still considering it.[67] When [V2] came back to the hut and asked [V1] to go to the playground to meet the accused, [V2] told [V3] that he had "just did it". About five minutes

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60 Transcript, 12 Apr 2022, p 12 lines 28–31.

61 Transcript, 12 Apr 2022, p 13 lines 4–8.

62 Transcript, 12 Apr 2022, p 61 lines 7–16.

63 Transcript, 12 Apr 2022, p 13 lines 11–15.

64 Transcript, 12 Apr 2022, p 13 lines 26–27.

65 AB at p 3 ([V1]'s statement at para 12).

66 Transcript, 12 Apr 2022, p 14 lines 1–3.

67 AB at p 10 ([V3]'s statement at para 12).

after this, [V1] returned and asked [V3] to go to the playground to meet the accused.[68] [V3] testified that he did so as he felt afraid of the accused and was also worried that [V1] or [V2] would tell the accused where he lived.[69]

24 The second time that [V3] went up to the top of the slide, the accused presented him the same options as before (at [16] above). Specifically, the accused said the "*takde kau hisap* …" phrase to [V3], which seemingly presented [V3] a choice of whether to perform fellatio or to leave.[70] [V3] decided to perform fellatio on the accused "for the sake of settling".[71] He felt that walking away was not a good option if "[the accused] really meant his words". He therefore decided to "end the problem" and do as he was told.

25 [V3] bent his body and used his mouth to perform fellatio on the accused. He testified that the accused's penis was not erect.[72] After a few seconds, the accused told him to stop. The accused said that he was sorry that [V3] got involved and shook his hand. The accused also told him that all their problems were settled and not to spread rumours about him again.[73]

26 The accused and [V3] then walked back to the hut. When they reached the hut, the accused spoke to the victims for about 20 minutes, telling them that he could be a good friend to them. Subsequently, all of them left the scene.[74]

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68 AB at p 10 ([V3]'s statement at para 12).

69 Transcript, 21 Apr 2022, p 64 lines 10–13.

70 Transcript, 21 Apr 2022, p 69 lines 11–18; Transcript, 21 Apr 2022, p 75 lines 11–15.

71 Transcript, 21 Apr 2022, p 48 line 13.

72 Transcript, 21 Apr 2022, p 67 line 25–26.

73 AB at p 10 ([V3]'s statemgent at para 14).

74 AB at p 10 ([V3]'s statement at para 14).

[V1] learned from [V2] and [V3] that they had also been made to fellate the accused.[75]

27 The Prosecution submitted that the victims' testimonies were internally and externally consistent. They corroborated each other in their accounts of the sequence in which they were called to "settle" with the accused, and each of them consistently testified that the accused had posed a demand to them to fellate him in order to settle the problem.[76] The victims' testimonies were also corroborated to some extent by [M1], who had witnessed the accused's threats and the violence that he inflicted upon the victims.[77]

[V1]'s behaviour the day after the incident and police report

28 The day after the incident, Mr [AB], [V1]'s class advisor in [School A], noted that [V1] looked quieter and less cheerful than usual. Mr [AB] then decided to ask [V1] what had happened, to which [V1] said that he had done "something unusual" for his neighbour but did not share more.[78] Mr [AB] then referred [V1] to the school counsellor, Mr [CD] via e-mail. Mr [CD] testified that during the counselling session on 22 October 2018, [V1] revealed that he had been made to "suck the dick" of a neighbour.[79] During the session, [V1] also

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75 AB at p 3 ([V1]'s statement at para 13).

76 Prosecution's submissions dated 15 June 2022 ("Prosecution's submissions") at para 52.

77 Prosecution's submissions at para 54.

78 Transcript, 11 Apr 2022, p 86 lines 24–26.

79 Transcript, 11 Apr 2022, p 104 lines 16–19.

said that "if he [did] not abide to certain things … there was threat to his life".[80] He also appeared fearful and anxious during the session.[81]

29 In accordance with the school protocols, a decision was made by the [School A] administrators thereafter to lodge a police report. A police report of sexual assault by penetration was subsequently made on 24 October 2018 by Mr [EF], the student guidance officer at [School A].[82] Station Inspector Nithiya d/o Silvadorai ("SI Nithiya") was briefed on the matters raised in the First Information Report.[83] She then alerted Assistant Superintendent of Police Chai Xi En, Regina ("IO Regina") of the case of sexual assault by penetration, and arranged to interview [V1] on 25 October 2018 to gather more information. From the interview, SI Nithiya was informed that [V1] had been made to fellate the accused and that [V2], [V3] and [M1] were also involved.[84]

30 The Prosecution submitted that [V1] had given consistent accounts of what he and the victims had experienced. Mr [AB]'s initial observations and Mr [CD]'s subsequent observations of [V1]'s demeanour and mood were corroborative of the trauma that [V1] experienced as a result of having to fellate the accused.[85]

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80 Transcript, 11 Apr 2022, p 105 lines 14–17.

81 Transcript, 11 Apr 2022, p 105 lines 20–24.

82 AB at p 18.

83 AB at p 19–21 (Exhibit P1).

84 Transcript, 11 Apr 2022, p 131 lines 8–11.

85 Prosecution's submissions at para 64.

The accused's statements

31 IO Regina recorded three police investigation statements under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") from the accused from 30 to 31 October 2018. The accused admitted in these statements that he had told the victims that if they wanted to settle their issues with him, they would have to suck his penis, and that the victims had put their mouths onto his penis after he unzipped his pants.[86]

32 The accused alleged that the three statements were recorded when he was in an unstable mental state and under immense stress due to alleged harassment via his home telephone number by unlicensed moneylenders.[87] He did not make any direct allegation that he was given any threat, inducement or promise when he gave the statements. IO Regina testified that the accused did not raise any complaints to her before or during the recording of his statements.[88] This was corroborated by Maria binte Bazid ("Ms Maria"), the interpreter who was present at the time his statements were recorded. She similarly testified that the accused did not raise any complaints before or during the recording of the three statements.[89]

33 In relation to the accused's admission in his first statement that he had asked "3 people to suck [his] penis for [him]", IO Regina testified that it was the accused who volunteered this information.[90] Further, the accused was calm

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86 AB at pp 43–44 (Exhibit P7-3), 47–48 (Exhibit P8-2 and 8-3), 51–52 (Exhibit P9-2 and 9-3).

87 Prosecution's submissions at para 24.

88 Transcript, 11 Apr 2022, p 20 lines 26–28, p 26 lines 14–15; p 30 lines 24–25; p 34 lines 16–17.

89 Transcript, 11 Apr 2022, p 70 lines 15–17.

90 Transcript, 11 Apr 2022, p 22 lines 23–25.

during the recording of his statements and initiated multiple amendments.[91] He also signed on the statements to confirm that the statements were made without any threat, inducement or promise, and that the statements were given voluntarily.[92]

34 It was not disputed that the accused had only made one police report in relation to the harassment over the telephone by unlicensed moneylenders on 23 November 2017,[93] nearly a year before his arrest. He changed his home telephone number around a month after he made the police report and did not receive any further threats or harassment over the phone thereafter. He testified that he kept a lookout for these "illegal loan shark[s]" for up to six months after the report, which would mean that he was on such lookout until July 2018.[94] The Prosecution thus submitted that there was no evidence to support the accused's claim that he had been harassed by illegal loan sharks around the time of his statement recording which resulted in him being unable to give his statements voluntarily and accurately to the police.[95]

Institute of Mental Health report

35 The accused's forensic psychiatric assessment and psychiatric report dated 9 September 2020 were prepared by Dr Yeo Chen Kuan Derrick ("Dr Yeo") from the Institute of Mental Health ("IMH").[96] The accused admitted to Dr Yeo during his interviews on 26 and 31 August 2020 that he had met up with

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91 Transcript, 11 Apr 2022, p 22 line 28.

