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

[2023] SGHC 312

Criminal Case No 37 of 2023

Between

Public Prosecutor

… *Prosecution*

And

CSK

… *Defendant*

JUDGMENT

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

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Public Prosecutor
v
CSK

[2023] SGHC 312

General Division of the High Court — Criminal Case 37 of 2023
Mavis Chionh Sze Chyi J
18 September, 3 October 2023

31 October 2023 Judgment reserved.

Mavis Chionh Sze Chyi J:

1 The victim in the present case is 17 years old. She was 15 years old in December 2021, when the accused committed a series of sexual offences against her.[1] At the material time, she was studying in school.[2] She and her younger sister lived with her grandaunt (the "Grandaunt") at home.[3] The Grandaunt was the family's sole breadwinner.[4] The victim would help her Grandaunt to clean the floor, wash the clothes, and hang clothes up to dry while at home.[5]

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1 Statement of Facts ("SOF") at para 2.

2 SOF at para 2.

3 Psychological Assessment Report at p 1 (SOF at p 11).

4 SOF at para 5.

5 Psychological Assessment Report at p 5 (SOF at p 15).

2 According to a report by the Child Guidance Clinic of the Institute of Mental Health ("IMH") dated 12 December 2022, the victim's verbal comprehension and reasoning abilities fall into the Extremely Low range, while her working memory and processing speed indexes fall within the Low Average range.[6] Overall, she has an IQ of 66 on the Weschler Intelligence Scale for Children – Fifth Edition ("WISC-V"), which puts her in the "Extremely Low" range of intelligence.[7]

3 The victim, her sister, and her Grandaunt have been identified as a financially-in-need household by a local Resident's Network ("the RN") since at least 2015. The RN is a grassroots organisation under the People's Association, and organises events to engage residents and assist families identified to be in-need. The Grandaunt was actively involved in these events.[8]

4 It was through this connection that the Grandaunt became acquainted with the accused (a male Singaporean and an employee of the People's Association) in 2015. The accused, who is now 64 years old, started working at the RN in 2015. By December 2021 he had become the sole manager of the RN.[9] He developed a good relationship with the victim's family as he would actively assist the Grandaunt to find jobs, and he occasionally bought food for their family. He would also talk regularly to the Grandaunt, who confided in him about her family circumstances.[10] As a result of these interactions between

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6 Psychological Assessment Report at p 3 (SOF at p 13).

7 Psychological Assessment Report at p 3 (SOF at p 13).

8 SOF at para 5.

9 SOF at paras 4 and 5.

10 SOF at para 5.

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2015 and 2021, the Grandaunt grew to trust the accused. She thus had no reservations about the accused meeting and interacting with the victim alone.[11]

5 Between 2020 and 2021, the Grandaunt would bring the victim and her sister to a weekly event at the RN called "Breakfast with Love". There, the victim started interacting with the accused with increasing frequency. The victim also began to volunteer at other RN events to help the accused.[12] She learnt that the accused was previously a schoolteacher, and he would assist her with her schoolwork. The victim came to regard the accused as her "teacher" and held him in high esteem.[13] During this period, the accused came to notice that the victim had grown taller and slimmer. He also noticed that she was generally very obedient and a slower learner than her younger sister.[14]

6 On at least four separate occasions in December 2021, the accused took advantage of his relationship with the victim and the Grandaunt to obtain unsupervised one-to-one access to the victim and sexually exploit her. This spate of offences only came to an end when the accused was caught red-handed on 20 December 2021 by Mr A, a volunteer with the RN and the chairman of the RN resident committee.[15]

The charges

7 The accused has pleaded guilty to three proceeded charges under s 376A(1)(*b*) punishable under s 376A(2)(*a*) of the Penal Code (Cap 224, 2008

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11 SOF at para 5.

12 SOF at para 6.

13 SOF at para 6.

14 SOF at para 6.

15 SOF at para 3.

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Rev Ed) ("Penal Code") for sexual penetration of a minor below 16 years of age while in an exploitative relationship with the victim. He has also consented to 15 other charges under the Penal Code, Films Act (Cap 107, 1998 Rev Ed) ("Films Act"), and the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("CYPA") being taken into consideration ("TIC charges").

8 The Prosecution has informed that this is the first case involving charges brought under s 376A(1)(*b*) punishable under s 376A(2)(*a*) of the Penal Code.

9 All the proceeded and TIC charges relate to the same victim. I set out below the details of the proceeded charges below:

S/N	Charge	Offence	Description
1	TRC-900602-2021 ("First Charge")	Section 376A(1)(*b*) p/u s 376A(2)(*a*) of the Penal Code	Sometime on 5 December 2021, at [X], Singapore, did penetrate with your finger the vagina of the victim, a female then above 14 years of age but below 16 years of age (15 years old, D.O.B.: [X]), whilst in a relationship that was exploitative of her.
2	TRC-900144-2023 ("Second Charge")	Section 376A(1)(*b*) p/u s 376A(2)(*a*) of the Penal Code	Sometime on 13 December 2021, at [X], Singapore, did penetrate with your finger the anus of the victim, a female then above 14 years of age but

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			below 16 years of age (15 years old, D.O.B.: [X]), whilst in a relationship that was exploitative of her.
3	TRC-900147-2023 ("Third Charge")	Section 376A(1)(*b*) p/u s 376A(2)(*a*) of the Penal Code	Sometime on 13 December 2021, at [X], Singapore, did penetrate with your finger the vagina of the victim, a female then above 14 years of age but below 16 years of age (15 years old, D.O.B.: [X]), whilst in a relationship that was exploitative of her.

10 The 15 TIC charges are set out below:

S/N	**Charge**	**Offence**	**Description**
1	DAC-903225-2023 ("First TIC Charge")	Section 7(1)(*a*)(i) p/u s 7(10)(*b*) of the CYPA	Sometime on 1 December 2021, at [X], Singapore, did sexually exploit a young person by committing an indecent act on the victim (female, then 15 years old, D.O.B.: [X]), to wit, by kissing her breasts and licking her vagina (skin-to-skin).

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2	DAC-903233-2023 ("Second TIC Charge")	Section 377BH(1) p/u s 377BH(2) of the Penal Code	Sometime on 1 December 2021, at [X], Singapore, did intentionally produce child abuse material knowing that the material you produced was child abuse material, to wit, by taking nine (9) photographs capturing the bare breasts of the victim (female, then 15 years old, D.O.B.: [X]).
3	DAC-903231-2023 ("Third TIC Charge")	Section 7(1)(*a*)(i) p/u s 7(10)(*b*) of the CYPA	Sometime on 5 December 2021, at [X], Singapore, did sexually exploit a young person by committing an indecent act on the victim (female, then 15 years old, D.O.B.: [X]), to wit, by kissing her breasts and licking her vagina (skin-to-skin).
4	TRC-900143-2023 ("Fourth TIC Charge")	Section 376A(1)(*b*) p/u s 376A(2)(*a*) of the Penal Code	Sometime on 13 December 2021, at [X], Singapore, did penetrate with your finger the vagina of the victim, a female then above 14 years of age but below 16 years of age (15 years

			old, D.O.B.: [X]), whilst in a relationship that was exploitative of her.
5	DAC-903228-2023 (“Fifth TIC Charge”)	Section 7(1)(*a*)(i) p/u s 7(10)(*b*) of the CYPA	Sometime on 13 December 2021, at [X], Singapore, did sexually exploit a young person by committing an indecent act on the victim (female, then 15 years old, D.O.B.: [X]), to wit, by kissing her breasts and licking her vagina (skin-to-skin).
6	DAC-903229-2023 (“Sixth TIC Charge”)	Section 377BH(1) p/u s 377BH(2) of the Penal Code	Sometime on 13 December 2021, at [X], Singapore, did intentionally produce child abuse material knowing that the material you produced was child abuse material, to wit, by taking 78 photographs and recording 4 videos capturing you digitally penetrating the vagina and anus of the victim (female, then 15 years old, D.O.B.: [X]).

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7	TRC-900148-2023 ("Seventh TIC Charge")	Section 376A(1)(*b*) p/u s 376A(2)(*a*) of the Penal Code	Sometime on 20 December 2021, at [X], Singapore, did penetrate with your finger the anus of the victim, a female then above 14 years of age but below 16 years of age (15 years old, D.O.B.: [X]), whilst in a relationship that was exploitative of her.
8	DAC-903230-2023 ("Eighth TIC Charge")	Section 7(1)(*a*)(i) p/u s 7(10)(*b*) of the CYPA	Sometime on 20 December 2021, at [X], Singapore, did sexually exploit a young person by committing an indecent act on the victim (female, then 15 years old, D.O.B.: [X]), to wit, by licking her vagina (skin-to-skin).
9	TRC-900150-2023 ("Ninth TIC Charge")	Section 375(1A)(*a*) r/w s 511 p/u s 375(2) r/w s 512(2)(*a*) of the Penal Code	Sometime on 20 December 2021, at [X], Singapore, did attempt to penetrate with your penis the mouth of the victim (female, then 15 years old, D.O.B.: [X]), without her consent.

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10	DAC-903232-2023 ("Tenth TIC Charge")	Section 7(1)(*b*) p/u s 7(10)(*b*) of the CYPA	Sometime on 20 December 2021, at [X], Singapore, did sexually exploit a young person by procuring the commission of an indecent act by the victim (female, then 15 years old, D.O.B.: [X]), to wit, by getting her to touch your penis.
11	DAC-903234-2023 ("Eleventh TIC Charge")	Section 377BH(1) p/u s 377BH(2) of the Penal Code	Sometime on 20 December 2021, at [X], Singapore, did intentionally produce child abuse material knowing that the material you produced was child abuse material, to wit, by taking 106 photographs capturing the bare breasts and genitals of the victim (female, then 15 years old, D.O.B.: [X]).
12	MAC-901148-2023 ("Twelfth TIC Charge")	Section 376ED(2) p/u s 376ED(3)(*b*) of the Penal Code	Sometime on 20 December 2021, at [X], Singapore, did, for the purpose of obtaining sexual gratification, intentionally cause the victim

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			(female, then 15 years old, D.O.B.: [X]), who was below 16 years of age and who you did not reasonably believe to be of or above 16 years of age, to observe an image that was sexual, to wit, by showing her a pornographic video capturing a man and woman engaging in sexual intercourse.
13	MAC-901147-2023 ("Thirteenth TIC Charge")	Section 30(2)(*a*) of the Films Act	Sometime on 20 December 2021, at [X], Singapore, did have in your possession seven (7) obscene films, knowing that these said films were obscene.
14	DAC-903226-2023 ("Fourteenth TIC Charge")	Section 204A(*b*) of the Penal Code	Sometime on 21 December 2021, at [X], Singapore, did do an act which has a tendency to obstruct the course of justice whilst intending to obstruct the course of justice, to wit, by telling the victim not to inform the Police about the sexual acts you committed on her.

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15	DAC-903227-2023 ("Fifteenth TIC Charge")	Section 204A(*b*) of the Penal Code	Sometime between 20 December 2021 and 21 December 2021, in Singapore, did do an act which has a tendency to obstruct the course of justice whilst intending to obstruct the course of justice, to wit, by telling one [Mr A] to remain quiet about what he had witnessed you do with the victim on 20 December 2021 at [X], Singapore, and by informing him that you would give money to the victim's family.

