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

[2023] SGHC 169

Criminal Case No 11 of 2022

Between

Public Prosecutor

And

CEJ

GROUNDS OF DECISION

[Criminal Law — Abetment]
[Criminal Law — Offences — Rape]
[Criminal Law — Offences — Sexual offences]
[Criminal Procedure and Sentencing — Sentencing]
[Criminal Procedure and Sentencing — Mitigation]

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Public Prosecutor
v
CEJ

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General Division of the High Court — Criminal Case No 11 of 2022
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See Kee Oon J:

1 The accused was convicted before me on 4 May 2023 after pleading guilty to six proceeded charges (2nd, 3rd, 7th, 11th, 14th and 16th out of 17 charges in total as per the Schedule of Offences). These involved five counts of abetment by conspiracy to commit rape under s 375(1)(a) punishable under s 375(2) read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") and one count of sexual assault by digital-vaginal penetration under s 376(2)(a) punishable under s 376(3) of the Penal Code.

2 A further 11 related charges were taken into consideration ("TIC") with the accused's consent for the purpose of sentencing. Five of the TIC charges were also for abetment by conspiracy to commit rape. Another three counts were for sexual assault by penetration (two for penile-oral penetration and one for digital-vaginal penetration). Two counts involved voluntarily causing hurt by

administering a poison under s 328 of the Penal Code and one final count was for outrage of modesty under s 354(1) of the Penal Code.

3 I sentenced the accused to an aggregate imprisonment term of 29 years and to caning subject to the maximum of 24 strokes permitted by law. As the accused has appealed against his sentence, the full reasons for my decision incorporating my oral sentencing remarks are set out below.

Facts

4 The accused admitted the Statement of Facts ("SOF") without qualification. I do not propose to recite the SOF in detail for present purposes. I shall only set out a brief summary of the salient aspects.

5 Through the "SammyBoy" online forum and messaging platforms such as "Skype" messenger, the accused was in contact with his five co-accused (B2 – "CEK": B3 – "CEL"; B4 – "CEM"; B5 – "CEN" and B6 – "CEO") to discuss their wife-sharing fantasies where they (as husbands) would watch another man (the accused or one of the co-accused) having sex with their wives. They then proceeded with their plans to realise their fantasies, and this took place from as early as 2010 until 9 August 2018.

6 Of the six proceeded charges, the five proceeded charges of abetment by conspiracy to commit rape involved the accused and his co-accused arranging to sedate their wives or ex-wife through spiking their drinks or on the pretext of feeding them medication. While their victims were unconscious, the accused or his co-accused would have sexual intercourse with the other man's wife (or ex-wife). In the remaining charge of the six proceeded charges, the accused digitally penetrated the co-accused's wife. In various instances, they did not use condoms. As these acts occurred, the husbands (or ex-husband) stood by

watching their wives (or ex-wife) being raped or sexually assaulted. At times, they would also video-record or photograph the sexual acts taking place. The accused and his co-accused shared these photographs or video footages with each other. From Skype chats between the accused and CEK, it would appear that some of these photographs or videos were also uploaded onto the Internet.

7 In respect of the five proceeded counts involving abetment by conspiracy to commit rape, the accused had arranged in three instances for his wife ("A1") to be raped by his co-accused. In respect of the other two proceeded counts, the accused himself had raped two other victims who were the wife ("A2") and ex-wife ("A4") respectively of two of his co-accused, CEK and CEM. For the remaining count proceeded with, the accused had digitally penetrated A2. The victims were sedated in all the instances by the accused or the co-accused and were not in any state to consent to any of the acts.

8 The offences only came to light in the early hours of 1 January 2020. While the accused was sleeping, A1 was turning off a video which she saw playing on the accused's handphone when she chanced upon a "Skype" chat between the accused and CEK. The chat contained explicit images of her including one of her naked with a blindfold, and another of her unconscious with two penises over her face. As she scrolled down the chat messages, she discovered that the accused and CEK had been "exchanging wives" and had done this by using "drugs, charms and stimulants".