92 Prosecution's submissions at para 30.

93 Exhibit P15.

94 Transcript, 27 Apr 2022, p 42 lines 28–32.

95 Prosecution's submissions at para 31.

96 AB at pp 94–99.

each of the victims consecutively, unzipped his pants and showed them his penis.[97] However, he claimed that he only did so with the intention to humiliate them as he felt that he had been wronged by them.[98] He did not expect them to take him seriously and suck his penis. He told Dr Yeo that he had stopped the victims "within seconds" of them putting his penis in their mouths.[99] In Dr Yeo's clinical notes, it was also recorded that the accused's penis had, at the very least, made contact with the victims' mouths.[100]

36 At the conclusion of the Prosecution's case, the accused did not make any submission of no case to answer. I proceeded to call for the Defence as I was satisfied that there was sufficient evidence adduced in support of all the charges.

The accused's case

37 The accused elected to give evidence. Although he claimed to have some witnesses to support his defence, no other witnesses eventually turned up in court to testify on his behalf even though he was afforded ample opportunity to contact them to arrange for their attendance.

38 The defence consisted of three main limbs. First, the accused claimed that his statements were obtained while he was labouring under an unstable state of mind. Further, IO Regina, the recording officer, was biased against him and did not record an accurate statement from him. Second, he claimed that the victims had a choice as to whether to perform the act of fellatio. Lastly, he

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97 AB at p 97 (Exhibit P6-4, Dr Yeo's report at para 16).

98 AB at p 97 (Exhibit P6-4, Dr Yeo's report at para 16).

99 AB at p 97 (Exhibit P6-4, Dr Yeo's report at para 16).

100 Prosecution's submissions at para 43.

maintained that the victims did not in fact fellate him as he had pushed them away before any contact was made with his penis.

Accused's statements and IMH report

39 The accused submitted that his statements should not be relied upon as IO Regina had rushed the statement-taking process while he was labouring under an "un-stable [*sic*] condition state of mind".[101] The accused explained that he was worried for his elderly mother who was alone at home and was also concerned about the threat of loan sharks in his neighbourhood. He was also under the impression that he would be offered bail and that he would be allowed to make a phone call.[102] Nonetheless, IO Regina continued to take his statements even though she knew that his "condition was not stable".[103] He submitted that Ms Maria had also noted that his mental state was "like a small kid" at the material time, though she was unable to recall having noticed this when she was cross-examined. The accused further submitted that the translation of the "*takde kau hisap …*" phrase was "lead [*sic*] by IO Regina towards her advantage" to "match this translation" with [V1]'s statement.[104]

40 The accused further submitted that the contents of the IMH report were unreliable as Dr Yeo was "clearly bias [*sic*]"[105] towards the police and Prosecution. Dr Yeo testified that the accused had explained to him that he made all three victims perform the act of fellatio as "the first already sucked, must

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101 Accused's submissions dated 14 June 2022 ("Accused's submissions") at p 1 (1-9).

102 Accused's submissions at p 2 (2-9).

103 Accused's submissions at p 1 (1-9).

104 Accused's submissions at p 8 (2-4).

105 Accused's submissions at p 35 (10-10).

show the other two".[106] The accused submitted that this was fabricated. The accused further stated that Dr Yeo was also unable to understand that the Malay "slang" phrase that he used towards the victims (*ie*, the "*takde kau hisap* …" phrase) merely had the same meaning as "kiss my ass".[107]

41 The accused also testified that there were unlicensed moneylending activities in his neighbourhood which had caused him stress.[108] He claimed that his neighbour living in the unit across his was being harassed by an unlicensed moneylender,[109] which affected his household as well. The accused made one police report of unlicensed moneylenders making harassing telephone calls to his household. The accused later changed his home telephone number and the harassment ceased. Nonetheless, the accused claimed that the unlicensed moneylenders continued to loiter around the area.[110]

Accused presented the victims with a choice

42 The accused's position was that the victims had not been coerced. They had a choice to walk away from the situation but had chosen not to.

43 The accused claimed that he had stated in Malay to [V1] and [V2], "[*t]akde kau hisap aku punya, boleh tak?*"[111] which translates in English to, "If not, you suck my one (*ie*, my penis), can or not".[112] However, the accused

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106 Transcript, 21 Apr 2022 at p 27, lines 3–6.

107 Accused's submissions at p 34 (7-10).

108 Transcript, 28 Apr 2022, p 33 lines 1–6.

109 Transcript, 27 Apr 2022, p 43 lines 11–19.

110 Transcript, 27 Apr 2022, p 43 lines 25–29.

111 Transcript, 12 Apr 2022, p 61 lines 13–14; Accused's submissions at p 2 (4-9).

112 AB at 51 (Exhibit P9-2); Accused's submissions at p 2 (4-9).

claimed that his usage of this phrase was a "slang", and that he did not literally mean that he wanted the victims to perform fellatio on him. The accused suggested that IO Regina had tried to translate the words to match her understanding, resulting in his statement reflecting the translation as "you have to suck my penis", to establish a case of sexual assault by penetration.[113] The accused further stated that the "*takde kau hisap* …" phrase is a "slang" phrase akin to telling someone to "kiss my ass",[114] and it is not to "call people to perform sexual act".[115] The accused also pointed to [V2]'s testimony at trial that he understood this phrase to mean that the accused was "pissed off".[116] As such, the words recorded by IO Regina contradicted his intent in using this "slang" phrase.

44 The accused also submitted that he did not stop any of the victims from walking away if they wished to.[117]

Accused's involvement in gangs

45 The accused argued that the three victims could not have been threatened by him as he had never been part of a gang and had never presented himself as a dangerous individual. The accused submitted that the three victims knew "nothing about [his] gangster life".[118] While [V1] testified that the accused threatened to "*potong*" or "cut" him, [V1] also testified that he never saw the accused carrying weapons, did not know the kind of weapons that the accused

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113 Accused's submissions at p 3 (5-9).

114 Transcript, 11 Apr 2022, p 50 lines 22–24.

115 Accused's submissions at p 2 (4-9).

116 Accused's submissions at p 2 (4-9), Transcript, 19 Apr 2022, p 19 lines 7–12.

117 Accused's submissions at p 40 (9-19).

118 Accused's submissions at p 4 (8-9).

would use and also did not know if the accused had "*potong*" or "cut" others before.[119] Further, while [V1] was purportedly fearful of the accused's friends who loitered around the area, these friends were not gangsters.[120] While [V2] was afraid that the accused would go to his house and "assault his family", the accused testified that he did not know [V2]'s address.[121]

Credibility of the victims

46 The accused submitted that the victims were "plotting … against [him]".[122] He argued that it was untrue that the victims had hung out with him since 2017. He did not have time to hang out with them as he was studying at Kaplan, working as an Uber and Grab driver and attending counselling twice a week.[123] He did not tell them about religion, and maintained that not one of them could answer what he taught them about religion.[124] He was also not a gangster, and the victims were not able to substantiate his alleged involvement in gangs.[125] The accused admitted that he did kick [V2], but this was only a light kick. He said that he did not slap [V3] and cause his spectacles to fall, as there were children at the playground who would have seen this if it had happened.[126]

47 The accused also pointed out that the victims gave inconsistent evidence. For instance, he submitted that [V1] had merely mentioned "something bad"

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119 Transcript, 12 Apr 2022, p 26 lines 1–14.

