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

**[2024] SGHC 162**

Criminal Case No 7 of 2024

Between

Public Prosecutor

And

CRX

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# JUDGMENT

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

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# v
# CRX

**[2024] SGHC 162**

General Division of the High Court — Criminal Case 7 of 2024
Hoo Sheau Peng J
5, 23 February, 10 May 2024

26 June 2024 Judgment reserved.

**Hoo Sheau Peng J:**

## Introduction

1 The case involves a young offender (the "Accused") who sexually assaulted his younger sister (the "Victim"). He is one of four brothers who perpetrated acts of sexual assault against the Victim.

2 Before me, the Accused pleaded guilty to one charge of sexual assault by penetration ("SAP") of the Victim (who was under 14 years of age) under s 376(2)(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code"), punishable under s 376(4)(*b*) of the Penal Code (the "Aggravated SAP Charge"). He further consented to have seven charges taken into consideration for the purpose of sentencing (the "TIC Charges").

**The facts**

3 I now summarise the key facts, as set out in the Statement of Facts (the "SOF"). At the time of these proceedings, the Accused is 20 years old, and the Victim is 14 years old. The Accused is the third of four brothers with three younger sisters (including the Victim).[1]

4 At the material time, the Accused was 16 to 17 years old, while the Victim was ten to 11 years old. The Accused, the Victim and all of their siblings lived with their parents in the family home. The family home had three bedrooms. The master bedroom was occupied by the parents, while the four brothers occupied the second bedroom (the "boys' room") and the three sisters occupied the third bedroom (the "girls' room"). The parents prohibited the four brothers from entering the girls' room, as all three girls were still young. They were only allowed to go there to comb their hair, as the boys' room did not have a mirror.[2]

5 When the mother saw any of the four brothers in the girls' room, she would remind them not to stay in it. In spite of this, the Accused would go into the girls' room both to sexually assault the Victim and to sometimes rest or play games. On one occasion, the eldest brother spotted him and told the Accused not to go inside the girls' room. When the Accused began his offending conduct, his three other brothers had already sexually assaulted the Victim on at least one prior occasion. Despite being aware of such conduct by the eldest brother and the second brother, the Accused decided to "keep quiet".[3]

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1 Statement of Facts ("SOF") at paras 1–3 and 10.

2 SOF at paras 7–8.

3 SOF at paras 8–9.

***Incident forming the Aggravated SAP Charge***

6 In 2020, the Accused felt "very horny". He decided to sexually assault the Victim to satisfy his sexual urges. The Accused knew that the Victim did not consent to the sexual acts as she would try to resist his sexual advances. He was also aware at all material times that what he was doing was wrong.[4]

7 One day in 2020, the Accused went into the girls' room once more, having already sexually assaulted the Victim on prior occasions in the same year. Only the Victim and Accused were in the room as their two youngest sisters had already left the room. The Accused laid down next to the Victim as she laid on her bed, facing upwards. He proceeded to grab her breasts with both hands. Thereafter, he rubbed her vagina, first over her underwear, and then, skin-to-skin. The Accused also inserted one of his fingers into the victim's vagina and moved it from side to side.[5]

8 This incident formed the basis of the Aggravated SAP Charge. This is the sixth charge which reads as follows:[6]

> … on a second occasion sometime in 2020, at the [girls' room], did sexually penetrate with your finger the vagina of the [Victim], a female under 14 years of age (then 10 to 11 years old, D.O.B.: XXX), without her consent, and you have thereby committed an offence under section 376(2)(*a*), punishable under section 376(4)(*b*) of the Penal Code (Cap 224, 2008 Rev Ed).

9 During the sexual assault, the Victim told the Accused not to touch her and tried to avoid him. However, the Accused persisted in his assault. The

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4 SOF at para 11.

5 SOF at paras 12–13.

6 List of Arraigned Charges (dated 25 January 2024) ("AC") at p 3.

Victim did not struggle further as she knew what was going to happen and was afraid.[7]

***Incidents forming the TIC Charges***

10 Over the course of 2020, the Accused would touch the Victim's breasts and vagina as and when he felt like touching her, on no less than four occasions in the girls' room. He would also digitally penetrate her vagina.[8] These sexual acts formed the subject matter of the seven TIC Charges brought against the Accused as follows:[9]

(a) the first charge: on a *first* occasion, aggravated SAP of a minor by penetrating the Victim's vagina with his finger sometime in 2020 without her consent, while she was ten to 11 years old, an offence under s 376(2)(*a*) and punishable under s 376(4)(*b*) of the Penal Code;

(b) the second charge: on a *first* occasion, use of criminal force to outrage the modesty of the Victim by rubbing her vagina over her panties, sometime around 2020, while she was ten to 11 years old, an offence punishable under s 354(2) of the Penal Code;

(c) the third charge: on a *first* occasion, use of criminal force to outrage the modesty of the Victim by touching her breasts over her clothes, sometime around 2020, while she was ten to 11 years old, an offence punishable under s 354(2) of the Penal Code;

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7 SOF at para 14.