Facts

11 I next outline the circumstances of the proceeded and TIC charges, which took place over four separate occasions.

1 December 2021

12 A few days before 1 December 2021, the accused sought permission from the Grandaunt to bring the victim out to Jewel Changi Airport for the ostensible purpose of taking photographs of the victim at the airport. The Grandaunt agreed as the accused had previously told her that one of his hobbies

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was photography, and he had also previously shown her some of his photographs.[16]

13 On 1 December 2021, the accused met the victim at Farrer Park MRT. They travelled to Jewel Changi Airport together. At the airport, the accused took several photographs of the victim which he later sent to the Grandaunt. The accused then took the victim out for lunch.[17]

14 After lunch, the accused brought the victim to his personal office at the RN. While alone with the victim in his office, he adjusted the flap of a cardboard box above his cupboard so that the flap obstructed the view of the CCTV camera installed in the office. He brought the victim to his sofa and lifted the victim's t-shirt and bra up and began to kiss the victim's exposed breasts. The accused then removed the victim's pants and underwear and licked the victim's exposed vagina. These acts are the subject of the First TIC Charge. The accused then took nine photographs of the victim's bare breasts. This is the subject of the Second TIC Charge.[18]

5 December 2021 (First Charge)

15 On 5 December 2021 the accused, with the Grandaunt's approval, again brought the victim out to Jewel Changi Airport. He met the victim at a bus stop near the victim's home, travelled to the airport together, and had lunch there. They also took several photographs of the victim while at the airport.[19]

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16 SOF at para 8.

17 SOF at para 9.

18 SOF at paras 10 and 11.

19 SOF at para 13.

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16 After this outing, the accused again brought the victim back to his personal office at the RN.[20] The accused again adjusted the flap of a cardboard box above his cupboard to obstruct the view of the CCTV camera. With no one else around, the accused lifted up the victim's t-shirt and bra up and kissed the victim's exposed breasts, and removed the victim's pants and underwear and licked the victim's exposed vagina. This is the subject of the Third TIC Charge.[21]

17 The accused then asked the victim to lie prone on the table in his office. He then touched the victim's vagina before proceeding to insert his finger into it. The accused eventually stopped as the victim complained of pain.[22]

18 At the material time, by virtue of the victim's young age at the material time (15 years old), the age difference between the accused (then 62 years old) and the victim (a difference of 47 years), the nature of the relationship between the accused and the victim, as well as the degree of influence exercised by the accused over the victim, the accused was in a relationship with the victim that was exploitative of the latter under s 377CA(1) of the Penal Code.[23]

19 By the act of digitally penetrating the victim's vagina when the victim was 15 years old and whilst the accused was in a relationship with the victim that was exploitative of the victim, the accused committed an offence under s 376A(1)(*b*) punishable under s 376A(2)(*a*) of the Penal Code (the First Charge).

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20 SOF at para 13.

21 SOF at para 14.

22 SOF at para 14.

23 SOF at para 7.

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13 December 2021 (Second Charge)

20 Sometime before 13 December 2021, the accused successfully sought permission from the Grandaunt for the victim to come to the RN to assist him with volunteer work.[24]

21 On 13 December 2021, the accused picked the victim up from her block of flats. He got the victim to assist him in preparing posters for the RN and putting these posters up around the neighbourhood. The accused sent the Grandaunt several photographs of the victim helping him with these tasks. The accused then brought the victim out for lunch.[25]

22 After lunch, the accused brought the victim back to his personal office at the RN. He again made sure the CCTV inside was obscured using a flap of a cardboard box. The accused then lifted the victim's t-shirt and bra up and began to kiss her exposed breasts. He also removed the victim's pants and underwear and licked her exposed vagina. These acts are the subject of the Fifth TIC Charge. The accused then licked the victim's vagina and inserted his finger into it. This is the subject of the Fourth TIC Charge.[26]

23 The accused then asked the victim to change positions and lie prone on top of his table, after which he inserted his finger into the victim's anus and moved it in and out several times. By digitally penetrating the victim's anus, when the victim was 15 years old and whilst the accused was in a relationship with the victim that was exploitative of the victim, the accused committed an

[24] SOF at para 16.

[25] SOF at para 18.

[26] SOF at para 19.

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offence under s 376A(1)(*b*) punishable under s 376A(2)(*a*) of the Penal Code (the Second Charge).[27]

24 Over the course of the above events, the accused also took 78 photographs and recorded four videos of himself digitally penetrating the victim's vagina and anus. This is the subject of the Sixth TIC Charge.[28]

20 December 2021 (Third Charge)

25 Shortly before 20 December 2021, the accused again successfully sought permission from the Grandaunt for the victim to come down to the RN to assist him with volunteer work.[29]

26 On 20 December 2021, the accused brought the victim to help him place posters for the RN around neighbouring blocks, before again bringing the victim back to his personal office at the RN.[30] In the office, the accused again obstructed the view of the CCTV using the flap of a cardboard box.

27 While alone with the victim in his office, the accused removed the victim's pants and underwear and licked her exposed vagina. This is the subject of the Eighth TIC Charge. The accused also took his penis out of his pants and got the victim to touch his penis. This is the subject of the Tenth TIC Charge.[31]

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27 SOF at para 19.

28 SOF at para 19.

29 SOF at para 21.

30 SOF at para 22.

31 SOF at para 23.

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28 The accused then inserted his finger into the victim's vagina after licking it. By digitally penetrating the victim's vagina, when the victim was 15 years old and whilst the accused was in a relationship with the victim that was exploitative of the victim, the accused committed an offence under s 376A(1)(*b*) punishable under s 376A(2)(*a*) of the Penal Code (the Third Charge).[32]

29 The accused also inserted his finger into the victim's anus. This is the subject of the Seventh TIC Charge. He then instructed the victim to pose for him in various positions while she was undressed. In total, the accused took 106 photographs capturing the victim's bare breasts and genitals, which acts are the subject of the Eleventh TIC Charge. These photographs included:[33]

(a) six close-up photos of the victim's exposed vagina;

(b) three close-up photos of the victim's exposed vagina with the accused spreading the victim's labial folds apart with his fingers;

(c) 28 photos of the victim posing with her legs spread apart and her vagina exposed;

(d) three photos of the victim standing naked with her breasts and vagina exposed;

(e) 19 photos of the victim posing with her breasts exposed;

(f) 17 photos of the victim posing with a towel and with her breasts exposed;

(g) 16 close-up photos of the victim's exposed breasts;

[32] SOF at para 23.

[33] SOF at para 25.

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(h) three close-up photos of the victim's vagina area while she was standing; and

(i) 11 photos of the accused groping the victim's exposed breast with his hand.

30 The accused also asked the victim if she had seen videos of people having sex before. When the victim replied that she had not, the accused showed the victim a pornographic video capturing a man and woman engaging in sexual intercourse. This is the subject of the Twelfth TIC Charge.[34]

31 The accused thereafter lowered his pants, exposed his penis and turned to face the victim. He then asked the victim to try sucking on his penis. The victim refused. The accused thus rubbed his penis against the victim's mouth and face and offered the victim money to suck his penis. The victim again refused. This is the subject of the Ninth TIC Charge.[35]

32 At this point, Mr A walked into the accused's office and saw the accused standing in front of the victim on the sofa, with his pants lowered. The accused turned around and quickly stopped what he was doing. Mr A quickly left the accused's office. The accused then brought the victim back out to continue placing posters around the neighbouring blocks, before instructing the victim to return home.[36]

33 On the same day, the accused called Mr A on his mobile phone and sought the latter's forgiveness, pleading with him to "keep quiet" about the

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[34] SOF at para 26.

[35] SOF at para 27.

[36] SOF at para 28.

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matter. The following day (21 December 2021), the accused again messaged Mr A to plead for his forgiveness and to ask for a "second chance". The accused informed Mr A that he was willing to to "paid (sic) back [his] mistake in win win situation" by giving the victim's family $200 a month.[37] However, Mr A had already escalated the matter to the RN's Constituency Director, who lodged a police report on 22 December 2021. The accused was arrested on the same day.

Prosecution's arguments

34 I next outline the Prosecution's submissions on sentence.

Individual sentences

35 The Prosecution submitted that the predominant sentencing principles in the present case should be deterrence and retribution. General deterrence was necessary given the victim's vulnerability, as signalled by the sentencing range carved out by Parliament.[38] Specific deterrence was necessary given the Accused's conscious choice to commit his offences.[39] Retribution was also highly relevant in this case. The accused took more than a hundred sexual photographs of the victim in addition to sexually and digitally penetrating her on multiple occasions. This was a case of serious sexual assault which was unimaginably degrading to the victim's dignity.[40]

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[37] SOF at para 29.

[38] Prosecution's Submissions on Sentence dated 8 September 2023 ("PSS") at para 5.

[39] PSS at para 7.

[40] PSS at para 10.

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36 As to the applicable sentencing framework, the Prosecution submitted that the sentencing framework set out by the Court of Appeal in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("the *Pram Nair* framework") should apply to offences under s 376A(1)(*b*) punishable under s 376A(2)(*a*) of the Penal Code.[41]

37 Applying the *Pram Nair* framework, the Prosecution argued that the offence-specific aggravating factors would place this case within Band 2.

38 Initially, the first offence-specific aggravating factor highlighted by the Prosecution was the exploitative relationship which the accused had with the victim. The Prosecution noted that in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*"), the Court of Appeal observed (at [53]) that a paradigmatic example of a Band 2 case would be the rape of a particularly vulnerable victim coupled with evidence of an abuse of position. The Prosecution initially took the position that the very fact that the accused had enjoyed an exploitative relationship with the victim should *per se* be considered one of the offence-specific aggravating factors placing the present case within Band 2.[42] This conclusion was, according to the Prosecution, bolstered by the nature and the extent of the exploitative relationship in the present case. The victim and her Grandaunt trusted and relied on the accused, which in turn afforded him the opportunity to be alone with the victim without arousing any suspicion,[43] and thereby commit the multiple offences. Further, the Prosecution pointed out that a child who experienced serious sexual assault at the hands of someone who was supposed to care for and protect her would suffer indelible

41 PSS at para 14.

42 PSS at para 21.

43 PSS at para 22.

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psychological scars, and her ability to function in society might also be impacted: *Public Prosecutor v UI* [2008] 4 SLR(R) 500.[44] This was indeed what the victim in this case experienced.

39 The Prosecution also identified two other offence-specific aggravating factors which justified placing the present case within Band 2 of the *Pram Nair* framework. These were the victim's vulnerability by virtue of her intellectual disability, and the premeditation shown by the accused in committing the offences (including, for example, his arranging to be physically alone with the victim and his actions in deliberately obstructing the CCTV view of his office).[45]

40 In terms of offender-specific mitigating factors, the Prosecution submitted that the accused's lack of antecedents was a neutral factor. As for the mitigating factor of his plea of guilt, this had to be balanced against the 15 TIC charges against the accused.

41 Taking into account the above considerations, the Prosecution contended that a sentence of seven and a half to 10 years' imprisonment per charge would be appropriate.

Imprisonment in lieu of caning

42 By virtue of s 325(1)(*b*) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"), the accused is ineligible for caning given his age, *i.e.* 64 years at the time of sentencing. The Prosecution submitted that the court ought to

[44] PSS at para 23.

[45] PSS at para 26.

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exercise its discretion to impose an additional imprisonment term of 12 months under s 325(2) of the CPC to compensate for this.[46]

Global sentence

43 The Prosecution submitted that the sentences for the First and Third charges should run consecutively, given that at least two sentences must be ordered to run consecutively under s 307(1) of the CPC.[47] This would result in a global term of 15 to 20 years' imprisonment, with an enhanced sentence of 12 months' imprisonment.