120 Transcript, 12 Apr 2022, p 35 lines 8–9.

121 Transcript, 27 Apr 2022, p 13 lines 27–31.

122 Accused's submissions at p 50 (10-14).

123 Accused's submissions at p 55 (1-11).

124 Accused's submissions at p 55 (1-11).

125 Accused's submissions at p 55 (1-11).

126 Transcript, 27 Apr 2022, p 17 lines 20–22.

had happened to him in response to Mr [AB]'s enquiries, but Mr [AB] and Mr [CD] recalled different phrases being used. The accused further took issue with [V1] having allegedly lied to Mr [CD] about being punched. Moreover, the victims were not able to give details of the shorts or underwear that he was wearing.[127]

No penetration occurred

48 Further, the accused submitted that no penetration occurred in any event. The accused submitted that [V2] did attempt to perform the act of fellatio, but when [V2] bent his body downwards, the accused "straightaway stopped him" and there was no contact between [V2] and his penis.[128] The accused further submitted that penetration could not have occurred because his penis was not erect at the time.[129]

49 The accused admitted that he had "fleshed [*sic*]" his penis at [V1] but "pushed him away before he can reach it".[130] The accused submitted that [V1] had appeared to "want to touch [his penis]" and "moved very fast towards [it]".[131] However, the accused pushed his head away, and there was no contact made.[132] The accused then told [V1] that he did not have to do it, and asked [V1] to call [V3] over.[133]

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127 Accused's submissions at p 45 (19-19).

128 Transcript, 27 Apr 2022, p 35 lines 1–4.

129 Accused's submissions at p 29 (6-8).

130 Accused's submissions at p 23 (15-22).

131 Transcript, 27 Apr 2022, p 37 lines 9–13.

132 Transcript, 27 Apr 2022, p 37 lines 16–20.

133 Transcript, 27 Apr 2022, p 37 lines 19–22.

50 As for [V3], the accused testified that he "[felt] like … punishing him by [making him] perform it. But I did not want him to touch it".[134] The accused then unzipped his pants and told [V3] "[*t*]*akde kau hisap*" (which, according to the accused, translates to "[d]o this thing"), and "[i]f not you can go".[135] However, he then spoke to [V3] and told him that "You don't have to do anything. We settle."[136]

51 The accused further pointed out that he was sitting on the floor "with [his] leg straight forward".[137] The victims did not even know the colour of his underwear and could not see "the posture of [his] penis".[138] He further submitted that his penis was "pointing downwards" and it would have been "impossible for [his victims] to reach".[139]

Collusion amongst the Prosecution witnesses

52 Finally, the accused contended that [V1] had lied to Mr [AB] and Mr [CD] and thereafter conspired with [V2] and [V3] to backstab him.[140] As [V1]'s claims led to the police report being lodged, the accused suggested that various Prosecution witnesses (namely Mr [AB], Mr [CD], SI Nithiya, IO Regina, Ms Maria and Dr Yeo) were all influenced by or predisposed towards [V1]'s account and they had all in effect colluded to implicate him. The Prosecution

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134 Transcript, 27 Apr 2022, p 38 lines 9–10.

135 Transcript, 27 Apr 2022, p 38 lines 15–19.

136 Transcript, 27 Apr 2022, p 39 lines 16–18.

137 Accused's submissions at p 23 (15-22).

138 Accused's submissions at p 23 (15-22); p 31 (8-8).

139 Accused's submissions at p 29 (5-8).

140 Accused's submissions at p 12 (5-6).

submitted that the accused had levelled a bare allegation and had failed to raise evidence of any possible motive for such collusion to have taken place.

Issues for determination

53 There were essentially three key issues which arose for my determination:

(a) whether the accused penetrated the victims' mouths with his penis;

(b) whether the victims consented to the sexual act; and

(c) whether the accused knew or had reason to believe that the victims were in fear of injury when they fellated him.

The law

54 Section 376(1)(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") as in force at the material time 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.

55 The elements of the first, second and third charges which the Prosecution must prove beyond a reasonable doubt were: (a) the accused had penetrated the victims' mouths with his penis; and (b) the victims did not consent to the act of penetration.

My decision on conviction

Whether the accused penetrated the victims' mouths with his penis

56 It was not disputed that the accused was present together with each of the victims at the relevant time and place as set out in the charges. It was also undisputed that he had asked each of them whether they wanted to "settle" the problem with him, and that he had unzipped his pants and exposed his penis to them. However, the accused denied penetrating their mouths with his exposed penis. He claimed that while the victims did attempt to suck his penis, he managed to push them all away before they could do so (at [48]–[50] above). He further claimed that he had not intended for the victims to take him seriously and literally but was only using "slang" akin to a retort telling them to "kiss [his] ass" (at [43] above).[141]

57 I address the victims' evidence of the background events leading up to the incident in my subsequent analysis of whether they consented to the acts of sexual penetration. On their part, all the victims gave consistent evidence that they had performed fellatio on the accused. The accused himself confessed to this in his three statements, which were partly corroborated by what he had told Dr Yeo. I found that there was clear and credible evidence that established beyond reasonable doubt that the accused had penetrated the victims' mouths with his penis. My reasons are set out below.

The victims' accounts

58 Each of the victims was able to provide a textured, coherent and internally consistent account of the material events that had occurred between

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141 Accused's submissions at p 2 (4-9).

them and the accused. Fundamentally, the victims' accounts were also externally consistent and mutually corroborative. No doubt there were some inconsistencies in their narration of certain details, but I found that these were inconsequential as they related to minor or peripheral aspects.

59 The accused did not dispute the sequence in which the respective victims went to meet him at the top of the slide at the playground. The victims also gave consistent evidence in this regard. [V3] was the first to see the accused, but when asked by the accused whether he would choose to suck the accused's penis or to walk away, he could not decide which course to take. The accused threatened that "tables and chairs would fly" the next time he saw the victims at the coffeeshop if the matter was not settled. As [V3] remained undecided, the accused told him to call [V2] to see him (at [16]–[17] above).

60 [V2] was similarly given two "options" of settling the problem, to either follow the accused's "way" or to walk away. If he chose the latter, the accused would give him "problems … in public". [V2] recalled that the accused had uttered the "*takde kau hisap* …" phrase to him. [V2] was told to suck the accused's penis and although he felt disgusted, he did so for two to three seconds. He gave clear evidence that the accused's penis penetrated his mouth (at [18]–[20] above).

61 [V1] was next to be summoned to see the accused, and he was told by the accused in an angry tone that if he wanted to "settle the problem", he would have to suck the accused's penis. [V1] proceeded to suck the accused's penis. He covered the accused's penis with his mouth for a few seconds until the accused told him to stop (at [21]–[22] above).

62 Finally, when [V3] was asked to see the accused the second time, the accused again used the "*takde kau hisap* …" phrase, asking him whether he wanted to "settle" the problem. [V3] agreed to do so and he was also clear in his testimony that the accused's penis penetrated his mouth (at [24]–[25] above).