9 Shocked, A1 slapped the accused awake, who confessed to her that the two penises in the image were his and CEK's. After A1's discovery, the accused deleted the incriminating chats from his handphone. Later that day, the accused brought A1 to CEK's residence, at her request. When confronted by A1, CEK

admitted that he had sex with her while she was unconscious, and that he had also made his own wife (A2) unconscious for the accused to have sex with her.

10 On 2 January 2020, A1 lodged a police report. On 3 January 2020, the police arrested the accused and CEK, and seized from the accused items including a blindfold used by him on A1 in the commission of the offences. The police subsequently also seized digital storage media from the accused, CEK, CEM and CEN, containing photographs and videos of themselves and the other men performing various sexual acts on the victims.

11 The SOF also contained other relevant background information pertaining to the 11 TIC charges.

The parties' sentencing submissions

12 The Prosecution submitted that there were serious offence and offender-specific aggravating factors as outlined in the Prosecution's Address on Sentence ("PAS") and its oral sentencing submissions. Retribution and deterrence were the dominant sentencing considerations.[1]

13 As set out in the PAS, as many as six distinct offence-specific aggravating factors were evident from the SOF.[2] Two main factors were highlighted in the Prosecution's oral submissions, namely the clear premeditation and planning involved in all the charges, and the gross betrayal and abuse of trust against the accused's own wife. The only mitigating factor

1 Prosecution's Address on Sentence ("PAS") at para 11.

2 PAS at para 20.

was the accused's plea of guilt, which showed some remorse on his part by sparing the victims from having to testify at trial.[3]

14 It was submitted that the rape and digital penetration charges would fall minimally within the middle to higher end of Band 2 of the sentencing frameworks laid down by the Court of Appeal in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") and *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*") respectively.[4]

15 The Prosecution sought a global sentence in the range of 28 to 32 years' imprisonment and caning which would be capped at the statutory limit of 24 strokes.[5] The Prosecution highlighted the fact that the accused had conspired and abetted five other men to drug and have them rape his wife (A1) while she was unconscious. He had conspired with two other men (CEK and CEM) to rape their wife and ex-wife respectively. The offences were committed over a prolonged period of almost eight years from 2010 to 2018.

16 Four of the co-accused had already been sentenced after having pleaded guilty. They were sentenced to between 13 to 22 years' imprisonment and 20 strokes of the cane.[6] The four accused faced between two to five charges each. The proposed sentencing range for the accused, who faced 17 charges in total, would not offend the principle of parity and would appropriately reflect the severity of his offences.

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3 PAS at para 40.

4 PAS at para 42.

5 PAS at para 45.

6 PAS at para 55.

17 The accused tendered two lengthy written pleas in mitigation. The first was dated 18 April 2023 ("WMP1"). The second was dated 4 May 2023 ("WMP2"). WMP2 was tendered only on the morning that he was scheduled to plead guilty before me. He confirmed that he wished to rely on both WMP1 and WMP2 (collectively, the "WMPs").

18 In WMP1, the accused enumerated a series of objections to various portions of an earlier draft SOF which was extended to him prior to 18 April 2023.[7] Substantially similar objections had been raised at an earlier stage in the proceedings. I should clarify that the draft SOF had since been amended. A revised SOF which took into account his previous objections was before me on the date when he was scheduled to plead guilty (4 May 2023). In addition, as reflected in the transcripts of the hearing on 4 May 2023, prior to his plea being taken, I had ascertained from the accused whether he continued to have concerns about any portion of the revised SOF. While he confirmed that some concerns did remain, I did not see how any of these concerns would amount to a qualification of his plea. In the event, his plea of guilt was eventually recorded uneventfully and he did not raise any further objections to the SOF.

19 In mitigation, and with reference in particular to WMP2, the accused expressed his regret and remorse over the offences. He stated that he was "sincerely regretful" of his wrongdoings and remorsefully wished to submit himself to punishment as soon as possible. He stated that A1 had forgiven him, and his mother and daughters wanted him to return home.[8] He blamed "irresponsible and unethical people" for trying to "over-sensationalise [his] case as a pornographic story that stems from fantasy of threesome sex and wife

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7 Written Mitigation Plea dated 18 April 2013 ("WMP1") at paras 4–9.