Further submissions

44 During the hearing on 18 September 2023, I sought clarification from the Prosecution as to whether they were taking the position that the very existence of an exploitative relationship in an offence under s 376A(2)(*a*) *per se* would inevitably constitute an aggravating factor in the sentencing of such an offence. The Prosecution had argued in their written submissions that on the basis of comments made by Sundaresh Menon CJ in *ABC v Public Prosecutor* [2023] 4 SLR 604, the existence and nature of the exploitative relationship would be an aggravating factor in the application of the *Pram Nair* framework. However, as I pointed out to the Prosecution, the present case was unlike *ABC* in at least one critical aspect: unlike the offence under s 376(2) of the Penal Code referred to by Menon CJ in *ABC*, in the present case, the existence of an exploitative relationship was an essential element which triggered the enhanced punishment provided for under s 376A(2)(*a*). Both the Prosecution and the Defence subsequently tendered further submissions on this issue.

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46 PSS at para 31.

47 PSS at para 39.

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45 In its further submissions, the Prosecution took the position that the existence of an exploitation relationship *per se* should not be an aggravating factor in sentencing[48] – but that where the nature of an exploitative relationship reflected a "greater degree of exploitation", this would indicate a higher level of gravity to the offence and warrant an uplift in sentence.[49] The Prosecution offered several reasons for why this should be the case. First, the degree of exploitation in every relationship is different and should be measured holistically.[50] Second, the extent of exploitation would reflect the "intrinsic seriousness of the offending act" which the different bands of the *Pram Nair* framework were intended to measure (*Terence Ng* at [39]).[51] Third, the Prosecution noted that even where an aspect of offending formed an essential element of the offence, the intensity of that aspect could still be a factor taken into account in sentencing. The Prosecution relied on *Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*"), where it was held that in the context of sentencing offences of voluntarily causing grievous hurt, the degree of hurt would be a primary indicator of the seriousness of the offence in determining the appropriate sentence (at [42] of *BDB*).[52]

46 The Prosecution suggested that the degree of exploitation be taken into account within the *Pram Nair* framework in the following manner. The court should first consider the relevant offence-specific factors, *apart from those which contribute to the degree of exploitation*.[53] One example of an offence-

48 Prosecution's Further Submissions on Sentence dated 3 October 2023 ("PFS") at para 4.

49 PFS at para 7.

50 PFS at para 8.

51 PFS at para 9.

52 PFS at para 11.

53 PFS at para 14.

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specific aggravating factor which should be excluded at this stage is "abuse of position and breach of trust", because – according to the Prosecution – every exploitative relationship would, by its nature, involve an abuse of position and breach of trust.[54]

47 Next, the court would determine which sentencing band the offence falls within and arrive at an indicative starting point within that band.[55] Only after the court has reached this indicative starting point should the court assess the degree of exploitation and decide its weight on sentence. The degree of exploitation would only determine where within the band an offence falls, rather than which sentencing band applies.[56] Where an offence has already been placed at the high end of a band, a high degree of exploitation may warrant moving the case into the next band.[57] The Prosecution noted that it did not foresee a situation in which the court's assessment of the degree of exploitation would result in the offence being moved to a lower band.[58] Finally, the Prosecution suggested that only exceptional cases under s 376A(2)(*a*) ought to attract an indicative starting point of below seven years.[59]

48 The Prosecution submitted that its proposed approach would apply in the present case as follows:

(a) The relevant offence-specific aggravating factors (apart from the degree of exploitation) were: the offences were premeditated, the victim

54 PFS at para 14.

55 PFS at para 14.

56 PFS at para 13.

57 PFS at para 15.

58 PFS at para 15.

59 PFS at para 17.

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was vulnerable by virtue of her low IQ, and the offences caused the victim to experience suicidal ideation and difficulty sleeping (although this did not rise to the level of severe harm).[60] This placed the case in the middle of Band 2.

(b) The facts disclosed a moderately high degree of exploitation, as the age difference between the accused and the victim was 47 years, and the accused exercised considerable influence over the victim's family financial situation.[61]

(c) The moderately high degree of exploitation warranted a sentence between the middle and higher end of Band 2. Taking into account the accused's plea of guilt, a global sentence of 15 to 20 years' imprisonment, with an enhanced sentence of 12 months' imprisonment in lieu of caning, would be appropriate.[62]

Defence's arguments

49 The Defence submitted that the accused should be sentenced to a global imprisonment term of at most 15 years.[63] Defence counsel highlighted the following:

(a) The accused has been a responsible father and husband towards his wife and family of three children, and it was a lapse in judgment that led him to offend.[64]

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60 PFS at para 18.

61 PFS at para 19.

62 PFS at para 21.

63 Mitigation Plea dated 8 September 2023 ("Mitigation Plea") at para 9.

64 Mitigation Plea at paras 5–8.

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(b) He understands the gravity of his actions, makes no excuse for his actions, and is remorseful and contrite.[65]

(c) He had pleaded guilty at the earliest point possible once investigations completed,[66] and has fully cooperated with those investigations.[67]

(d) He is a first-time offender.[68]

50 In its further submissions, on the issue of whether the existence of an exploitative relationship would *per se* always constitute an aggravating factor for the purpose of sentencing, the Defence submitted that it should not. Because s 376A(2)(*a*) explicitly prescribed an enhanced punishment for a sexual offence involving an exploitative relationship, this demonstrated that "the Penal Code Review Committee… has taken into consideration the exploitative relationship as an aggravating factor for the purposes of punishment".[69] The Defence argued that since the exploitative relationship formed an element of the enhanced offence, to consider this factor as a further aggravating factor during sentencing would be excessive[70] and would lead to double counting.[71]

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65 Mitigation Plea at para 11.

66 Mitigation Plea at para 12.

67 Mitigation Plea at para 14.

68 Mitigation Plea at para 13.

69 Defence Submissions on Sentence dated 3 October 2023 ("DSS") at para 4.

70 DSS at para 5.

71 DSS at para 9.

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The appropriate sentencing framework

51 I first address the question of the appropriate sentencing framework to be applied.

52 The Prosecution has argued that the *Pram Nair* framework should apply to offences under s 376A(1)(*b*) punishable under s 376A(2)(*a*) of the Penal Code. This framework was affirmed in *BPH v Public Prosecutor and another appeal* [2019] 2 SLR 764 ("*BPH*") at [55] to cover all forms of sexual assault by penetration under s 376 of the Penal Code. The framework has two steps.

53 In the first step, the court should identify which band the offence in question falls under, having regard to offence-specific factors (factors which relate to the manner and mode by which the offence was committed as well as the harm caused to the victim). These offence-specific factors can be transposed from the framework in *Terence Ng*, and include the following (*Terence Ng* at [44]):

(a) group rape;

(b) abuse of position and breach of trust;

(c) premeditation;

(d) violence;

(e) rape of a vulnerable victim;

(f) forcible rape of a victim below 14;

(g) hate crime;

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(h) severe harm to the victim; and

(i) deliberate infliction of special trauma.

54 The following sentencing bands should apply (*Pram Nair* at [159]):

(a) Band 1: seven to ten years' imprisonment and four strokes of the cane;

(b) Band 2: ten to 15 years' imprisonment and eight strokes of the cane;

(c) Band 3: 15 to 20 years' imprisonment and 12 strokes of the cane.

55 Band 1 comprises cases at the lower end of the spectrum of seriousness, where there are no offence-specific factors or where the factors are only present to a very limited extent. Where only one aggravating factor is identified, the case in question will fall within the middle to the upper range of Band 1 (*Terence Ng* at [50]). Band 2 comprises cases involving a higher level of seriousness, which would usually feature two or more offence-specific aggravating factors. Offences at the middle and upper reaches of Band 2 are generally those marked by serious violence, those which take place over an extended period of time, and those which leave the victims with serious and long-lasting physical or psychological injuries (*Terence Ng* at [53]). Band 3 involves cases which are extremely serious by reason of the number and intensity of the aggravating factors, and often feature victims who are particularly vulnerable and/or serious levels of violence attended with perversities. At the apex of Band 3 lie cases which are among the most serious instances of the offence in question, and where the offender manifests "perverted or psychopathic tendencies or gross personality disorder, and where

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he is likely, if at large, to remain a danger to women for an indefinite time" (*Terence Ng* at [57], citing *Regina v Billam* [1986] 1 WLR 349 at [351E]). Further, where the offences disclose the use of actual or threatened violence, or where the offence is committed against a person under 14 years of age, either of these two aggravating factors would place the offence within Band 2 (or even Band 3 if there are additional aggravating factors) (*Pram Nair* at [160]).

56 The sentencing band defines the range of sentences which may usually be imposed for a case with those offence-specific features. Once the sentencing band has been identified, the court should determine precisely where within the applicable range the offence at hand falls into, so as to derive an "indicative starting point" which reflects the intrinsic seriousness of the offending act. (*Terence Ng* at [39(a)]).

57 At the second step, the court should have regard to the aggravating and mitigating factors which are personal to the offender, in order to calibrate the appropriate sentence for that offender. These "offender-specific" factors relate to the offender's particular personal circumstances and, by definition, cannot be the factors which have already been taken into account in the categorisation of the offence. In exceptional circumstances, the court is entitled to move outside of the prescribed range for that band if, in its view, the case warrants such a departure (*Terence Ng* at [39(b)]).

Parties' positions

58 The Prosecution cites two reasons why the *Pram Nair* sentencing framework should apply. First, the sentencing ranges for offences under s 376(3) and s 376A(2)(*a*) of the Penal Code are identical, and the provisions

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target similar legal interests with many common considerations in sentencing.[72] Second, the Prosecution notes that the *Pram Nair* framework has since been extended by both the Court of Appeal and the High Court to (a) offences relating to sexual assault by penetration of a minor below the age of 14 and the sexual penetration of a minor under ss 376(3) and 376A(3) of the Penal Code (*ABC* at [43] and [46]), as well as (b) offences of penile-anal and oral penetration of a minor below the age of 14 punishable under s 376A(3) of the Penal Code (*CJH v Public Prosecutor* [2023] SGCA 19 ("*CJH*")).[73]

59 The Defence makes no submission on the appropriate sentencing framework, although it does not appear to object to the application of the *Pram Nair* framework, in so far as it argues for the accused to be sentenced to the "lowest imprisonment" of 15 years "in the Prosecution's sentencing band".[74]

My decision

60 I agree with the Prosecution that the *Pram Nair* framework should apply to the present case, and to offences under s 376A(1)(*b*)–(*d*) punishable under s 376A(2)(*a*) of the Penal Code more generally.

61 In *ABC*, after surveying the relevant case law, Menon CJ found that the *Pram Nair* framework should apply to all offences sentenced under s 376(3) and also s 376A(3) of the Penal Code (as in force post-2019 amendments), with the exception of penile-vaginal penetration which could be prosecuted under s 376A(1)(*a*) of the Penal Code (*ABC* at [46]). Menon CJ observed the following (*ABC* at [47]):

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72 PSS at para 15.

73 PSS at para 17.

74 Mitigation Plea at para 9.

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(a) the sentencing ranges for both provisions were identical;

(b) there were common considerations to guide the sentencing judge; and

(c) prior to the 2019 amendments and beyond, the consent of a minor under the age of 14 would be a neutral factor, although absence of consent would be an aggravating factor.

62 Following from these observations, Menon CJ noted that it was clear that Parliament equated the position of an adult victim who did not consent with that of a minor under 14 who did consent. The *Pram Nair* framework, formulated in the context of a non-consenting adult victim, would thus be applicable to consenting minors under the age of 14, because Parliament equated both offences in terms of gravity and because they had an identical sentencing provision (*ABC* at [48]).