8 SOF at para 11.

9 AC at pp 1–4.

(d) the fourth charge: on a *second* occasion, use of criminal force to outrage the modesty of the Victim by rubbing her vagina over her panties, sometime around 2020, while she was ten to 11 years old, an offence punishable under s 354(2) of the Penal Code;

(e) the fifth charge: on a *second* occasion, use of criminal force to outrage the modesty of the Victim by touching her breasts over her clothes, sometime around 2020, while she was ten to 11 years old, an offence punishable under s 354(2) of the Penal Code;

(f) the seventh charge: on a *third* occasion, use of criminal force to outrage the modesty of the Victim by touching her breasts over her clothes, sometime around 2020, while she was ten to 11 years old, an offence punishable under s 354(2) of the Penal Code; and

(g) the eighth charge: on a *fourth* occasion, use of criminal force to outrage the modesty of the Victim by touching her breasts over her clothes, sometime around 2020, while she was ten to 11 years old, an offence punishable under s 354(2) of the Penal Code.

11 To summarise, the seven TIC Charges comprise another aggravated SAP charge involving digital-vaginal penetration (the "Second Aggravated SAP Charge") and six outrage of modesty charges punishable under s 354(2) of the Penal Code (the "OM Charges").

***Aftermath of the assaults***

12 During the period she was sexually abused by the Accused and her other brothers, the Victim did not dare to inform anyone of the incidents. She would feel stressed and sad but pretended to be happy.[10]

13 Sometime in 2022, the Victim decided to inform her school of her brothers' sexual abuse, which led to the school informing the Ministry of Social and Family Development ("MSF"). On 10 February 2022, the MSF reported the matter to the Serious Sexual Crimes Branch of the Singapore Police Force.[11] After making the report, the Victim felt anxious. She felt guilty for not stopping her brothers when they sexually assaulted her, and she felt bad for reporting them. During a school counselling session, she expressed feeling nervous, worried, upset and scared.[12]

14 The Accused was arrested on 11 February 2022. Although he initially denied putting his finger into the Victim's vagina, he subsequently confessed to having done so on at least two occasions.[13]

**Conviction**

15 At the first hearing on 5 February 2024, the Accused admitted without qualification to the facts as set out in the SOF. Since the elements of the proceeded charge were established beyond a reasonable doubt, I convicted the Accused of the Aggravated SAP Charge.

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10 SOF at para 15.

11 SOF at paras 4–5.

12 SOF at para 16.

13 SOF at para 17.

## Sentencing

16 Turning to sentencing, for the Aggravated SAP Charge, s 376(4)(*b*) of the Penal Code prescribes a mandatory minimum sentence of eight years of imprisonment and 12 strokes of the cane. However, as the Accused is a young offender below 21 years of age, s 305 of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC") provides that the court may impose a sentence of reformative training in lieu of any other sentence if it is satisfied – having regard to the offender's character, previous conduct and the circumstances of the offence – that to reform the offender and to prevent crime, the offender should undergo a period of training in a reformative training centre. Essentially, reformative training is a structured correctional programme that is imposed with the hope that expert intervention will be able to reclaim young offenders from crime and prevent them from reoffending in the future.

### *Sentencing positions*

17 The Defence counsel urged the court to call for a pre-sentencing report to be furnished pursuant to s 305(3) of the CPC, so as to assess the Accused's suitability for reformative training. However, the Prosecution objected to this course of action and pressed instead for a sentence of eight to nine years' imprisonment with 12 strokes of the cane to be imposed on the Accused.

18 After considering the divergent positions of the parties, at the subsequent hearing on 23 February 2024, I called for a pre-sentencing report to be furnished to assess the Accused's suitability for reformative training.[14] In addition, I directed the parties to clarify a few points of contention. I also invited the

[14] Notes of evidence dated 23 February 2024 at p 6 lines 13–16.

Prosecution to provide statistics, if relevant, to support the Prosecution's position that there is presently an enhanced need for general deterrence for cases of intra-familial sexual offences involving young offenders.