63 In terms of external consistency, the evidence of the victims that the accused had penetrated their mouths with his penis bore important common threads. There were no material gaps or discrepancies. Their evidence was consistent when measured against the accused's statements. He acknowledged using the "*takde kau hisap* …" phrase, unzipping his pants and exposing his penis to the victims.[142] He agreed that by asking them whether they wanted to "settle" the problem, he meant that the victims were to suck his penis,[143] although he claimed that he did not expect that they would take him seriously and that they had the option to walk away.[144]

64 The accused's claim that he did not really expect the victims to take his words literally and to proceed to suck his penis was entirely disingenuous. If he was merely intent on baiting and chastising them, there was no need for him to have blatantly unzipped his pants to expose his penis to them upon seeing them one-on-one at the top of the slide. There was even less of a need for him to call on them repeatedly to suck his penis. Having done so, any reasonable person would only assume, and indeed would have expected, that under such circumstances the accused had been completely serious about his stated intent. While the accused claimed that the "*takde kau hisap* …" phrase was a "slang"

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142 AB at p 47 (Exhibit P8-2) and p 51 (Exhibit P9-2).

143 Transcript, 27 Apr 2022, p 38 line 18 to p 39 line 9.

144 AB at p 97 (Exhibit P6-4, Dr Yeo's report at para 16).

phrase that he used to "make [the victims] go away",[145] he had repeated this to each of the victims.[146] This showed the accused's voluble insistence that the act of sucking his penis was the *only* way that the disagreement between him and the victims could be "settled".

65 I rejected the accused's claim in his oral testimony that he had pushed the victims away before their mouths could make contact with his penis. This was an obvious afterthought as it was entirely inconsistent with all the accounts he had given prior to trial. I shall examine this aspect in greater detail below at [97]–[107] where I deal with the accused's credibility as a whole.

The victims had not colluded to falsely implicate the accused

66 The accused suggested that the victims, in particular [V1], had conspired to backstab[147] him and had somehow influenced the other Prosecution witnesses to align themselves with the victims' side of the story. The accused's suggestion was premised on pure speculation and was not supported by any evidence. The settled law is that the accused bears the burden of adducing sufficient evidence of an alleged motive to falsely implicate him, whereupon the burden to show that no such motive exists shifts to the Prosecution: *Goh Han Heng v Public Prosecutor* [2003] 4 SLR(R) 374 at [33]; *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 at [102]. I agreed with the Prosecution that the accused had not provided any cogent evidence of any possible motive on the victims' part.

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145 Transcript, 27 Apr 2022, p 72 lines 21–27.

146 Transcript, 12 Apr 2022, p 61 lines 13–18; 19 Apr 2022, p 18 lines 24 – 26; 21 Apr 2022, p 69 lines 11–14.

147 Accused's submissions at p 12 (5-6).

67 The opportunity for the victims to discuss their evidence and collude was no doubt possibly present, but I found no grounds to suspect that there was any collusion. The victims had no reason to fabricate and falsely implicate the accused. They had clearly looked up to him, regarded him as a "big brother"[148] and respected his advice. The victims bore no animosity towards the accused, and had simply sought to avoid him after hearing the rumours about him and [M2].[149] Instead, it was the accused who was upset and indignant that they had purportedly spread such rumours and were avoiding him, and he had then sought them out to "settle" the issue with them (at [6] and [14] above).

68 The manner in which the incident came to light was also noteworthy. It was entirely fortuitous that the very next day after the incident, on 18 October 2018, Mr [AB] astutely observed that [V1] was quieter and less cheerful compared to his usual self.[150] Pertinently, [V1], like [V2] and [V3], did not initiate any complaint. He did not volunteer any information until Mr [AB] approached him and enquired what had happened. Mr [CD] also similarly noted [V1]'s anxious and fearful demeanour when he counselled him on 22 October 2018.[151] It was only then that details of the acts of fellatio emerged. Mr [AB] and Mr [CD]'s careful enquiries and sensitive handling of the issue were instrumental in ensuring that the sexual acts were ultimately disclosed. In the circumstances, the fact that the victims gave mutually corroborative accounts to the police and in their court testimonies was more consistent with the truth rather

148 Transcript, 26 Apr 2022, p 10 lines 29–30.

149 AB at p 1 ([V1]'s statement at para 5), p 8 ([V3]'s statement at para 4); Transcript, 12 Apr 2022, p 85 lines 15–23.

150 Transcript, 11 Apr 2022, p 86 lines 9–14.

151 Transcript, 11 Apr 2022, p 105 lines 28–32.

than any alleged attempt to collude and fabricate evidence to malign the accused.

69 It was also difficult to see why the victims would have been willing to admit to having fellated the accused and to undergo the rigours of the full police investigation and trial process unless their allegations were true. From the victims' accounts, they had felt compelled to "settle" the matter with the accused. [V2] and [V3] had apparently not intended to surface the matter but instead intended to keep it to themselves.[152] [V1]'s parents also appeared reluctant for him to get involved by making any police report and did not engage the school on the issue.[153] If the incident did not actually occur, it would have been much more logical and natural for the victims to have simply denied that any such potentially shameful and embarrassing acts had taken place. Thus, the fact that the victims affirmed that they had fellated the accused was far more consistent with them having spoken truthfully about the incident.

The accused's statements

70 In his three statements, the accused stated that he had told the victims that if they wanted to "settle" their issues with him, they would have to suck his penis. He admitted that each of the victims put their mouths onto his penis after he unzipped his pants.[154] As such, his statements were materially self-incriminating in respect of the issue of whether he had penetrated the victims' mouths with his penis.

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152 Transcript, 21 Apr 2022, p 50 lines 10–13; 26 Apr 2022, p 60 lines 2–3.

153 Transcript, 11 Apr 2022, p 108 lines 2–6.

154 AB at p 47 (Exhibit P8-2).

71 It was evident from the statements that the accused had tried to downplay the nature and severity of the sexual acts by suggesting that the victims did not actually suck his penis for any extended duration.[155] In particular, the accused claimed that the victims only "covered"[156] his penis briefly with their mouths. In my assessment, this was no more than a matter of semantics. The accused's statements were consistent with the victims' evidence, and the totality of the evidence had to be properly evaluated and understood. In that light, the acts of penetration had taken place once the accused's penis was in the victims' mouths.

72 To be clear, it is not a defence to criminal liability under s 376(1)(*a*) of the Penal Code to contend that penetration was only for a brief duration lasting a few seconds or that the offender's penis was not erect, as long as there is sufficient evidence to show that there was in fact penetration of the victim's mouth with the offender's penis. It was also not a defence for the accused in the present case to maintain that the victims did not actually engage in any "sucking" of his penis, but had merely "covered" his penis with their mouths. The ingredients of the offence do not require proof that they had sucked his penis. In any event, the victims' evidence was that they had done so, albeit only briefly. I shall examine more fully below at [80]–[83] the question of whether the accused had penetrated the victims' mouths with his penis for sexual gratification.

73 The accused argued that the statements ought to be disregarded as IO Regina had recorded his statements despite knowing that he was in an unstable condition (see [32] and [39] above). This argument was plainly unmeritorious.

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155 AB at p 47 (Exhibit P8-2) and p 97 (Dr Yeo's report at para 16).

156 AB at p 52 (Exhibit P9-3).

IO Regina and Ms Maria both testified that the accused was calm and coherent when his statements were recorded,[157] and he had not raised any complaints before or during the statement-taking process.