63 In the present case, I find that similar considerations apply to offences under s 376A(1)(*b*)–(*d*) p/u s 376A(2)(*a*) of the Penal Code. The sentencing range under s 376A(2)(*a*) is identical to that of s 376(3). The sentencing judge will also be guided by common considerations since the offences are similar in nature. This is supported by the legislative history of the provision. The Penal Code Review Committee ("PCRC") recommended that enhanced punishment provisions for minors between 14 and 16 years of age, where the minors have been exploited by the offender, should be "pegged to those of non-consensual sexual activity with minors" (*ie*, offences under s 376(2) punishable under s 376(3) of the Penal Code) (Penal Code Review Committee, *Report* (August 2018) ("*PCRC Report*") at p 114). This rationale was echoed by the Minister for Home Affairs, Mr K Shanmugam, during the Second Reading of the

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Criminal Law Reform Bill (*Singapore Parliamentary Debates, Official Report* (6 May 2019, vol 94)):

> For sexual exploitation offences by persons in relationships of trust with minors who are below 16 years of age – we will enhance the existing penalties, and we will peg them to those for non-consensual sexual penetration.

64 Given the similarities in the sentencing provisions, and the legislative intention that offences punishable under s 376A(2)(*a*) be sentenced in a similar manner to offences punishable under s 376(3), it will be appropriate to apply the *Pram Nair* framework to offences under s 376A(1)(*b*)–(*d*) punishable under s 376A(2)(*a*).

65 I decline to opine on whether the *Pram Nair* framework should be extended to offences under s 376A(1)(*a*) punishable under s 376A(2)(*a*) of the Penal Code (*ie*, penile-vaginal penetration by an accused's penis). This is because the *actus reus* of s 376A(1)(*a*) does not have any equivalent provision under s 376 of the Penal Code, unlike the acts falling under subsections (*b*) to (*d*). To the extent that Parliament may be taken as equating the position of an adult victim who did not consent with that of a minor between 14 and 16 who provided factual consent within an exploitative relationship, there is no analogue offence under s 376 to which offences under s 376A(1)(*a*) may be equated. It is thus not clear whether the *Pram Nair* framework, set out in the context of s 376, should apply. In this regard, the Court of Appeal noted in *Pram Nair* at [150]–[151] that (a) there was an intelligible difference between penile and digital penetration of the vagina because penile penetration carries the risk of unwanted pregnancy and of transmitting diseases, and is a more intimate act than digital penetration, and (b) rape has generally been regarded as the gravest of all the sexual offences. These views were re-affirmed in *BPH* at [62], even as the *Pram Nair* framework was extended to situations where an accused

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causes a male victim's penis to penetrate a third and female person's vagina (*BPH* at [57(e)]). The present version of s 376 of the Penal Code, under s 376(2)(*b*), would also now encompass situations where a female accused causes a male victim's penis to penetrate the accused's vagina. It would seem that the psychological and physical consequences of penile-vaginal penetration outlined in *Pram Nair* above should apply equally to male victims who were non-consensually forced to penetrate a female accused person's vagina, with the only distinguishing factor being the risk of pregnancy incurred by the victim. Indeed, in the context of other penetrative sexual acts, courts have been reluctant to draw bright lines of distinction between cases where the accused is the "giver" of penile penetration and cases where the accuse is the "receiver" (*AQW v Public Prosecutor* [2015] 4 SLR 150 ("*AQW*") at [41]). In any event, whether a different sentencing framework, such as that in *Terence Ng* (see for example *ABC* at [43]), should apply to offences under s 376A(1)(*a*) punishable under s 376A(2)(*a*) of the Penal Code is an open question that I am not required to answer in the present case.

The appropriate offence-specific factors under the *Pram Nair* framework

66 I now consider how the existence and nature of the exploitative relationship in an offence punishable under s 376A(2)(*a*) should be accounted for under the *Pram Nair* framework.

The existence of the exploitative relationship

67 I agree with the Prosecution and the Defence that the existence of the exploitative relationship *per se* should not be an offence-specific aggravating factor under the first step of the *Pram Nair* framework. As Menon CJ pointed out in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen Balakrishnan*") at [84], a "clear situation in which double counting occurs is

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when a factor that is an essential element of the charge is taken also as an aggravating factor enhancing the sentence within the range of applicable sentences for that charge" (see also *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 at [25]).

The nature of the exploitative relationship

68 To avoid double counting, it is necessary to identify the essential normative considerations inherent in the elements of an exploitative relationship which justify the imposition of the enhanced punishment in s 376A(2)(*a*). Only after having identified these considerations would it be possible to assess the kinds of sentencing considerations involving departures from the "baseline" or paradigmatic case which would not constitute instances of double counting (*Public Prosecutor v GED and other appeals* [2023] 3 SLR 1221 at [71]). Put another way, only after assessing why there is an enhanced sentencing range under s 376A(2)(*a*) can one identify whether the sentencing factors underlying that enhancement have been given their due weight in the sentencing analysis and nothing more (*Raveen Balakrishnan* at [91]).

69 I find it helpful to consider the following questions:

(a) First, what are the normative sentencing considerations for offences punishable under s 376A(2)(*b*)?

(b) Second, what are the normative sentencing considerations behind the enhanced sentencing range under s 376A(2)(*a*)?

(c) Third, given the considerations identified at (a) and (b), what adjustments, if any, need to be made to the application of the *Pram Nair*

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sentencing framework for offences under s 376A(1)(*b*)–(*d*) p/u s 376A(2)(*a*)?

*The normative sentencing considerations for offences punishable under s 376A(2)(*b*) of the Penal Code*

70 Offences under s 376A of the Penal Code are, by virtue of the operation of s 376A(1A), confined to acts of sexual penetration of minors below 16 years of age which are not non-consensual in nature. The criminalisation of such offences rests on the notion that minors below 16 are vulnerable to such a degree that they are taken to be incapable of consenting (*Public Prosecutor v Ong Jack Hong* [2016] 5 SLR 166 at [8]).

71 A more extensive treatment on the harm underlying consensual sexual activity by minors is found in the case of *Public Prosecutor v AOM* [2011] 2 SLR 1057 ("*AOM*"). *AOM* considered, among other issues, the question of whether consent could be regarded as a mitigating factor for statutory rape. The relevant portion of *AOM* at [34] is as follows:

> 34 In my view, the considerations stated above with regard to the offence of statutory rape under s 376(1) or carnal intercourse against the order of nature under s 377 of the Penal Code (1985 Rev Ed) are applicable with equal force to the determination of sentences for the offence of statutory rape punishable under s 375(2) of the Penal Code (2008 Rev Ed); and for the offences of sexual penetration of a minor under 16 punishable under s 376A of the Penal Code (2008 Rev Ed). The underlying rationale behind these provisions is to protect young and vulnerable girls from being sexually exploited. Indeed, as a matter of societal morality and legislative policy, girls below 16 years of age are, due to their inexperience and presumed lack of sexual and emotional maturity, considered to be vulnerable and susceptible to coercion and hence incapable of giving informed consent. This is epitomised by the fact that the offences of statutory rape and sexual penetration of a minor are *strict liability* offences as far as consent is concerned. This was also alluded to by the Court of Appeal in *PP v UI* ([15] *supra*) where it was commented that (at [60]) the "law *imputes an*

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> *inability to consent* to the sexual acts committed against [the victim] as she is a minor". It would therefore be contrary to such considerations for the court to treat consent as a relevant mitigating factor for such offences.
>
> [emphasis in original]

72 Steven Chong J in *AOM* also cited *Annis bin Abdullah v PP* [2004] 2 SLR(R) 93 ("*Annis*"), where the court had explained why consent was irrelevant for the purposes of sentencing under s 377 of the Penal Code (1985 Rev Ed) for the offence of carnal intercourse against the order of nature. The portion in *Annis* at [50] reproduced in *AOM* is as follows:

> 50 In my view, as a general guide, 'young victims' should be those under 16 years of age. This would be consonant with the protection of young women under s 140(1)(i) of the Women's Charter which was enacted on the basis that girls under the age of 16 are deemed to be incapable of giving valid consent to a sexual act. I was of the view that this principle should be extended to s 377 offences, such that in cases where the victim is under the age of 16 years, his or her consent is irrelevant for the purposes of sentencing. The underlying principle in this regard is that *young girls under the age of 16 may not have the experience or the maturity to make decisions in their own best interests about their own sexuality and that the law must step in to prevent their exposure to sexual activity regardless of their purported consent.*
>
> [emphasis added in italics]

73 *AOM* continues to be cited as the *locus classicus* which set out the normative basis for the offences of statutory rape and sexual penetration of a minor under 16. The PCRC Report, for example, quotes *AOM* as saying that for such offences, as a matter of social morality and legislative policy, girls below 16 years of age are, due to their inexperience and presumed lack of sexual and emotional maturity, considered to be vulnerable and susceptible to coercion and hence incapable of giving informed consent (*PCRC Report* at pp 97–98).

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74 To the explanation set out in *AOM*, it may be added that subsequent revisions to the Penal Code have increasingly recognised that boys and girls alike can be the subject of sexual offences. Vulnerability to sexual exploitation is not the exclusive province of young girls. The PCRC Report, for example, notes that recent legislative reforms to update sexual offences with gender neutral language are to ensure that legislation covers circumstances where offences are committed against males *and* females, to reflect changing societal norms and views on the roles of men and women (*PCRC Report* at p 328).

75 It is also helpful to understand not just the underlying rationale behind s 376A, but also to articulate the wrongfulness of sexual offences against minors under s 376A. This helps guide our consideration of the sentencing process.

76 A review of the existing jurisprudence shows that there are four main interests of minors which s 376A of the Penal Code is intended to protect.

77 First, s 376A is meant to protect the bodily and sexual integrity of minors. Sexual offences, and penetrative sexual offences in particular, represent a grave intrusion into the sexual integrity of minors (*Public Prosecutor v Tan Meng Soon Bernard* [2019] 3 SLR 1146 ("*Bernard Tan*") at [30]; *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805 at [39]; *Public Prosecutor v ASR* [2019] 3 SLR 709 at [106]). The adoption of the language of sexual integrity should be welcomed as it enables a better articulation of the nature of rights and interests violated by sexual offences. Remarking on similar developments in the Canadian context, the Supreme Court of Canada in *R v Friesen* [2020] 1 SCR 424 ("*Friesen*") at [55] noted:

> 55 These developments are connected to a larger shift, as society has come to understand that the focus of the sexual offences scheme is not on sexual propriety but rather on wrongful interference with sexual integrity. As Professor Elaine

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> Craig notes, "This shift from focusing on sexual propriety to sexual integrity enables greater emphasis on violations of trust, humiliation, objectification, exploitation, shame, and loss of self-esteem rather than simply, or only, on deprivations of honour, chastity, or bodily integrity (as was more the case when the law's concern had a greater focus on sexual propriety)" (*Troubling Sex: Towards a Legal Theory of Sexual Integrity* (2012), at p. 68).

78 Connected with the language of sexual integrity is the identification of sexual autonomy and its violation as a cornerstone of wrongdoing for sexual offences (*Pram Nair* at [150(b)]; *Bernard Tan* at [30]; *Terence Ng* at [44(h)]). In my view, notwithstanding minors' inability to legally consent, the language of autonomy remains relevant in articulating the nature of minors' interests which need to be protected. However, in the context of minors, personal autonomy should be understood as referring to a minor's right to grow to adulthood free from sexual interference and exploitation from adults (*Friesen* at [52]).