19 On 1 April 2024, a pre-sentencing report was duly furnished by the Singapore Prisons Service (the "RT Report"). The RT Report assessed the Accused to be suitable for the reformative training regime. It also recommended that, if reformative training were to be imposed, the Accused be ordered to undergo reformative training at Level 2 intensity to be delivered over a 12-month period.

20 Thereafter, the parties provided further sentencing submissions. Notwithstanding the recommendations in the RT Report, the Prosecution continues to object to the imposition of reformative training and maintains its sentencing position. On the other hand, the Accused urges the court to accept the recommendations in the RT Report. In the alternative, the Accused submits that the mandatory minimum of eight years' imprisonment with 12 strokes of the cane would be sufficient punishment.

***The applicable law for sentencing young offenders***

21 The applicable approach for sentencing young offenders is that set out in *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*"). In that case, the High Court affirmed that in cases involving a young offender who has committed a serious offence, like the present, "the principles of rehabilitation and deterrence must form the prime focus of the court's attention" (at [28]). The court further recognised that although rehabilitation *generally* assumes centre-stage when the offender is young and below 21 years of age, where the offence is serious, deterrence may supplant

rehabilitation as the dominant consideration and thus require a more serious form of corrective punishment (at [31]–[36]).

22 In *Al-Ansari*, the High Court also set out a two-step framework as follows (at [77]–[78]):

(a) At the first step, the court will determine whether rehabilitation should remain the predominant consideration. If the offence is particularly heinous or the offender has a long history of offending, reform and rehabilitation may not be possible or relevant, notwithstanding the youth of the offender.

(b) If the court determines that rehabilitation is the dominant sentencing consideration, it moves to the second step, where the question turns to which sentence best gives effect to this. With young offenders, the courts are generally left with a choice between probation and reformative training.

23 In *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") (at [30]), the High Court elaborated further on first step of the *Al-Ansari* framework, specifically on the factors to be taken into account when determining whether rehabilitation has been displaced by deterrence as the dominant sentencing consideration. The factors are as follows:

(a) the offence is serious;

(b) the harm caused is severe;

(c) the offender is hardened and recalcitrant; and

(d) the conditions do not exist to make rehabilitative sentencing options such as probation or reformative training viable.

24 I should add that in *Public Prosecutor v ASR* [2019] 1 SLR 941 ("*ASR*"), the Court of Appeal affirmed the approach in *Al-Ansari* and the factors in *Boaz Koh,* but clarified that, in cases which do not involve foreign offenders who are not locally resident, factor (d) of *Boaz Koh* would properly fall under the second step of the *Al-Ansari* framework. Hence, even if the Prosecution argues that reformative training is not suitable for the Accused due to certain circumstances (such as a lack of familial support), this "does not mean that rehabilitation has been displaced as the *normative* sentencing consideration at the first step of the *Al-Ansari* framework" [emphasis in original]. Instead, the burden remains on the Prosecution to "provide *positive* reasons as to why sentencing considerations other than rehabilitation are dominant" [emphasis added] (*ASR* at [101]–[102]).

***Application to the present case***

25 Having set out the applicable legal principles for sentencing young offenders, I now turn to the facts of the present case.

*Step 1: Has rehabilitation been displaced as the dominant sentencing consideration?*

(1) Seriousness of the offence

26 The Prosecution argues that since the courts have generally regarded rape as a grave and heinous offence, the fact that a young offender is being sentenced for rape alone would generally displace the presumptive focus on rehabilitation. Although the Prosecution concedes that a rape offence generally attracts a more severe sentence than a SAP offence, the same sentencing

considerations ought to apply to both types of offences, as they involve similarly "gross violations of dignity and bodily integrity" (citing *AQW v Public Prosecutor* [2015] 4 SLR 150 ("*AQW*") at [19]).[15] In support of this point, the Prosecution also cites several cases where the court imposed imprisonment, instead of reformative training, for sexual offences.[16] I note, however, that these cases involved penile-vaginal penetration offences (*eg*, *CJH v Public Prosecutor* [2023] SGCA 19 ("*CJH (CA)*")) or attempted rape offences (*eg*, *Ng Jun Xian v Public Prosecutor* [2017] 3 SLR 933).