8 Written Mitigation Plea dated 4 May 2023 ("WMP2") at para 29.

sharing/swapping" and painting a persona of him which was "totally not what [he was] in reality".[9]

20 While expressing his love and devotion for A1 in WMP2, the accused also asserted that it was his "shocking discovery of her affairs" that sparked off the very first of his offences (in 2010). In 2014, "to further rub salt into the injury, she had another affair with her colleague". He claimed that in both instances, she had taunted, mocked and humiliated him and "these were the catalyst that further [pushed him] into taking retaliatory action in response".[10]

21 The accused also claimed that he was "never interested" in the wives of his co-accused but had only been acting to "reciprocate their [*ie.* his co-accused's] friendship and their help".[11] He sought to distance himself from his co-accused, explaining that he did not want to be sentenced together with them, "not wanting to be seen and stereotype[d] as one who thinks and behaves the same as them and have the same agenda".[12] He further claimed in WMP1 that his actions and state of mind at the time of the offences were in fact "triggered" because he had been influenced by his co-accused CEK and CEL.[13]

My decision on sentence

The accused's mental condition

22 In WMP1, the accused annexed a copy of a psychiatric report from Dr Tommy Tan ("Dr Tan") dated 9 April 2022 ("Dr Tan's report"). Dr Tan

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9 WMP2 at para 12.

10 WMP2 at para 19.

11 WMP2 at para 20.

12 WMP2 at para 27.

13 WMP1 at para 6.

diagnosed the accused as having compulsive sexual behaviour disorder ("CSBD") or sex addiction in layman's terms. The accused sought to rely on this diagnosis in support of his mitigation plea. I shall briefly address the reliability and relevance of Dr Tan's report as a preliminary point. That being said, I was also fully conscious that the accused had gone on in WMP2 to label Dr Tan's diagnosis as "superficial"[14] and also seemed to be somewhat critical of Dr Tan in his oral submission.

23 Dr Tan opined in his report that the accused's condition of CSBD together with his low self-esteem and self-doubt about his masculinity, were "significant contributory factors" in his commission of the alleged offences. Dr Tan did not however suggest that his disorder had impaired his judgment and decision-making capacity.

24 In response to WMP1, the Prosecution tendered Dr Jerome Goh's Institute of Mental Health ("IMH") reports dated 6 February 2020 and 3 October 2022, indicating that the accused did not have CSBD or any other mental disorder at the time of the alleged offences. Dr Goh's opinion was that a high sex drive did not necessarily equate to CSBD or sex addiction and the accused's sexual impulses or urges were not irresistible or uncontrollable.

25 I found that a "Newton" hearing was unnecessary as the doctors' respective reports and conclusions could be evaluated by the court on the basis of the analysis and reasoning found in their reports. Dr Tan's report was of questionable assistance since it was premised largely on the accused's self-reported account, with no real attempt to verify his assertions against other available material such as the draft charges or statement of facts. More

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14 WMP2 at para 24.

importantly, Dr Tan had not adequately explained how he had formed his views about the accused having suffered from a mental condition since over 10 years ago based solely on his fairly recent consultations in March 2022.

26 As the Prosecution pointedly noted in its Reply to the Plea in Mitigation ("Reply to WMP1"), the "fatal flaw" in Dr Tan's report was that there was no reference at all to the accused's account of the alleged offences. As such, Dr Tan did not provide any explanation or reasoning as to the effect of the accused's purported mental condition on his offending.[15] In fact, Dr Tan's report contained no mention whatsoever of the numerous rape or digital-vaginal/penile-oral penetration offences which were perpetrated over the course of eight years while the victims were drugged and unconscious. It would appear that Dr Tan's conclusions were based on a completely different and palpably mistaken understanding of the actual factual context.