79 The second main interest which s 376A of the Penal Code is meant to protect relates to the physical and psychological harm which could be caused to minors as a result of penetrative sexual activity. As our courts have reiterated time and again, the physical, emotional, and psychological scars inflicted on victims of serious sexual offences are irretrievable and severe (*Public Prosecutor v NF* [2006] 4 SLR(R) 849 ("*NF*") at [47]*; Chia Kim Heng Frederick v PP* [1992] 1 SLR(R) 63 at [9]). Minors are particularly vulnerable to such harms. As noted by Michelle Oberman in "Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape" (2000) 48 Buffalo Law Review 703 ("*Regulating Consensual Sex*") at p 710:

> As teenagers navigate the transition from childhood to adulthood, they learn by experimentation by mistake, and by observation. Because of their inexperience, they are necessarily prone to misjudgment. Nowhere is this tendency toward

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> misjudgment more pernicious than in the area of sexuality, in which adolescents' age-appropriate naivete renders them uniquely susceptible to coercion and abuse. The law of statutory rape reflects an attempt to protect teenagers from themselves, as well as from those who would prey upon their vulnerability.

80 The scars of exploitative sexual interference are even more painful when inflicted on minors, who must bear the burden of these traumatic experiences through crucial stages of identity formation and maturation into adulthood.

81 The third normative sentencing consideration underlying s 376A of the Penal Code is the recognition of the wrongfulness behind the sexual exploitation of minors, in the narrow sense of treating them as objects for sexual gratification. *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 cites Kate Warner in "Sentencing in cases of marital rape: towards changing the male imagination" (2000) 20 Legal Studies 59, where she observed (at 601) as follows:

> It could be added that the wrong of rape lies in the fact that an act that is valued because it expresses connection and intimacy is abused to express power and domination, to objectify, humiliate and degrade.

82 In the context of sexual offending against minors, conduct that treats minors as sexual objects to be exploited for an accused's personal gratification invites considerations of deterrence and retribution in sentencing (*AQW* at [15]). In *GCM v Public Prosecutor and another appeal* [2021] 4 SLR 1086, Aedit Abdullah J noted at [58] that seeking to exploit the known vulnerabilities of a young child was an especially reprehensible and calculated manner of behaviour which engaged considerations of deterrence. This consideration is why we speak of "predatory sex" when accused persons choose victims who are younger, less certain of themselves, and less likely to be sexually experienced (*Regulating Consensual Sex* at p 721), because such intentional behaviour

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generally leads to a stronger inference that young persons are being used as objects to be exploited for the end of an accused's own gratification.

83 Fourth, although not applicable *per se* to s 376A of the Penal Code, it is important to recognise that minors are autonomous and volitional human beings who retain the capacity to exercise their volition, even if they are not quite yet deemed capable of giving legal consent to sexual activity. Where sexual activity is forced on minors despite their lack of consent, this is an act of violence against their autonomous will that constitutes an additional wrong over and above the harm to their sexual integrity. This explains why even though minors cannot legally consent, the lack of factual consent of a minor would constitute an additional aggravating factor in sentencing. As noted by Andrew Ashworth in *Principles of Criminal Law* (Oxford University Press, 3rd Ed, 1999) at p 349, cited in *NF* at [46]:

> [S]exuality has a certain uniqueness which is absent from much property: sexuality is an intrinsic part of one's personality, it is one mode of expressing that personality in relation to others, and it is therefore fundamental that one should be able to choose whether to express oneself in this way – and, if so, towards and with whom. The essence of such self-expression is that it should be voluntary, both in the giving and in the receiving.

*The normative sentencing considerations for the enhanced sentencing range under s 376A(2)(*a*) of the Penal Code*

84 On the face of the wording of s 376A(2)(*a*), it is clear that the enhanced sentencing range in the provision is predicated on the existence of an exploitative relationship.

85 However, the plain wording of the terminology of "an exploitative relationship" does not in itself give much information as to why sexual acts with minors between 14 and 16 years old in an exploitative relationship should attract

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harsher sentences *on account of there being such a relationship*. The word "exploit" is defined in the Shorter Oxford English Dictionary (Oxford University Press, 6th Ed 2007) as *inter alia*, to "utilize for one's own ends" or to "take advantage of". On this expansive definition, one might say that people exploit each other all the time – friendships might be forged for ulterior motives, or workplace relationships taken advantage of for career advancement. To add that an exploitative relationship is one in which one party takes advantage of "some vulnerability of the other party" (John Lawrence Hill, "Exploitation", (1993-1994) 79 Cornell L. Rev. 631 ("*Exploitation*") at p 679) does not appear to bring about better clarity: the terminology remains amorphous. For the purposes of understanding s 376A(2)(*a*), a clearer definition of the term is necessary.

86 In my view a consideration of the legislative intention behind the enhanced sentencing regime under s 376A(2)(*a*) lends some clarity to this issue. As noted by the PCRC, the exploitation of minors occurs even in the context of consensual sexual activity because the quality of the minor's consent "may well have been compromised due to exploitation or manipulation by the offender" (*PCRC Report* at p 111). This reasoning was affirmed in Parliament during the Second Reading of the Criminal Law Reform Bill which introduced the provision. It is helpful to set out the relevant remarks here (*Singapore Parliamentary Debates, Official Report* (6 May 2019, vol 94) (Mr K Shanmugam, Minister for Home Affairs)):

> So, the new offences, under the rubric of "exploitative sexual activity with minors" will deal with sexual predators who exploit young people.
>
> The age of consent for sexual activity is 16 years old, but there are situations where slightly older minors, those between 16 and 18 years old, may be exploited for sexual gratification by persons who are in relationships of trust with the minor.

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> In such cases, the young person's consent, and we are talking about 16 to 18 years; that young person's consent, is, in my view, compromised.
>
> …
>
> For sexual exploitation offences by persons in relationships of trust with minors who are below 16 years of age – we will enhance the existing penalties, and we will peg them to those for non-consensual sexual penetration.
>
> …
>
> First, in considering whether the accused is in a relationship that is exploitative of the victim, the Court will be required to consider the age of the minor – the younger the person (the victim), the more susceptible to influence he or she will be.
>
> Second, the difference in age between the accused and the minor. A large age difference may result in the victim viewing the accused as an authority figure, allowing the accused to exert significant influence over the victim.
>
> Third, the nature of the relationship. If the accused initiates sexual communication or activity, it is likely that the intention of the accused, particularly if it is done very early in the relationship, was to make use of the power imbalance in the relationship to exploit the victim for his sexual gratification.
>
> Fourth, the degree of control or influence exercised by the accused over the minor. The greater the influence by the accused over the minor, the more the minor's will may be considered to be compromised.
>
> The use of violence or coercion by the accused will be considered to be amongst the indicators of control or domination over the victim.
>
> So, in short, a key factor in determining "exploitation" is the presence of a power imbalance between the accused person and the minor.

87 These remarks make reference to multiple normative considerations behind the wrongfulness of exploitation, including the fact that the young person's will or consent is compromised, and the exploitation of the victim for sexual gratification. The central theme of these remarks would appear to *be the effect that exploitation has on the quality of consent given by a minor*. The effect on the minor's consent is the common explanatory denominator behind factors

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such as the minor's susceptibility to influence (correlating with age), the degree of influence the accused exercises over a minor, and the presence of a power imbalance between the accused and minor.

88 That the compromising of the minor's consent is the central wrong targeted by the enhanced sentence in s 376A(2)(*a*) is reinforced by the sentencing range stated in the provision. As noted above at [63], the express reason for stipulating an imprisonment term of up to 20 years was to bring the sentence in s 376A(2)(*a*) in line with the sentence stipulated for non-consensual sexual activity with minors. As the PCRC observed in its Report, because a minor's consent to sexual activity "may well have been compromised", the sentence range for offences involving an exploitative relationship ought to be pegged to offences where no consent was in fact given by the minor (*PCRC Report* at pp 111 and 114).

89 To this, I would add that based on the Parliamentary remarks reproduced above, the reason why a minor's consent is compromised in an exploitative relationship is because there is a power imbalance inherent in such relationships which allows the accused to exert control or influence over the minor.

90 It is apposite at this juncture to clarify a point of terminology. In the paragraphs which follow, I refer to "exploitation" in the context of exploitative relationships as defined in s 377CA of the Penal Code. Exploitation in this sense relates to the manner in which a minor's consent to sexual activity within a relationship is compromised, through the control or influence of the accused operating within an asymmetric power dynamic, such that an accused person can use the minor as a means to obtain sexual gratification. This is *different* from the sense in which the word "exploitation" is used in *AQW* at [13] and [19]–[21], where Menon CJ used the phrase to refer to the extent to which the

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accused interferes with and violates the minor's rights. In the latter instance, the term is used in a more general sense encompassing *inter alia* the degree of invasion of bodily integrity and privacy. In contrast, for the purposes of the present case, it is analytically neater to adopt a narrower view of the term. In the context of sentencing offences punishable under s 376A(2)(*a*), using the more general sense of the word may obfuscate the distinction between offence-specific factors stemming from the exploitative relationship, and other factors such as the harm to the victim's bodily integrity or the use of violence or threats of violence (*contra AQW* at [21]).

The Prosecution's approach

91 With the above in mind, I now explain why I choose not to adopt the Prosecution's suggested implementation of the *Pram Nair* framework outlined at [45]–[48] above.

92 First, in so far as the sentencing range in s 376A(2)(*a*) already treats the compromised consent of the minor as being akin to a situation where no factual consent was given, I am unconvinced of the merits of introducing an additional aggravating factor of the "degree of exploitation" which would introduce a sliding scale of the extent to which a minor's consent is compromised.[75] Once a relationship is deemed as exploitative under s 377CA of the Penal Code, the legislative intention is that the sentencing range for non-consensual sexual activity ought to apply. To introduce more granular distinctions as to whether the minor's consent was compromised to a "low" or "high" degree beyond this threshold would introduce unnecessary complication to the sentencing process.

[75] PFS at para 7.

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93 To the extent that the Prosecution seeks for the "degree of exploitation" to reflect the degree to which an accused exercised control or influence over the minor,[76] this may be adequately reflected through other offence-specific factors such as the duration of offending. Leaving aside these factors, it is unclear whether the *extent* of control *per se* should be an independent aggravating factor. Consider the following two scenarios:

> **Void Deck I**: A is 40 years old and loiters around the void deck of A's block looking for a teenager to befriend. A eventually forms a friendship with B, a 15 year old. A is an interesting and charismatic individual and a smooth talker. B is taken with A's charisma, views A with a degree of "hero worship" and is flattered by his attention. A and B communicate frequently and enthusiastically over various messaging platforms. Over the next four months, A convinces B to enter a sexual relationship. B readily goes to A's house every time A asks him to come over for sex.
>
> **Void Deck II**: A is 40 years old and loiters around the void deck of A's block looking for a teenager to befriend. A eventually forms a friendship with B, a 15 year old. A is not a particularly interesting individual, and B is not particularly taken with A, but out of boredom and apathy, B responds to A's text messages – albeit sporadically. Over the next four months, A convinces B to enter a sexual relationship. B agrees chiefly out of boredom and only responds to some of A's invitations to come over to the latter's house for sex.

94 *Ceteris paribus*, (*i.e.*, in both cases A sustains a relationship with B for the same length of time, takes identical steps to plan their meetings, does not engage in deception or coercion, initiates sexual activity with identical frequency, *etc*.), there does not appear to be any good reason why the *extent* of control exercised by the accused in **Void Deck I** should form the basis for an additional aggravating factor compared to **Void Deck II**. In both cases, there was apparent factual consent procured from the minor. Assuming that both scenarios disclose sufficient evidence of an exploitative relationship for the

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[76] PFS at para 8.