74 The accused claimed to have been under tremendous stress due to ongoing unlicensed moneylender activities in his neighbourhood (see [41] above). However, IO Regina and Ms Maria were not informed of any of his alleged concerns over unlicensed moneylenders causing harassment to his flat, let alone of his purported concern that the moneylenders might endanger his elderly mother's safety.[158] In any event, his alleged fears about illegal moneylending activities appeared to be groundless. His last and only police report concerning illegal moneylending activities was made in November 2017, nearly an entire year before the incident.[159] No further harassing telephone calls were received since late 2017 after he changed his home telephone number in December 2017 or January 2018. On his own evidence, he only continued to monitor such activities for the next six months (*ie*, until July 2018).[160] This would suggest that by October 2018, there were no further harassing telephone calls causing him concern.

75 Apart from the accused's bare allegations of feeling stressed from the alleged harassment by unlicensed moneylenders, there was no other objective evidence adduced of such activities persisting in October 2018. He claimed that while there were no longer harassing phone calls, his neighbours and his elderly mother continued to be threatened by illegal loan sharks who were loitering

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157 Transcript, 11 Apr 2022 p 22, line 28; Transcript, 11 Apr 2022 p 70, lines 15–17.

158 Transcript, 11 Apr 2022, p 48 lines 28–31; 11 Apr 2022, p 74 lines 14–19.

159 Exhibit P15.

160 Transcript, 28 Apr 2022, p 29 lines 18–24.

around his area.[161] However, none of these individuals was called to testify to corroborate his claims.

76 I found that the accused's claims that he was harassed by unlicensed moneylenders were hastily cobbled together and were not credible. These claims were little more than a desperate attempt to support his belated claim that he had been in an unstable frame of mind when his statements were recorded. The contents of the statements were coherent and included details which only the accused himself could have given. The statements did not appear to have been given by him when he was not in a proper condition to do so.

77 I saw no basis to impugn the reliability and accuracy of the accused's statements which were corroborative of the victims' accounts. I therefore accorded full weight to them in evaluating the evidence.

The accused's account to Dr Yeo

78 In his interviews with Dr Yeo, the accused had also partially incriminated himself, at least to the extent of acknowledging that his penis had made contact with the victims' mouths. He told Dr Yeo that he had stopped the victims "within seconds" of them putting his penis in their mouths.[162] This still amounted to a confession that his penis had *penetrated* their mouths.

79 In his submissions, the accused alleged that Dr Yeo had lied in court and had been influenced to take the side of the victims (see [40] above). He claimed that Dr Yeo had been misled by IO Regina's summary of facts. He further suggested that Dr Yeo had not only misunderstood his explanation of the "*takde*

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161 Transcript, 28 Apr 2022, p 29 lines 5–10.

162 AB at p 97 (Exhibit P6-4, Dr Yeo's report at para 16).

kau hisap …" phrase, but had left out other explanations he gave. I saw no basis whatsoever for his criticisms of Dr Yeo. The IMH report was objective and was based on Dr Yeo's contemporaneous notes of his interviews with the accused, where he had been assisted by a Malay interpreter. There was no conceivable reason for Dr Yeo to have lied to implicate the accused, to have conducted himself improperly or to have been anything less than objective and impartial in his assessment of the accused.

Whether the acts of penetration were for the accused's sexual gratification

80 I shall briefly address this issue for completeness, since the accused's position appeared to be that even if he had penetrated the victims' mouths with his penis, he did not and could not have derived any sexual gratification from doing so. The Prosecution's case was pitched somewhat differently in any case. The Prosecution submitted that the accused had been angry due to the victims' alleged circulation of the rumour, and had been motivated by revenge to commit the offences.[163] It was not the Prosecution's case that the accused had done so for the sake of sexual gratification.

81 Notably, this argument appeared to find some support in [V2]'s indication that the accused was not actually asking for oral sex when he said the "*takde kau hisap* …" phrase, but was "pissed off" (see [18] above). From this, it could be seen that [V2]'s perception was that the accused was not seeking sexual gratification but was displaying his irascibility over the victims having allegedly spread rumours about him and [M2]. I accepted that this was a fair and reasonable characterisation of the accused's animus. He was seeking primarily to vent his anger and to chastise the victims for their impertinence. It

163 Prosecution's submissions at para 115.

was consistent with the undisputed fact that each incident of sexual penetration was brief, lasting only a few seconds at most. In addition, the accused's penis was not erect and he did not ejaculate.

82 Nevertheless, in my view, an offender's motive in committing the offence under s 376(1)(*a*) of the Penal Code is irrelevant. Specifically, obtaining sexual gratification is plainly not an element of the offence. Lust or libido are not ingredients of the offence. An offender may commit the offence for one or more reasons which are best known only to himself, whether for sexual gratification, as a perverse display of ego-boosting bravado, or to intimidate, humiliate, degrade and/or assert authority over his victim(s). There may well be other possible reasons. Whatever the accused's actual motivation(s) might have been in the present case, this had no bearing on the material elements of the offence. The offence was still a sexual offence once the requisite elements of the offence had been proved.

83 To reiterate, the crucial elements to be proved beyond reasonable doubt were that there were acts of penetration, and that the victims had not consented to the acts. I have explained above why I found that the accused had penetrated the victims' mouths with his penis. In connection with the latter requirement, it also had to be shown that the victims did not consent to the sexual acts in the circumstances of the case and that the accused had known or had reason to believe that the victims had engaged in the acts out of fear of injury.

Whether the victims consented to the sexual acts with the accused

84 A key plank of the defence was that the victims had been given a choice as to whether to fellate the accused. Further, the accused claimed to be surprised that the victims had taken the "*takde kau hisap* …" phrase, which he claimed

was a "slang", literally and had agreed to suck his penis. The victims, however, all testified that they had been fearful that the accused would cause injury to them or their families and had only acquiesced to his demands to fellate him as a result (see [16], [19], [21] and [24] above).

85 It was crucial to appreciate the full context in which the victims had agreed to "settle" the problem with the accused by sucking his penis. The uncontroverted evidence was that the accused was angry that the victims had purportedly spread rumours about him making [M2] suck his penis and were avoiding him. He wanted to know who had been responsible for the rumours. He confronted the victims and spared no effort to demonstrate his capacity to carry out his threats of violence; in fact, he had no qualms resorting to various displays of violence on the victims to strike fear in them and punish them, such as by kicking or slapping them. In my assessment, the victims had no reason to doubt that the accused was serious about his threats of violence.

86 Beginning with the accused's conversation over the phone with [V1] at around midnight on 17 October 2018, the accused had systematically threatened and browbeaten the victims. [V1] was the first to meet the accused at the fitness corner near the hut, after he was told that the accused would "*potong*" him if he did not meet him immediately (see [7] above). [V1] was then assaulted and recalled feeling pain from the accused having squeezed his jawline and slapped him (see [8] above). [V1] felt "very scared" at that time and shouted for the accused to stop.[164] The accused then used vulgarities and offensive language in text messages to [V2] and [V3] (see [9]–[10] above). [V2] testified that he felt afraid as he thought that the accused was angry with him.[165]

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164 Transcript, 26 Apr 2022, p 19 lines 2–4.