27 I did not accept that Dr Tan's report was reliable and relevant. Much like the psychiatric report that was relied upon by the appellant in *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805, Dr Tan's report was of little or no assistance to the accused in mitigation.

28 Ultimately, the accused was clearly able to understand the nature and consequences of his conduct. His condition, even if properly diagnosed, had in any event not impaired his ability to perform his work, or to judge, plan and make decisions. I did not accept that his conduct was somehow mitigated by a claimed addiction to sex. The point was put across well at para 17 of the Prosecution's Reply to WMP1: "no mitigating weight can or should be given to

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15 Prosecution's Reply to Plea in Mitigation ("Reply to WMP1") at para 9.

a rapist who claims he is addicted to sex".[16] I did not see how he had demonstrated any difficulty in making appropriate choices or comprehending the consequences of his conduct.

Offence-specific factors

29 Two aspects of this case were noteworthy from the SOF: the shocking betrayal of marital trust by the accused and the egregious sexual perversion in the offending conduct.

30 As the SOF plainly demonstrated, and as highlighted in the PAS, there were multiple serious offence-specific aggravating factors, namely, (a) significant planning and premeditation; (b) the victims' vulnerability; (c) exposure to risks of sexual diseases/unwanted pregnancies; (d) violation of the sanctity of the victims' homes; (e) recording and dissemination of the incidents; and (f) betrayal of trust and abuse of trust.[17] In addition to these, two of the TIC charges also raised the further aggravating use of sedatives on A1.

31 The accused did not dispute that there were aggravating factors which should be taken into account. In WMP1, he conceded that the use of sedatives, the commission of the offences at the victims' place of residence, premeditation and prolonged duration of offending were all aggravating circumstances.[18]

Offender-specific factors

32 Turning to the offender-specific aggravating factors, these were obviously not one-off offences as can be seen from the sheer number of charges

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16 Reply to WMP1 at para 17.

17 PAS at paras 21– 38.

18 WMP1 at para 23.

and the lengthy duration over which the offences were committed. The accused had persisted in his offending conduct from 2010 until 2018.

33 The accused had no antecedents. He had pleaded guilty. That said, despite knowing that the game was up when he was abruptly awakened from his sleep and confronted by A1 on 1 January 2020, he went on to delete the incriminating chats from his handphone.[19] It was undisputed nonetheless that he eventually did cooperate in the police investigations. Both his plea of guilt and his cooperation reflected some measure of remorse for his actions.

34 The accused maintained in both WMP1 and WMP2 that he was remorseful, regretted his wrongdoings and "really wanted to come clean and atone" for [his] sins". I was not persuaded however that the accused was unreservedly remorseful. He did not appear to have fully understood the gravity of his offences although he had indicated that he wished to own up, take responsibility and accept the punishment that was due.

35 While I sought to account for the relevant mitigating factors and the totality principle, I could not ignore the fact that the WMPs were replete with self-serving attempts to deflect responsibility and shift blame to others, particularly his co-accused CEK and CEL.[20]

36 Most regrettably, the accused had resorted to a form of victim-blaming, suggesting that a "reason of (*sic*) [his] offending" was because he was purportedly "in emotional distress and was severely distraughted from (*sic*) [his]

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19 Statement of Facts ("SOF") at para 5.

20 WMP1 at para 6.

wife's infidelities".[21] He maintained this claim in WMP2 while acknowledging that he had committed the offences involving his wife as a retaliatory measure for his wife's alleged infidelities.[22] He only informed Dr Tan that he "was jealous of [his wife] *if* she had an affair, yet he tried to encourage a neighbour to have sexual relations with her and allowed others to have sexual intercourse with her".[23] He admitted that he himself had extra-marital affairs.[24] Whatever all this may have been intended to convey, and even if his wife may have also had affairs herself, his statement to Dr Tan did not reflect the frame of mind of a severely distraught husband who was in emotional distress. More importantly, any perceived grievance on his part could neither justify nor mitigate his actions.