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purposes of s 377CA, and the minor's consent is deemed compromised, it is unclear why the extent of control exercised by the accused beyond this would *in itself* be of further relevance. Of course, if the charisma and smooth-talking charm of the accused in **Void Deck I** allowed A to offend with greater frequency or to exploit multiple victims, these consequences might amount to a separate aggravating factor compared to **Void Deck II**. If the accused's text messages to the minor victim in **Void Deck I** involved initiating conversations of a sexual nature or sending lewd photographs to the minor, such behaviour might also indicate premeditation and persistence and thereby give rise to separate aggravating factors (*Yap Lee Kok v Public Prosecutor* [2021] SGHC 78 ("*Yap Lee Kok*") at [11]–[15]) compared to **Void Deck II**. If A's control over the minor in **Void Deck I** enabled A to persuade the minor to refrain from reporting their sexual activity to the authorities, that would amount to a deliberate step to conceal offending which would in turn give rise to a separate aggravating factor (*Muhammad Alif bin Ab Rahim v Public Prosecutor* [2021] SGCA 106 ("*Muhammad Alif*") at [39]). If A was able to exercise more control over B because B placed trust in A by virtue of A's office of employment or because A was in a position of responsibility over B, the breach of such trust or the abuse of such position would also constitute a distinct aggravating factor. If the nature of A's relationship with B in **Void Deck I** led to greater psychological trauma being suffered by B than in **Void Deck II**, this would be taken into account in sentencing through the separate aggravating factor of serious harm caused to the victim. These situations aside, it is difficult to see how the *extent* of control exercised by the accused *per se* should be treated as an independent aggravating factor.

95 Second, it seems anomalous to characterise the "degree of exploitation" as a *sui generis* aggravating factor which, despite being offence-specific, would

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not constitute an offence-specific factor for the purpose of determining which sentencing band to apply – while at the same time allowing it to affect where within the sentencing band the offence should fall. No legal precedent was offered for this suggested approach.

96 Third, I was not convinced by the Prosecution's attempt to equate their approach with the sentencing framework in *BDB* for offences of voluntarily causing grievous hurt.[77] The rationale for the approach in *BDB* is that the extent of the hurt or injury caused is a "primary indicator of the seriousness of the offence [of causing grievous hurt] in determining the appropriate sentence" for such offences (*BDB* at [42]). Conversely, as the Court of Appeal pointed out in *Terence Ng*, the offence of rape can take place in a wide variety of different circumstances, and it is difficult to identify any set of "principal factual elements" which can affect the seriousness" for offences of rape (*Terence Ng* at [34]). The same is true for offences under s 376A of the Penal Code.

97 Fourth, I disagree with the Prosecution's argument that "abuse of position and breach of trust" should be disregarded as an aggravating factor for offences under s 376A(2)(*a*) of the Penal Code, because "*every* exploitative relationship would, *by its nature*, involve an abuse of position and breach of trust".[78] The definition of the aggravating factor of abuse of position and/or breach of trust was defined in *Terence Ng* at [44(b)] as follows:

> (b) *Abuse of position and breach of trust*: This concerns cases where the offender is in a position of responsibility towards the victim (*eg*, parents and their children, medical practitioners and patients, teachers and their pupils), or where the offender is a person in whom the victim has placed her trust by virtue of his office of employment (*eg*, a policeman or social worker). When

77 PFS at para 11.

78 PFS at para 14.

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> such an offender commits rape, there is a dual wrong: not only has he committed a serious crime, he has also violated the trust placed in him by society and by the victim.
>
> [italics in original]

98 This definition of abuse of trust was reiterated by the Court of Appeal in its recent decision in *Mustapah bin Abdullah v Public Prosecutor* [2023] SGCA 30 ("*Mustapah*"). On the facts of *Mustapah*, the appellant and three victims (aged 16 to 17 years old) resided in the same neighbourhood. The victims were students enrolled in institutes of technical education. The three victims often met at a hut in their neighbourhood together with a fourth 15 year old victim. Around 2017, the fourth victim introduced the appellant to the other victims, and they began to meet the victims in the hut. At these meetings, the appellant would drink beer and smoke cigarettes. Whenever they met up, the appellant was friendly with the victims. He would often tell them about his past experiences and give them his views on various topics. The victims alleged that the appellant also revealed his past as an ex-convict and a gang member as well as his involvement in rioting with a large group of people. The victims viewed the appellant with respect and saw him as a close friend. They even thought of him as a "big brother". Some of the victims were also members of a gang, and sometime prior to 17 October 2018 they asked the appellant for help when they wanted to leave the gang. The appellant testified that he had helped them leave the gang by negotiating with the headman of the gang. The appellant claimed trial to three charges of sexual assault by oral-penile penetration involving the first three victims under s 376(1)(*a*) of the Penal Code. He was convicted on these charges. On appeal, the appellant's conviction was upheld. In relation to sentencing, the Court of Appeal held that there was no offence-specific aggravating factor of abuse of trust and authority present on the facts:

> 122 Whilst the Victims thought of the appellant as a "big brother" and sought his assistance in order to leave their gang,

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> that did not mean that the appellant was necessarily in a position of responsibility in relation to the Victims. It was clear that the Victims respected the appellant, seeing him as an experienced adult who could help them leave the gang. But the relationship between the appellant and the Victims was different from that found in the familial context where a clear hierarchy exists between family members. Nor can it be said that the appellant was standing in a quasi-parental position to the Victims (see, *eg*, *BPH v PP* at [67] at [92]). The Victims and the appellant shared a close friendship prior to the SAP offences but none of them had any responsibility towards the others. Hence, the offence-specific aggravating factor of abuse of trust and authority was not present in this case.

99 Following from the reasoning in *Terence Ng,* and in *Mustapah*, it is clear that there can be a wide range of circumstances in which an exploitative relationship may not involve (a) the accused being in a position of responsibility towards the victim (*eg*, parents and their children, medical practitioners and their patients, teachers and their pupils), or (b) the accused being a person in whom the victim has placed her trust by virtue of his office of employment (*eg*, a policeman or social worker). For example, where a 55-year-old accused person befriends a minor online and engages in online conversation regularly, exchanges nude photographs with the minor, and eventually meets up with the minor to engage in sexual activity (as in *Yap Lee Kok*), this may possibly amount to an exploitative relationship between the accused and minor, but there would not be any abuse of trust and authority in the *Terence Ng* sense. Even though almost every exploitative relationship would involve the minor placing some degree of trust in the accused, to satisfy the *Terence Ng* definition of abuse of trust, this trust must have been placed *by virtue of the accused's office of employment*. For this reason, I would consider the abuse of a position of trust (in the *Terence Ng* sense) to be a separate aggravating factor under the *Pram Nair* framework, for the purpose of applying the framework to offences under s 376A(1)(*b*)–(*d*) punishable under s 376A(2)(*a*) of the Penal Code.

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My decision

100 I next outline my approach to the sentencing of offences under s 376A(1)(*b*)–(*d*) punishable under s 376A(2)(*a*) of the Penal Code.

Adaptation of the Pram Nair framework

101 I am of the view that in applying the *Pram Nair* framework, two caveats apply.

102 First, contrary to the Prosecution's proposed implementation, the degree of exploitation would not constitute an offence-specific aggravating factor for the purposes of sentencing. The same offence-specific aggravating factors recognised in *Terence Ng*, as well as those recognised in subsequent caselaw, would apply where relevant. These include:

(a) Abuse of position and breach of trust (*Terence Ng* at [44(b)]);

(b) Premeditation (*Terence Ng* at [44(c)]);

(c) Violence, actual or threatened (*Terence Ng* at [44(d)]);

(d) Offences being committed against a vulnerable victim (*Terence Ng* at [44(e)]);

(e) Severe harm to the victim (*Terence Ng* at [44(h)]);

(f) Deliberate infliction of special trauma (*Terence Ng* at [44(i)]);

(g) Exhibition of significant opportunism (*Muhammad Alif* at [39])

(h) Taking deliberate steps to conceal offending (*Muhammad Alif* at [39]); and

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(i) Recording sexual acts on a mobile phone (*Isham bin Kayubi v Public Prosecutor* [2020] SGCA 42 at [21]).

103 As to the aggravating factor of abuse of position and breach of trust, this should only apply in situations where the *Terence Ng* definition of this aggravating factor (at [44(b)] of *Terence Ng*) is satisfied (see the remarks at [97]–[98] above).

104 Second, I would add to the above list an additional offence-specific factor: the use of coercion or deception to (a) obtain physical access to the minor for the purpose of engaging in sexual activity, or (b) to procure factual consent from the minor to sexual activity. Earlier, at [90], I explained that "exploitation" for the purposes of the present case refers to "the manner in which a minor's consent to sexual activity within a relationship is compromised, through the control or influence of the accused operating within an asymmetric power dynamic, such that an accused person can use the minor as a means to obtain sexual gratification". I next explain why exploitation, so defined, is conceptually distinct from the use of coercion or deception, before going on to illustrate how application of this additional offence-specific aggravating factor would work.

105 John Lawrence Hill in *Exploitation* at p 660 outlines the difference between exploitation on one hand, and coercion or duress on the other:

> Exploitation is distinguished from coercion or duress in that coercion inevitably occurs in the context of a threat which serves to reduce the number of available options open to the actor. Exploitation, however, characteristically involves a situation in which the actor is presented with an *offer* that represents an additional alternative to the choices previously available. Exploitation, then, is distinct from the traditional notion of compulsion in two respects. First, the decision to pursue the proffered choice is precisely that - a *decision* made

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> by the actor. Because it is a decision and not a compelled act, the choice springs from internal motives and is not imposed by forces outside the agent. Second, an offer that creates an additional alternative can never render an action less free or voluntary than the action which would otherwise have been performed. That is, providing an additional choice is *per se* liberating, not compelling.
>
> [italics in original]

106 Joel Feinberg, in *Harmless Wrongdoing* at pp 177–178, similarly notes that the concepts of exploitation and coercion are "quite distinct in sense" even though they have a large overlap in application. He states:

> If we define exploitation in terms of A's profit through his relations to B, then not all exploitation involves coercive mechanisms. In fact there are four possibilities:
>
> 1. A's act can be exploitative and coercive, as when his proposal effectively forces B to act in a way that benefits A.
>
> 2. A's act can be exploitative and noncoercive, as when he takes advantage of B's traits or circumstances to make a profit for himself either with B's consent or without the mediation of B's choice at all.
>
> 3. (More dubious) A's act might be nonexploitative but coercive. Perhaps an example would be when A, a policeman, calls out to the murderer in hiding, B, to come out with his hands up or face lethal fire. This is a proper and justified use of coercion, but only minimally exploitative, that is a "taking advantage," in this case, of B's vulnerability. It shares in common with all exploitation a kind of opportunism, but it is not an exploitation of a person or in any way blameable.
>
> 4. A's act can be both nonexploitative and noncoercive, as in an ordinary commercial exchange from which both vendor and purchase expect to gain (but not at one another's expense).

107 In the context of offences under s 376A of the Penal Code, even though coercion and deception affect the quality of the minor's concept, they do so by operating in qualitatively distinct ways from exploitation. I first consider coercion. Where a minor's decision is motivated by a threat from the accused to withhold something from the minor or to cause an undesirable outcome to the

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minor, the presence of that threat would constitute an independently objectionable means of vitiating the minor's consent. Importantly, the wrongfulness of the threat, although functioning within an exploitative power dynamic, is not intrinsic to that dynamic. It involves an additional step by the accused to make a threat to do or omit to do something, in order to coerce the will of the minor. Consider the following situations:

> **Teacher I**: A is a 50 year old religious teacher of B, who is 15 years old. A gives religious guidance to B, who often seeks advice from A on sensitive situations. A asks B to engage in a sexual act together. B agrees.
>
> **Teacher II**: A is a 50 year old religious teacher of B, who is 15 years old. A gives religious guidance to B, who often seeks advice from A on sensitive situations. A asks B to engage in a sexual act together, saying that if B does not do this, A will not perform a religious ritual which will bring B spiritual blessings. A knows that B greatly desires spiritual blessings and will agree to A's proposal because of B's fear of losing these spiritual blessings. B agrees.