165 Transcript, 12 Apr 2022, p 88 lines 1–7.

87 [V3] later met the accused after midnight on 17 October 2018. [V3] was threatened with harassment at his residence, and the accused said that he would "*potong*" [V3]'s family members if it transpired that [V3] had been trying to defend the person who had spread the rumour. The accused was angry and pulled [V3] hard by the hair. He also threatened to hit [V3] with the beer bottle he was holding. [V3] felt "really scared" and cried (see [11] above).

88 On the night of the incident itself, when the accused met the victims at around 10.30pm, he lost no time in terrorising them. It appeared that the accused had been drinking. When [V2] arrived, the accused kicked [V2] on his back (albeit lightly) while holding on to a beer bottle (at [13] above). He then proceeded to slap [V3], knocking [V3]'s spectacles to the floor, and thrust his hand towards [V3]'s eye in an attempt to scratch [V3]'s eyeball[166] (at [14] above). The accused also slapped [V1].[167] [V1] and [V2] testified that the accused's aggressiveness made them feel afraid.[168] The accused confronted the victims over the rumour and brought up his past involvement in gang fights, while threatening to go to their homes, causing them to fear that he would harass their families. The victims all testified that they were fearful of the accused as he behaved violently and aggressively. They also believed that the accused was capable of carrying out the violent acts he threatened, as the accused had previously told them about his involvement in a gang.

89 The victims were subsequently told to meet the accused one-on-one at the top of the slide at the playground. None of them dared to decline. Eventually, each of the victims was presented with the accused's ultimatum: either to

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166 Transcript, 21 Apr 2022, p 46 lines 18–22.

167 AB at p 13 ([M1]'s statement at para 9).

168 Transcript, 12 Apr 2022, p 93 lines 17–23.

"settle" the problem with him by sucking his penis, or walk away (and be prepared for the consequences). The accused attempted to characterise this as a choice that he gave the victims. In the circumstances, I found that the obvious truth of the matter was that the accused had presented them with a Hobson's choice. The victims complied by accepting the ignominious "option" of sucking the accused's penis. To them, this was the lesser of two evils. What was manifestly clear was that they had only complied out of fear after they had been threatened and assaulted by the accused. They were also in fear of further harm or harassment that the accused might inflict on them or their families if they chose to walk away instead.

90 Plainly, the victims did not consent, but did so, in [V3]'s words, "for the sake of settling" the conflict.[169] They did not act voluntarily and did not submit themselves while "in free and unconstrained possession of [their] physical and moral power to act in a manner [they] wanted", adopting the language of the High Court in *Public Prosecutor v Iryan bin Abdul Karim and others* [2010] 2 SLR 15 at [123]. This principle was endorsed by the Court of Appeal in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*") at [93], and subsequently followed in my decision in *Public Prosecutor v Chong Chee Boon Kenneth and other appeals* [2021] 5 SLR 1434 at [40]. In the present case, any notion of consent was vitiated since any such purported consent was given under fear of injury to the victims or their families, a scenario directly addressed by s 90(*a*)(i) of the Penal Code.

91 The incident also clearly inflicted psychological and emotional harm on the victims. [V2] testified that he "felt very disgusted with [himself]" as he

169 Transcript, 21 Apr 2022, p 48 line 13.

"never ever did such [a] thing before"[170] and that he "[tries] not to remember [the incident]".[171] [V1] testified that after he went home, he felt stressed and was unable to sleep as the incident made him feel "uncomfortable with [himself]" and "dirty".[172] He was also fearful of going home late as he knew that the accused had friends who loitered near his home.[173] Specifically in [V1]'s case, there was also some corroboration of the traumatic experience he underwent in having been coerced to fellate the accused. Mr [AB] and Mr [CD] testified candidly and objectively about their observations of [V1]'s demeanour in the immediate aftermath of the incident. [V1]'s anxious and fearful demeanour was corroborative of the shame and disgust that he had experienced as a result of the non-consensual sexual act.

92 During the trial, I also noted [V1]'s demeanour when he was on the witness stand. Despite the lapse of time since the incident, [V1] still appeared to be affected by having to recall the details of the incident. There was a palpable sense of revulsion and lingering shame which came across as he testified. This further demonstrated that [V1] could not have voluntarily and willingly chosen to fellate the accused.

Whether the accused knew or had reason to believe that the victims were in fear of injury when they fellated him

93 As noted above at [80], the Prosecution's case was that the accused was angry and motivated by revenge to commit the offences. I accepted that this amply supported the finding that the accused knew or had reason to believe that

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170 Transcript, 12 Apr 2022, p 100 line 17.

171 Transcript, 12 Apr 2022, p 105 lines 9–16.

172 Transcript, 12 Apr 2022, p 15 lines 10–14.

173 AB at p 3 ([V1]'s statement at para 14).

his conduct would have placed the victims in fear of injury, leading to their fellating him to "settle" the matter with him.

94 This finding was further buttressed by the fact that the accused's statements contained similar admissions of having intimidated, threatened and assaulted the victims, both at around midnight and later at around 10.30pm on 17 October 2018 (see [9]–[10], [13]–[14] above).[174] It was very clear that these were not empty threats or mere idle talk. The accused used actual violence on the victims to demonstrate that he meant what he said and was fully capable of carrying out his threats. Unsurprisingly, the victims were intimidated and felt fearful that further harm would be inflicted upon them or their families if they were to choose not to "settle" the matter with the accused.

95 The events that occurred on 17 October 2018 showed that the accused was adept at manipulating the victims into complying with his demands to "settle" the matter. Apart from actual displays of physical violence, the accused capitalised on the victims' respect for him as an authority figure. They had been told of his purported violent exploits from his "gangster past". [V2] was afraid that the accused would "cut" him in public as the accused had previously said that his friends had "cut" other people before.[175] The victims knew he had friends in the neighbourhood as well. It did not matter whether the accused's purported "gangster past" and gang exploits were fictional, embellished or factual. As far as the victims were concerned, there was no reason to disbelieve the accused's accounts. At the time of the incident, the victims were teenagers, and were young and impressionable. They were suitably impressed by the fact that the accused had managed to assist in extricating [V2] and [V3] from their

174 AB at pp 43–44 (Exhibit P7-2 and P7-3).

175 AB at p 6 ([V2]'s statement at para 12).

gang involvement by apparently negotiating successfully with their headman (see [5] above). The accused had also deliberately referred again to his past involvement in gang fights when confronting the victims (see [13] above). This was intended to instil fear in them and ensure their obeisance and submission.

96 I found that the accused had bullied and cowed the victims into submission. There was no room in the circumstances for the accused to claim that he might have mistakenly believed that the victims had chosen, let alone acted of their own free will, to fellate him. He could not rely in good faith on the statutory defence of mistake provided in s 79 of the Penal Code.

Credibility of the accused and impeachment

97 I have set out my reasons above for rejecting the two key planks of the accused's defence, namely, that the victims did not in fact fellate him as he had pushed them away before any contact was made with his penis, and that the victims had consented to performing the act of fellatio. I turn next to elaborate on a critical aspect of the accused's evidence which I found to be materially inconsistent and demonstrative of why he was not a credible witness. As a result, I found that his credit had been impeached.

98 During the trial, the accused did not deny having unzipped his pants and exposing his penis to the victims. He also did not deny telling them to "settle" the problem or uttering the "*takde kau hisap* …" phrase specifically to [V2] and [V3]. However, he claimed that he had managed to push all the victims away in time before their mouths could make contact with his penis. I rejected this defence as it was completely at odds with three previous accounts he had given before the trial. I summarise the relevant accounts below.