37 Moreover, the accused attempted to downplay the seriousness of his offences by contending that he was unfairly labelled as a sexual predator or a deviant with fetishistic "wife-sharing" proclivities,[25] and that he was "never interested" in the wives (and ex-wife) of his co-accused.[26] These claims rang hollow. The sordid facts of this case spoke for themselves.

38 I found no discernible indication of genuine remorse. In support of his mitigation plea, the accused further adduced letters pleading for leniency from A1, his mother and three of his young daughters. He maintained that these letters were given by them voluntarily and he had their consent to tender them to the court. What he did not clarify (and possibly was not able to confirm) was

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21 WMP1 at para 7, para 19.

22 WMP2 at paras 19–20.

23 Psychiatric report from Dr Tommy Tan dated 9 April 2022 ("Dr Tan's report") at para 37.

24 Dr Tan's report at para 30.

25 WMP2 at para 26; WMP1 at para 4ii).

26 WMP2 at para 20.

whether the writers continued to stand by their expressed sentiments. In response, the Prosecution pointed out that these letters were all written quite some time back in March 2020, not long after the accused was arrested and remanded. The writers were obviously unaware then that he would be charged with as many as 17 offences. This was a significant point. The Prosecution clarified that A1 had not realised the full extent of the accused's misdeeds until much later. This was reflected in her Victim Impact Statement recorded on 25 January 2022, annexed as Annex A to the PAS.

39 The Prosecution highlighted that A1 had stated at paras 7 and 8 of her Victim Impact Statement that she had thought there was only one co-accused at the start. I reproduce these paras below:

> 7 At the start, I only thought that there was only one co-accused. Subsequently, when there were more and more accused being charged in court, only did I realise how bad this case was. I kept thinking about how cruel he was to do this to me.
>
> 8 As time went by, I began to feel numbed about the whole case and I chose not to feel anything about it. I wanted to focus my energy to take care of my children and the family.

40 Having regard to A1's sentiments as set out above, it would appear that the accused's suggestion that A1 had unconditionally forgiven him and would support his plea for leniency was misleading, or inaccurate at the very least.

Calibration of the sentence

41 The Prosecution fairly conceded that the accused should still be given some credit for his plea of guilt which would at least spare the victims from having to recount their ordeal at his trial. I agreed that this was fair and appropriate on the facts.

42 Apart from the accused's (late) plea of guilt, there were no other mitigating factors. There was a compelling need for a deterrent sentence and also for the sentence to adequately reflect retributive principles. To aggravate matters, there was persistence in his offending conduct spanning a considerable number of years from 2010 to 2018, which would warrant a measure of specific deterrence. Given his repeated offending over these years, he could not be treated purely as a first offender.

43 On account of the accumulated offence-specific aggravating factors, I agreed with the Prosecution's submission as to the applicability of the *Terence Ng* and *Pram Nair* frameworks.

44 Band 2 of the *Terence Ng* framework specifies that for rape cases which contain two or more offence-specific aggravating factors, the sentencing range from which an indicative starting point can be derived ought to fall between 13 to 17 years' imprisonment and 12 strokes of the cane. Band 2 of the *Pram Nair* framework specifies that for digital penetration cases which contain two or more offence-specific aggravating factors, the sentencing range from which an indicative starting point can be derived ought to fall between 10 to 15 years' imprisonment and eight strokes of the cane.

45 In my view, the Prosecution justifiably identified the appropriate indicative starting point sentences as follows:

a. between 13 to 17 years' imprisonment and 12 strokes of the cane in respect of the rape charges involving A1, A2 and A4; and

b. between 10 to 15 years' imprisonment and eight strokes of the cane in respect of the digital penetration charge involving A2.