108 In both **Teacher I** and **Teacher II**, the consent of B may be compromised by virtue of the exploitative relationship between A and B. However, even though B's consent may already be vitiated in either scenario, there is an added element of wrongdoing in **Teacher II** because A engages in the *additional* act of intentionally threatening to omit to perform the religious ritual, intending to coerce B by this threat. This adds a further dimension through which A treats B as an object to be manipulated – through coercion – in order to achieve A's ends. Thus understood, the use of coercion involves a separate act of wrongdoing not inherent in an exploitative relationship, and should rightly be considered an independent offence-specific aggravating factor.

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109 Coercion may also be engaged in by accused persons outside of positions of responsibility or positions where victims would repose trust in them by virtue of their office of employment. Consider the following scenario:

> **Void Deck III**: A is 40 years old and loiters around the void deck of A's block looking for a teenager to befriend. A eventually forms a friendship with B, a 15 year old. A is an interesting and charismatic individual and a smooth talker. B is taken with A's charisma, views A with a degree of "hero worship" and is flattered by A's attention. A and B communicate frequently and enthusiastically over various messaging platforms. After four months, A invites B to come to A's house for sex. B accepts the invitation and goes along to A's house but gets cold feet about engaging in sexual activity. A, knowing B is scared of B's strict parents, threatens to tell B's parents that B went to A's house after accepting an invitation to have sex at A's house. Frightened, B agrees to have sex with A.

110 Importantly, the use of coercion by A in **Void Deck III** would *not* be captured under the aggravating factor of abuse of position of trust in *Terence Ng*. A does not occupy a position of responsibility in relation to B, nor does B place trust in A by virtue of an office of employment. This is quite understandable since coercion, founded on abuse of a position of *power*, targets a different aspect of wrongdoing compared to abuse of a position of *trust*. There is thus a need for a separate aggravating factor to take in account situations where coercion is present.

111 The same analysis applies to deception, which involves the separate wrong of making dishonest representations to the minor. Not every exploitative relationship will necessarily involve deceptions, and so it cannot be said to be an essential element of the aggravated offence. Thus, where the accused lies to the minor in order to gain physical access for sexual activity, or where the accused lies in order to procure the minor's consent to sexual activity, this should constitute an additional offence-specific aggravating factor. Take for

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example the following situations, in which **Drink II** involves an additional wrongful element of deception compared to **Drink I**.

> **Drink I**: A is 45 years old and is the teacher of 15 year old B. A invites B to A's house. A offers an alcoholic drink to B, knowing that B admires A and will accept the offer. B accepts the drink. A later engages in sexual activity with a tipsy B.
>
> **Drink II**: A is 45 years old and is the teacher of 15 year old B. A invites B to A's house. A offers an alcoholic drink to B, knowing that B admires A and will accept the offer. To eliminate any reservations on that B's part, A also lies to B by telling B that the drink does not contain any alcohol. B accepts the drink. A later engages in sexual activity with a tipsy B.

112 The use of coercion or deception may also constitute an aggravating factor where it is perpetrated against third parties, if this was for the purpose of obtaining physical access to the minor or for the purpose of procuring the minor's factual consent to sexual activity.

113 I add that the use of coercion or deception is conceptually distinct from, and is not intrinsic to, abuse of position and breach of trust in the *Terence Ng* sense. Not every accused in a position of responsibility or trust breaches that responsibility or trust through coercion or deception. In both **Teacher I** and **Teacher II**, for example, the religious teacher might be said to abuse a position of responsibility over the minor – but **Teacher II** may nevertheless be said to be a more serious case than **Teacher I** by reason of the presence of coercion of the minor. That being said, in explaining the factors which determine the degree of abuse of trust in a particular case, we may find that these overlap with the factor of coercion or deception: for example, the religious teacher in **Teacher II** may be said to have committed a particularly egregious abuse of trust *because* of the coercive threat made in the capacity of a religious teacher. In this regard, care should be taken to avoid double-counting.

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Application of the *Pram Nair* framework to the present case

114 In applying the *Pram Nair* framework in the present case, I first address the appropriate offence-specific aggravating factors to be taken into account.

The victim was vulnerable

115 I agree with the Prosecution that the victim was vulnerable by virtue of her intellectual disability.[79] I also note that the accused specifically targeted the victim knowing of this vulnerability, having noticed that the victim was a slower learner than her sister.[80] Concerns of general deterrence would thus weigh heavily in favour of the imposition of a more severe sentence to deter would-be offenders from preying on such victims (*Terence Ng* at [44(e)], citing *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [24(b)]).

There was premeditation

116 I also agree with the Prosecution that there is evidence of premeditation of the accused's offences.[81] The accused took steps to obstruct the view of the CCTV camera in his office during his offending.[82] He also took steps towards the isolation of the victim by arranging to bring her out and subsequently bringing her alone to his office (*Terence Ng* at [44(c)]). Having successfully obtained physical access to the victim, he even took steps to allay any potential suspicions or concerns on the Grandaunt's part by sending the Grandaunt photographs of the victim engaged in innocuous activities such as helping to put up posters.

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[79] PSS at para 25.

[80] SOF at para 6.

[81] PSS at para 26.

[82] SOF at para 11.

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117 In my view, the weight given to this factor should be increased because it was enabled by the accused's institutional position within the RN, which gave him an excuse to ask the Grandaunt for permission to bring the victim out to assist him with volunteer work.[83] In other words, the accused's position within the RN facilitated his gaining physical access to the victim and separating her from her guardian, for the purpose of committing the various sexual offences.

118 I note that in the mitigation plea presented on his behalf, the accused has tried to downplay the reprehensible nature of his offences by characterising them as a "lapse in judgment".[84] Insofar as this appears to be an attempt to portray the accused's offending conduct as being mere foolhardiness or thoughtlessness, I should stress that his specific targeting of a vulnerable victim and the evidence of premeditation militate against any such characterisation. This was not an instance of some error of judgment: this was a case of deliberate and cynical offending.

There was severe harm to the victim and her family

119 The Prosecution submits that although the harm suffered by the victim does not rise to the level of severe harm, the offences caused the victim to experience suicidal ideation and difficulty sleeping.[85] I disagree with this position. In my view, having regard to the harm suffered directly by the victim, the harm to the victim's relationship with her family and community, and the harm suffered by the victim's family, the level of harm does in fact rise to the level of severe harm. I elaborate.

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[83] SOF at para 21.

[84] Mitigation Plea at para 8.

[85] PFS at para 18.

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120 Foremost in the consideration of the harm suffered by the victim is her undisputed account of her experience, as set out in the Victim Impact Statement. It is worth reproducing this account in full:

> When the RC people came to my house to talk to me and asked me what [the accused] did to me, I told them the truth, but I was very scared, and I cried. I cried because I thought that my grandaunt will get angry with me. She scolded me for not telling her what [the accused] did to me. She said she was very disappointment with me, she said it was all her fault and she cried. I saw grandaunt cry and I also cry because I was very scared. I blamed myself for everything.
>
> After police talked to me about what [the accused] did to me, grandaunt told me that we will never ever go to the RC anymore. Grandaunt would ask me to stay at home with her and I could only go out with her. Every time I see the RC people at my neighbourhood, I just quickly hide and walk away. I just don't feel like seeing the RC people. Grandaunt told me not to open the door for the RC people, we will never ever take anything from them or talk to them. Throughout Police investigations, I had to see a doctor at KK hospital, and I also see the doctor for the IQ test. When the doctor asked me about what [the accused] did to me, I felt very stress because I did not want to remember what happened and I got cry because it was very hard for me.
>
> Many times, at night, I would be scared. I cannot sleep. I kept thinking of jumping down and I did not know why I want to kill myself. I cannot sleep, I cried softly on my bed until I fall asleep. I did not want grandaunt to know that I am not sleeping because I did not want her to ask me why I cannot sleep because I did not want her to worry. Since the police case, I would be afraid to share bad things with my Grandaunt. I did not want her to get worried and angry about me. I did not want to disappoint her again like how I disappointed her for not telling her what [the accused] did to me. I did not want to see her cry again because of me.
>
> In school, I got punched the wall using my hands. I do not know why I punched the wall. The teacher asked me why I did that, I just cry, I did not know how to tell my teacher. I could only cry and cry. I never tell anyone about my feelings because I felt embarrassed to talk about it. I dared not tell them what [the accused] did to me. I only talk to girls in school, I dared not talk to the boys because I do not trust boys, I am scared of boys and I don't know why. I can only make friends with girls and not boys. Few weeks ago, I really cannot take it. I cried in school and told my teacher that I want jump down and kill myself. I

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> cannot take it because I suddenly think of what [the accused] did to me, I got very scared and stressed and I don't know how. I don't know how to stop all these things from coming to my head. The school counsellor sent me to KK hospital to the doctor. I told the doctor that I feel very scared and afraid. I told the doctor that I scratched my hands until it bled because I suddenly think of what [the accused] did to me. Then my head would suddenly very pain when I think of what [the accused] did to me. I also scared of going to grandaunt's bedroom because I would think of how she was crying and scolding me when she found out what happened to me. She cried and cried and kept blaming herself and me about what happened. Sometimes, I don't dare to go home because I scared of grandaunt, and I don't know why. I would always cry and cry, I cannot feel ok anymore and I want to jump down. I hope I can become ok like last time.

121 In *CJH*, the Court of Appeal noted at [16] that severe harm for the purposes of the *Pram Nair* and *Terence Ng* frameworks would not be limited to specific categories such as pregnancy or a specific psychiatric illness that is a consequence of the offence. While a court may not take into account facts that are part and parcel of the offence itself, there is no reason to exclude the type of harm and suffering that may be experienced by a victim just because many victims in a similar situation would also experience such harm. On the facts of *CJH*, the High Court had noted that the victim, who had not even started menstruating, would have experienced considerable pain and horror upon realising that the accused's actions in sexually assaulting her had left her bleeding from the vagina. Her trauma and abject helplessness were such that over the course of the accused's offending she had come to believe that it was "pointless" to resist the accused. This would have constituted severe harm to the victim. The Court of Appeal agreed with these observations and affirmed that it would be "difficult to suggest that there was no severe harm" to the victim (at [16]).

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122 The harm to the victim in the present case is considerable. Notwithstanding the lack of a diagnosed psychiatric illness, it is evident that the victim has experienced inability to sleep, continuous bouts of crying, and suicidal ideation; she has also engaged in self-harm and other forms of self-destructive behaviour. Beyond the psychological and physical toll on the victim, she continues to suffer from emotional dysregulation and an inability to "feel ok". She blames herself for what has happened.

123 I would also add that, although not perhaps rising to the level of an offence-specific factor (sufficient weight having been accorded through the presence of relevant TIC charges), the accused's conduct in taking photographs of the victim's naked body[86] would have further exacerbated the level of degradation experienced by the victim as a result of the sexual assaults. The accused's conduct of photographing the process of his sexual abuse – which included his arranging the victim in different poses and even manipulating her body (*eg*, spreading her labial folds apart with his fingers) – speaks to a deliberate deconstruction of the victim's dignity.