99 First, in the accused's statements which were recorded from 30 to 31 October 2018, he admitted that all three victims had put their mouths onto his penis (at [70] above). He claimed that [V2] put his mouth onto his penis for about two seconds. He initially claimed that "[t]here was no sucking of [his] penis" by [V2],[176] but later accepted that both [V1] and [V2] had "sucked [his] penis".[177] He also accepted that [V3]'s mouth had covered his penis for about two seconds.[178]

100 Second, in the accused's interviews with Dr Yeo on 26 and 31 August 2020, the accused similarly stated that all three victims had put their mouths onto his penis (at [78] above).[179] He stated that [V1] sucked his penis for two to three seconds. The accused also said that for [V2] and [V3], their lips only touched "the tip of [his] penis for one to two seconds" and he pushed them away after that.

101 Lastly, in the Case for the Defence ("CFD") which was filed on 20 August 2021 by the accused's then counsel on record, slightly different accounts were given.[180] The accused accepted that there was contact between some of the victims' mouths and his penis. It was stated in the CFD that [V1] placed one inch of the accused's penis in his mouth for two seconds.[181] [V3]'s

176 AB at p 47 (Exhibit P8-2).

177 AB at p 52 (Exhibit P9-3).

178 AB at p 52 (Exhibit P9-3).

179 AB at p 97 (Exhibit P6-4); P12.

180 Exhibit P14 (Case for the Defence ("CFD")).

181 Exhibit P14 (CFD at para 10).

lips touched the shaft of the accused's penis,[182] but [V2]'s lips only touched the accused's fingers that were holding down his pants.[183]

102 At the trial, the Prosecution applied to cross-examine the accused on the material inconsistencies between his oral evidence and his prior accounts in his statements, IMH interviews and CFD as to whether the victims had actually made oral contact with his penis. The Prosecution submitted that the accused's credit should be impeached because he could not proffer any credible explanation for the inconsistencies.[184] The Prosecution also pointed to various inconsistencies in the accused's stated motives for asking the victims to suck his penis.[185] I have addressed the relevance of the accused's motives above (at [80]–[83]). I was not persuaded that the inconsistencies in this connection were so material that they should warrant further discussion here.

103 In relation to the accused's claim during the trial that the victims did not make any physical (*ie*, oral) contact with his penis at all, I agreed that he had proffered inconsistent evidence on this highly material point. The accused conceded in his statements and the IMH report that the acts of fellatio had taken place with all three victims. He sought merely to show that the acts were very brief and the contact may not necessarily have involved the actual sucking of his penis.

104 As for the CFD, this was filed by the accused's then counsel based on his initial instructions to claim trial. The CFD was filed pursuant to the pre-trial

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182 Exhibit P14 (CFD at para 17).

183 Exhibit P14 (CFD at para 13).

184 Prosecution's submissions at paras 134–137.

185 Prosecution's submissions at para 135.

case disclosure regime in the CPC for the purpose of stating his defence, in anticipation of an impending trial. The CFD was never meant, contrary to the accused's suggestions, to "lead" him to accept a plea offer and take a certain course.[186] The accused alleged that his counsel had ignored his instructions and added in facts that did not come from him.[187] In my view, there was no reason why counsel would have taken such a step contrary to the accused's express instructions to claim trial. By the time the CFD was filed, the accused had begun moving away from his initial accounts, although it was still conceded in the CFD that [V1] and [V3] had oral contact with his penis, though not in the case of [V2].

105 When cross-examined on these glaring contradictions and inconsistencies with his oral testimony, the accused was unable to furnish any credible or coherent explanation. The irresistible inference was that his oral testimony alleging the lack of any oral contact with his penis was an afterthought. It was a bare denial aimed at disavowing any possible culpability for his acts. I agreed that his credit was impeached given his shifting and unreliable evidence on this crucial aspect of his defence.

106 I acknowledged that the accused may have had an incorrect understanding of the definition of "penetration". At trial, the accused asked IO Regina, "there is no erection. There is no sucking of penis. But why you still charge me?"[188] and also asked [V1], "How can I penetrate with unerected[sic] penis?"[189] As I have explained at [82]–[83] above, obtaining sexual gratification

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186 Transcript, 28 Apr 2022 p 19 line 10.

187 Transcript, 28 Apr 2022, p 18 lines 28 –31.

188 Transcript, 11 Apr 2022, p 56 lines 27–29.

189 Transcript, 12 Apr 2022, p 59 lines 5.

was not an element of the offence. The key element of the offence was that the accused intended to penetrate the victims' mouths with his penis, regardless of whether his penis was erect. Despite the accused's apparent misunderstanding of the word "penetration", the accused had clearly offered inconsistent evidence of whether there was oral contact made with his penis.

107 I have also elaborated (at [76] above) that I found the accused's claim of having been under severe mental stress at the time of his statement-recording, because of persistent harassment from unlicensed moneylenders, to be an afterthought. In addition, the accused liberally levelled accusations against the victims of colluding to falsely implicate him. I found these accusations to be wholly unsubstantiated. The accused went even further to make a sweeping allegation that other Prosecution witnesses such as SI Nithiya, IO Regina, Ms Maria, Dr Yeo, Mr [AB] and Mr [CD] had all somehow chosen to believe the victims' claims wholesale and to roundly reject his claims of innocence in a concerted effort to malign him. All these allegations were patently baseless and vexatious. They reinforced my view that the accused was not a credible witness. He did not raise any reasonable doubt in his defence. As such, I found him guilty of all three charges and convicted him accordingly.

My decision on sentencing

108 I now turn to the issue of sentencing. Apart from the first, second and third charges for which the accused was convicted after trial, the accused pleaded guilty to a sixth charge in relation to [M1] for the offence of sexual penetration of a minor under 16 years of age under s 376A(1)(*c*), punishable under s 376A(2) of the Penal Code. There were also five other charges taken into consideration for the purposes of sentencing. Two of the charges that were taken into consideration related to a fifth victim, [M2].

First, second and third charges

109 In relation to the first, second and third charges, I found that there were three offence-specific aggravating factors.

110 First, the accused was in a position of trust and authority over the victims. The victims looked up to him as a "big brother" and respected him. Second, the victims were teenagers who were between 16 and 17 years old at the time of the offences. They were young, impressionable and vulnerable. Third, the accused verbally intimidated the victims and inflicted physical violence on them, which resulted in the victims agreeing to fellate him out of fear of injury to themselves or their families. This began with his text messages to the victims in the early morning of 17 October 2018 threatening injury to the victims and their families and continued with the actual violence that he inflicted on the victims by kicking, slapping and/or pulling their hair shortly before the offences took place. The victims also testified that they only acquiesced to his demands to fellate him due to fear of injury to themselves or their families.

111 The sentencing framework for sexual assault by penetration under s 376 of the Penal Code was established by the Court of Appeal in *Pram Nair*. Though *Pram Nair* was a case concerning digital-vaginal penetration, in the subsequent case of *BPH v Public Prosecutor and another appeal* [2019] 2 SLR 764 ("*BPH*") at [55], the Court of Appeal clarified that the sentencing framework was applicable to all forms of sexual assault by penetration under s 376 of the Penal Code. The framework requires the court to consider the offence-specific aggravating factors to identify the appropriate sentencing band in which the offence should fall (*Pram Nair* at [159]). The sentencing bands are as follows:

(a) Band 1 (cases with no or limited offence-specific aggravating factors): seven to ten years' imprisonment and four strokes of the cane.