46 In respect of the rape offences, given that the accused had pleaded guilty, the Prosecution submitted that the indicative starting point sentence of up to 17 years' imprisonment and 12 strokes of the cane should be adjusted downwards to between nine to 11 years' imprisonment and 10 to 12 strokes of the cane for the 2nd and 7th charges which involved A2 and A4.[27] As for the 11th, 14th and 16th charges which involved A1, the Prosecution submitted for a downward adjustment to between 11 to 13 years' imprisonment and 10 to 12 strokes of the cane.[28]

47 In respect of the digital penetration charge, given that the accused had pleaded guilty, the Prosecution submitted that the indicative starting point sentence of up to 15 years' imprisonment and eight strokes of the cane should be adjusted downwards to eight years' imprisonment and six to eight strokes of the cane.[29]

48 I agreed that the sentencing ranges proposed by the Prosecution would be appropriate in the present case. The Prosecution's proposed sentences were also consistent with the sentencing precedents cited.

Conclusion

49 For the reasons set out above, having taken into account all the relevant sentencing considerations, I sentenced the accused as follows:

a. 2nd charge – 10 years' imprisonment and 12 strokes of the cane;

b. 3rd charge – eight years' imprisonment and six strokes of the cane;

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27 PAS at para 43.

28 PAS at para 44.

29 PAS at para 43.

c. 7th charge – 10 years' imprisonment and 12 strokes of the cane;

d. 11th charge – 11 years' imprisonment and 12 strokes of the cane;

e. 14th charge – 11 years' imprisonment and 12 strokes of the cane;

f. 16th charge - 11 years' imprisonment and 12 strokes of the cane.

50 Pursuant to s 307(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"), I ordered the sentences for the 3rd, 7th and 11th charges to run consecutively, resulting in an aggregate imprisonment sentence of 29 years' imprisonment. The punishment of caning totalled 66 strokes but this was limited to the maximum statutory permissible limit of 24 strokes as set out in s 328(6) of the CPC.

51 In my view, the total sentence of 29 years' imprisonment and 24 strokes of the cane was not crushing or disproportionate to the gravity of the offences. It was in line with considerations of sentencing parity when compared against the sentences of his co-accused, all of whom faced far fewer charges. Specifically, none of the four co-accused who had been sentenced thus far was involved in more than five offences. The accused was involved in 17.

52 The sentence was backdated to the date of his arrest on 3 January 2020.

Postscript

53 As a postscript, I note that the accused has raised only two grounds for appealing in his notice of appeal:[30]

[30] Notice of Appeal (Crime) dated 17 May 2023 in CA/CCA 6/2023.

> 1. My spouse wish that I am able to seek the honourable courts' leniency for a lighter sentence.
>
> 2. I was not able to be represented by a defense counsel at the point of pleading guilty.

54 I shall address these grounds briefly. In respect of the first ground, even granting the accused the benefit of doubt that A1 had in fact expressed such a wish (*ie*. for him to have a lighter sentence), no contemporaneous written mitigation plea from A1 was put forth on his behalf when he pleaded guilty before me. I noted that none of his family members appeared to be present in the courtroom as well. All the accused had to show for as a demonstration of A1's purported continuing support for him was her letter dating from 25 March 2020. This letter had evidently been superseded by events, as A1's subsequent Victim Impact Statement of 25 January 2022 revealed. Apart from the accused's own say-so, there was nothing else to indicate that A1 had since experienced a change of heart.

55 As for the second ground, it is pertinent to note from the case record that the accused had previously been represented by two different counsel. His first counsel had acted for him since 2020 and was discharged on 13 May 2022, apparently because the accused disagreed with counsel's advice. His second counsel was discharged on 28 October 2022 when he was originally scheduled to plead guilty along with a few of his co-accused. He apparently changed his mind and counsel obtained a discharge owing to his inconsistent instructions. In short, the accused already had the benefit of legal advice for well over two years from two different counsel.

56 The fact that the accused was unrepresented when he pleaded guilty on 4 May 2023 is not relevant to whether his sentence was manifestly excessive. He was afforded every opportunity to mitigate. He was given more than

sufficient notice and ample time to prepare for his mitigation. The record would also show that I had endeavoured to guide him as much as I could through the course of the proceedings. I do not think that he was prejudiced or impeded in any way on account of being unrepresented.

See Kee Oon
Judge of the High Court

Gail Wong, Ang Siok Chen and Lim Ying Min
(Attorney-General's Chambers) for the Prosecution;
Accused in person.