124 In accounting for the harm to the victim, it is also important to consider the harm which has been caused to the victim's relationship with her family and community by the accused's offending. As noted in *Friesen* at [60]–[61]:

> 60 Sexual violence causes additional harm to children by damaging their relationships with their families and caregivers. Because much sexual violence against children is committed by a family member, the violence is often accompanied by breach of a trust relationship (*R. v. D.R.W.*, 2012 BCCA 454, 330 B.C.A.C. 18, at para. 41). If a parent or family member is the perpetrator of the sexual violence, the other parent or family members may cause further trauma by taking the side of the perpetrator and disbelieving the victim (see "*The 'Statutory Rape' Myth*", at p. 292). Children who are or have been in foster

86 SOF at paras 10, 19, and 25.

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> care may be particularly vulnerable since making an allegation can result in the end of a placement or a return to foster care (see *R. v. L.M.*, 2019 ONCA 945, 59 C.R. (7th) 410). Even when a parent or caregiver is not the perpetrator, the sexual violence can still tear apart families or render them dysfunctional (*R. v. D.* (D.) (2002), 58 O.R. (3d) 788 (C.A.), at para. 45). For instance, siblings and parents can reject victims of sexual violence because they blame them for their own victimization (see *Rafiq*, at para. 38). Victims may also lose trust in the ability of family members to protect them and may withdraw from their family as a result (*Rafiq*, at paras. 39-41).
>
> 61 The ripple effects can cause children to experience damage to their other social relationships. Children may lose trust in the communities and people they know. They may be reluctant to join new communities, meet new people, make friends in school, or participate in school activities (C.-A. Bauman, "*The Sentencing of Sexual Offences against Children*" (1998), 17 C.R. (5th) 352, at p. 355). This loss of trust is compounded when members of the community take the side of the offender or humiliate and ostracize the child (*R. v. Rayo*, 2018 QCCA 824, at para. 87 (CanLII); *R. v. T.* (K.), 2008 ONCA 91, 89 O.R. (3d) 99, at paras. 12 and 42). Technology and social media can also compound these problems by spreading images and details of the sexual violence throughout a community (see *R. v. N.G.*, 2015 MBCA 81, 323 Man.R. (2d) 73).

125 The victim has lost an existing community – *i.e.* the people she used to spend time with at the RN. She does not dare to return to the RN for fear of reviving her trauma. She has found it difficult to make friends with boys. Worst of all, her relationship with her Grandaunt has deteriorated. The Grandaunt's initial reaction in blaming the victim for her own victimisation (*Friesen* at [60]) cannot be undone. As a result, the victim cannot trust the only adult on whom she is dependent. She does not dare to go into the Grandaunt's room. She can no longer share freely with the Grandaunt about her life. Sometimes, she is scared of her Grandaunt and scared of going home.

126 In this connection, I should clarify that no judgment or blame should be cast on the Grandaunt for how she may have reacted to the disclosure of the accused's sexual offences. No-one can be expected to react perfectly to life's

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most emotionally turbulent exigencies. Indeed, the Grandaunt herself has suffered harm as a result of the accused's offences. The harm caused to her is relevant in assessing the harm caused as a result of the accused's offending (*Public Prosecutor v Lee Ah Choy* [2016] 4 SLR 1300 at [54]). The Grandaunt has suffered emotionally, not only on account for what has happened, but also because of how her relationship with the victim has been affected. Further, the Grandaunt's involvement with the RN has had to cease on account of the trauma caused to the victim and the apparent distrust now felt by the Grandaunt towards the RN. The victim and the Grandaunt are now cut off from the very community that could have provided an important source of support. One can only hope that the estrangement and the isolation will not be permanent.

127 Considering the harm suffered by the victim, the effect on her relationship with her family and community, and the harm caused to the victim's family, I would view the harm caused by the accused as being severe harm sufficient to constitute an offence-specific aggravating factor.

128 For completeness, I would add that there is no abuse of position of trust on the facts of this case. The accused cannot be said to have been in a position of responsibility over the victim by virtue of his involvement in the RN, nor is there evidence that the victim placed trust in the accused *by virtue of his position* in the RN.

129 Having regard to the number of offence-specific aggravating factors, I find that this would bring the present case within the mid to high range of Band 2 of the *Pram Nair* sentencing framework, such that the indicative starting sentence should be 13 to 14 years' imprisonment per charge.[87]

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[87] PSS at para 27.

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Calibration of sentence

130 As to the applicable mitigating factors, I accept that the accused has pleaded guilty timeously, and that this is a sign of his contrition and regret for the wrong he has done.[88] This has also saved the victim the trauma of having to testify in court.

131 The mitigating weight of the accused's plea of guilt has to be balanced against the 15 charges that have been taken into consideration. The presence of multiple charges taken into consideration constitutes an offender-specific aggravating factor.

132 As to the accused's lack of antecedents, this is a neutral factor (*BPH* at [85]).

133 Taking into account the offender-specific mitigating and aggravating factors, I am of the view that it will be appropriate to calibrate the sentence per charge to 12 years' imprisonment per charge.

Imprisonment in lieu of caning

134 It is not disputed that the accused's age (64 years) makes him ineligible for caning under s 325(1)(*b*) of the CPC. The court retains the discretion to impose an additional sentence of imprisonment in lieu of caning under s 325(2) of the CPC.

135 In *Amin bin Abdullah v Public Prosecutor* [2017] 5 SLR 904 ("*Amin*"), the High Court held that enhancement of the sentence in lieu of caning is warranted, amongst other things, where on balance there is a need to (a)

[88] Mitigation Plea at para 3.

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compensate for the deterrent effect of caning that was lost by reason of the exemption, (b) compensate for the retributive effect of caning that is lost by reason of the exemption, or (c) maintain parity among co-offenders (at [59]). In my view, the first two factors are engaged.

136 On the first factor, Menon CJ noted in *Amin* (at [66] and [67]) that there were at least two factors that should be taken into account in determining whether an enhanced term of imprisonment would further the objective of deterrence:

> 66 First, the court should consider whether an additional term of imprisonment is *needed* to replace the lost deterrent effect of caning, having regard to *why* the offender was exempted from caning. … The key question is whether such potential offenders would have known before committing the offence that by reason of their own circumstances, they would be exempted from caning. If so, then an additional term of imprisonment in lieu of caning may be more readily seen as necessary or appropriate in order to compensate for the general deterrent effect lost because the offender knows he or she will be exempted from caning. …
>
> 67 In general, an offender who was exempted from caning due to gender or age is likely to have known from the outset that he or she would not be caned. Therefore, for this class of exempted offenders, an additional term of imprisonment will be more readily seen to be called for, in order to compensate for the lost deterrent effect of caning. Conversely, an offender who was exempted from caning on medical grounds is less likely to have known that he would not be caned. … Of course, these are mere guidelines, and each case must be decided on its own facts.
>
> 68 Second, the court should consider whether an additional term of imprisonment would be *effective* in replacing the deterrent effect of caning. …
>
> [emphasis in original]

137 In *Public Prosecutor v Chua Hock Leong* [2018] SGCA 32 ("*Chua Hock Leong*"), the 63-year-old male accused was convicted on a charge under s 376(1)(*b*) punishable under s 376(4)(*b*) of the Penal Code for performing

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fellatio on a young boy who was 12 years of age. The Court of Appeal reversed the trial judge's decision not to impose additional imprisonment in lieu of the mandatory 12 strokes of the cane and imposed an additional imprisonment term of six months. It noted (at [12]), that considerations of general deterrence applied to adults over the age of 50 who might otherwise commit such sexual offences against minors. The court further stated:

> 14 In this case, the Respondent committed the offence when he was 61 years old – most offenders of a similar age would know that they cannot be caned on account of their age (see also *Amin* at [67]). Further, we are of the view that an additional imprisonment term is necessary here to underscore the principle of general deterrence. The Respondent, who was at least five times older than the Victim in age and whom the Victim had addressed as "Uncle", was in a prime position to advise the Victim not to play truant from school. Instead of doing that, he had exploited the unsuspecting minor by befriending him in a public place and then forcing himself upon the Victim to satisfy his own depraved sexual desires. The offence committed by the Respondent offends "the sensibilities of the general public" and a "deterrent sentence is therefore necessary and appropriate to quell public disquiet and the unease engendered by such crimes" (see *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [25(c)]).

138 I agree with the Prosecution that considerations of deterrence would be at the forefront of the sentencing calculus in this case. The accused very likely knew from the outset that he would not be caned by reason of his age. The nature of his offences is similar in character (and in fact even more invasive) than the offences in *Chua Hock Leong*: these are offences which would offend the sensibilities of the general public.

139 On the second factor, retribution is likely to be the principal sentencing consideration where there is a specific victim, especially where violence has been visited upon that victim (*Amin* at [63], citing Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at paras 06.021 and 30.023). In the present case, where the accused specifically targeted and

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exploited a vulnerable victim, retribution would also form a dominant sentencing objective behind the imposition of caning. This therefore also points to the imposition of an additional term of imprisonment in lieu of caning.

140 Conversely, I do not find that the accused's age militates against the imposition of an additional term of imprisonment. There are also no medical or compassionate grounds to this effect.

141 As to the duration of the additional imprisonment, Menon CJ in *Amin* at [90] indicated that if more than 19 strokes of the cane were avoided, this would point to an additional imprisonment period of nine to 12 months. In this case, had the accused been eligible for caning, the starting point under Band 2 of the *Pram Nair* framework would have been eight strokes of the cane for each of the three proceeded charges under s 376A(1)(*b*) punishable under s 376A(2)(*a*) of the Penal Code – *i.e.* 24 strokes in total.

142 Having regard to the above factors, I find it appropriate to impose the maximum term of 12 months' imprisonment in lieu of caning.

The global sentence

143 Having determined the appropriate sentence for each of the three charges, I next consider the global sentence which should be imposed in respect of all three charges. Two of the three sentences must be ordered to run consecutively by virtue of s 307(1) of the CPC. I agree with the Prosecution that the sentences for the First Charge and the Third Charge should run consecutively.[89] This results in a global sentence of 24 years' imprisonment, with an additional 12 months' imprisonment in lieu of caning.

[89] PSS at para 39.

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144 I next consider the application of the totality principle, as outlined in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*"). The totality principle in *Shouffee* has two limbs. The first requires that the global sentence not be substantially above the normal level of sentences for the most serious of the individual offences committed. The second calls for consideration of whether the effect of the sentence on the accused is crushing and not in keeping with his past record and future prospects. While I do not think a global sentence of 25 years' imprisonment would be "substantially" above the normal level of sentences meted out for such an offence under s 376A(1)(*b*) p/u s 376A(2)(*a*), I do find that such a global sentence would be crushing on the accused in this case. Accordingly, I further calibrate the individual sentences for each of the three charges downwards, from 12 years to eight years and six months per charge. The sentences in respect of the First Charge and the Third Charge will run consecutively, with the sentence in respect of the Second Charge being concurrent. This leads to a revised global sentence of 17 years' imprisonment, with an additional 12 months' imprisonment in lieu of caning.

Conclusion

145 In summary, the accused is sentenced to a total of 17 years' imprisonment, with an additional 12 months' imprisonment in lieu of caning. The imprisonment term is backdated to the accused's date of arrest on 22 December 2021.[90]

146 I wish to close with two final points. First, while it appears that the victim and her Grandaunt now shun the RN, it is my sincere hope that the RN

90 SOF at para 30.

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members and the wider community do not cease their efforts to offer solace and support to this family. Second, it is also my sincere hope that the victim will in time come to understand that none of what happened is her fault; and that she will in time be able – with the support of her family and her community – to step back into the light, to forge her own courageous path.

Mavis Chionh Sze Chyi
Judge of the High Court

Grace Teo and Sruthi Boppana (Attorney-General's Chambers) for the Prosecution;
Ambalavanar Ravidass (Regal Law LLC) for the accused.

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