(b) Band 2 (cases that involve two or more offence-specific aggravating factors): ten to 15 years' imprisonment and eight strokes of the cane.

(c) Band 3 (the most serious cases by reason of the number and intensity of aggravating factors): 15 to 20 years' imprisonment and 12 strokes of the cane.

112 As I identified three offence-specific aggravating factors (see [110] above), the first, second and third charges minimally fell within the lower end of Band 2 of the sentencing framework set out in *Pram Nair* (at [122]). Having considered the various offence-specific factors, I found that the indicative starting point for the sentence for each of the first to third charges should be an imprisonment term of ten years.

113 In relation to offender-specific factors, I found that the conduct of the accused at trial was an aggravating factor that warranted a further uplift from the indicative starting point. At trial, the accused made sweeping personal attacks on the character and credibility of the victims and several of the Prosecution witnesses, alleging that they had colluded to falsely implicate him. These spurious claims were wholly without merit, indicating an absence of remorse on the accused's part. Even after conviction, the accused's mitigation plea, in which he reiterated that the "penetration did not happen and [could]

never [have occurred] with unerected [sic] penis",[190] reflected no real insight into the offences he had committed.

114 The accused submitted in mitigation that he did not have related antecedents,[191] was the sole breadwinner of his family[192] and was remorseful for his actions.[193] In my view, these were in no way mitigating. First, although the accused only had unrelated antecedents for drug offences, he could not be said to be a first-time offender, considering that he had several other charges for related sexual offences committed over the span of 2017 and 2018 that were taken into consideration for the purposes of sentencing. Second, while the accused may have been the sole breadwinner and the main caretaker of his elderly mother, it is trite that the impact on livelihood and hardship to the family caused by the imposition of a sentence should be given little weight unless there are exceptional circumstances (*CCG v Public Prosecutor* [2022] SGCA 19 at [6]; *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [11]). In the present case, there were no exceptional or extreme circumstances to justify affording leniency for any hardship caused to his family. Lastly, the accused had cast baseless aspersions on the victims and Prosecution witnesses, showing that he had no genuine remorse for his actions.

115 The present factual matrix was relatively atypical of an offence of sexual assault by penetration. The accused was not seeking sexual gratification; the duration of each offending act lasted mere seconds and his penis was not erect. I noted above at [82] that the accused's motive in committing the offence was

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190 Accused's submissions on sentence dated 5 September 2022 ("Accused's submissions on sentence") at p 2.

191 Accused's submissions on sentence at p 1.

192 Accused's submissions on sentence at p 1.

193 Accused's submissions on sentence at p 2.

irrelevant for the purpose of establishing the elements of the offence. To be clear, the accused's motive was also irrelevant for the purpose of sentencing. Even if the accused did not commit the offences for sexual gratification, this was in no way mitigating. As considered by the Court of Appeal in *BPH* at [60], there is "no unanimity of views" as to whether one form of sexual penetration is more serious or detestable than another, bearing in mind that "some permutations of the offence may not even be for sexual gratification but could be motivated by a thirst for sadistic humiliation and pain". The accused's desire to humiliate the victims in the circumstances was thus at least as reprehensible as a desire to obtain sexual gratification, and had no mitigating effect.

116 I was conscious, however, that for the first to third charges, each instance of sexual assault by penetration was brief, lasting mere seconds. I was also not persuaded that the evidence clearly demonstrated that the offences were premeditated. All considered, I applied an uplift of six months' imprisonment for each of the sentences for the first to third charges.

Sixth charge

117 The accused pleaded guilty to a sixth charge in relation to [M1], who was a minor (15 years old) at the time of the offence. Given that the accused had befriended [M1] in a manner similar to how he came to befriend the other victims, I found that there was also an element of abuse of trust. The starting point was therefore a term of imprisonment of three years (see *Public Prosecutor v BAB* [2017] 1 SLR 292 at [65(a)]). Considering that there were five other charges taken into consideration for the purposes of sentencing, and that the period of offending spanned several months, I found that an uplift of six months' imprisonment was justified.

The global sentence

118 Section 307(1) of the CPC provides that where a person is sentenced to imprisonment for at least three distinct offences, the court must order the sentences for at least two offences to run consecutively. As such, I ordered two of the sentences for the offences for which he was convicted after trial, namely the first and second charges, to run consecutively. I agreed with the Prosecution that the sentence for the sixth charge should also run consecutively. The sixth charge (in relation to [M1] in a separate incident) concerned different legally protected interests and therefore should also run consecutively (see *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen*") at [44]). If I were to impose a concurrent sentence for the sixth charge, this would result in the accused not having to bear any real consequence from his further offending (see *Raveen* at [46]).

119 I pause to note that ordering more than two sentences to run consecutively is only done in "exceptional cases", such as where the accused is shown to be a "persistent or habitual offender" (see *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") at [81(j)]). The present case involved numerous offences with a total of five young and impressionable victims. The offences were committed over a one-year period. I thus agreed with the Prosecution that the three sentences ought to run consecutively to reflect the accused's overall criminality.[194]

120 Adopting the *Pram Nair* framework, the indicative sentences for the first to third charges would also include eight strokes of the cane per charge, resulting in a total of 24 strokes. As the accused was above the age of 50 years,

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194 Prosecution's submissions on sentence dated 6 September 2022 at para 17.

as per s 325 of the CPC, no caning could be imposed on him. I was therefore of the view that an additional imprisonment term of 12 months was necessary to compensate for the deterrent effect of caning that was lost (see *Amin bin Abdullah v Public Prosecutor* [2017] 5 SLR 904 at [59] and [90]).

121 I further considered whether the cumulative sentence was proportionate to the overall criminality of the offences having regard to the totality principle (see *Shouffee* at [58]–[59]). Before any moderation, the indicative global sentence would have been 25 years and 6 months' imprisonment, which is a very substantial sentence that arises on account of three sentences running consecutively, including an additional 12 months' imprisonment in lieu of caning. In my view, this was a disproportionate and crushing aggregate sentence which would offend the totality principle. Hence, I moderated the sentences in the first to third charges to ten years' imprisonment per charge, and the sentence in the sixth charge to three years' imprisonment.

Conclusion

122 For the above reasons, I sentenced the accused as follows:

(a) First charge of sexual assault by penetration under s 376(1)(*a*) punishable under s 376(3) of the Penal Code – ten years' imprisonment.

(b) Second charge of sexual assault by penetration under s 376(1)(*a*) punishable under s 376(3) of the Penal Code – ten years' imprisonment.

(c) Third charge of sexual assault by penetration under s 376(1)(*a*) punishable under s 376(3) of the Penal Code – ten years' imprisonment.

(d) Sixth charge of sexual penetration of a minor under 16 years of age under s 376A(1)(*c*) punishable under s 376A(2) of the Penal Code – three years' imprisonment.

(e) An additional imprisonment term of 12 months in lieu of 24 strokes of the cane.

123 I ordered the sentences for the first, second and sixth charges to run consecutively. The global sentence was therefore 24 years' imprisonment. His sentence was backdated to commence from 25 October 2018, the date when he was first remanded.

See Kee Oon
Judge of the High Court

Gail Wong Li-Jing, Tay Jia En and Gladys Lim Hinn Teng
(Attorney-General's Chambers) for the Prosecution;
Accused in person.