27 Additionally, the Prosecution submits that the seriousness of the Accused's offence is aggravated by the abuse of trust by the Accused and his assault of a vulnerable victim. The Accused had brazenly exploited his position of responsibility and trust as the Victim's older brother, to assault her on more than one occasion.[17] Moreover, the Victim was only ten to 11 years old and significantly younger than the Accused. Her tender age reflects her enhanced vulnerability and underscores the severity of the Accused's abuse.[18] Moreover, not only was the Victim very young, she did not consent to the Accused's sexual assault which renders his offences particularly serious (citing *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [44(g)] and [45(b)]).[19] Finally, the Accused had assaulted the Victim persistently, as illustrated by the seven TIC Charges brought against him.[20] Significantly, the OM Charges would likely

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15 Prosecution's Written Submissions (dated 26 January 2024) ("PWS1") at paras 8–11.

16 PWS1 at paras 21–33.

17 PWS1 at para 15(a).

18 PWS1 at para 15(c).

19 PWS1 at para 15(d); citing SOF at para 11.

20 PWS2 at para 27.

attract imprisonment terms as well as the imposition of caning.[21] Hence, in light of the severity of the Accused's offending conduct, rehabilitation cannot be regarded as the dominant sentencing consideration.

28 To the Accused's credit, there is no denial that the Aggravated SAP Charge is a serious one. He instead argues that the fact that offences are serious does not automatically displace rehabilitation as the dominant sentencing consideration.[22] Although the Accused accepts the Prosecution's submission that in cases with penile-vaginal rape offences, the presumptive focus on rehabilitation is typically displaced, he points out that the same approach should not be adopted for cases with SAP offences, including those involving digital-vaginal penetration, which have been judicially recognised as less severe than rape offences.[23]

29 In this regard, the Accused relies on two cases to show that rehabilitation has not been displaced in cases involving young offenders committing digital penetration with similar aggravating factors:

(a) In *Public Prosecutor v GBC* [2016] SGDC 13 ("*GBC*"),[24] the 18-year-old offender digitally penetrated the vagina of the victim, his younger sister, when she was ten years old, without her consent (*GBC* at [3]). There were also three additional charges taken into consideration which involved penile-oral penetration and outrage of modesty, amongst other offences (*GBC* at [4]). These offences spanned a period of three

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21 PWS2 at para 35.

22 Accused's Written Submissions (dated 24 January 2024) ("AWS1") at para 19.

23 AWS1 at paras 25, 28 and 31.

24 AWS1 at para 33.

years, from 2011 to 2013 (*GBC* at [35]). The District Court ultimately found that rehabilitation remained the primary sentencing consideration and imposed a sentence of reformative training (*GBC* at [35]).

(b) In *Public Prosecutor v GIJ* [2024] SGDC 32 ("*GIJ*"),[25] the offender committed SAP and attempted rape against the victim, his younger sister, when she was 11 years old, without her consent (*GIJ* at [2] and [9]–[12]). He was 14 years old as at the time of the offences (*GIJ* at [7]). There were also two additional charges taken into consideration which involved attempted penile-oral penetration and attempting to convince the victim to perform an obscene act (*GIJ* at [3]). The Prosecution did not object to the calling of a reformative training report but objected to a sentence of probation (*GIJ* at [13]–[15]). The District Court ultimately sentenced the offender to probation (*GIJ* at [52]).

30 The Accused further relies on three unreported cases of the District Court which similarly involved the offenders sexually assaulting their younger sisters of 14 years or younger and being charged for, *inter alia*, outrage of modesty, SAP and even attempted rape. In all the three cases, the courts held that rehabilitation had not been displaced and thus ordered reformative training.[26] Thus, the Accused submits that in cases of digital-vaginal penetration, even in the familial context and with very young victims, rehabilitation has generally not been displaced in favour of deterrence for young offenders.

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25 Accused's Written Submissions (dated 24 April 2024) ("AWS2") at paras 14 and 30–41.

26 Defendant's Bundle of Authorities (dated 24 January 2024) at pp 331–340 and 513–526; Defendant's Bundle of Authorities (dated 24 April 2024) at Tab 10.

31 As a preliminary matter, it is not particularly clear whether the Prosecution's argument is that rehabilitation is displaced as the dominant sentencing consideration as long as the offence is one of digital-vaginal penetration generally, or of digital-vaginal penetration committed against a minor. Even assuming the latter, *ie*, the more serious of the two scenarios, I cannot agree with the Prosecution that an offence of digital-vaginal penetration of a minor (as contained in the Aggravated SAP Charge) is of such a serious nature as to invariably displace rehabilitation as the dominant sentencing consideration. In reading *AQW* in its entirety, it is clear that the High Court's observation – that penetrative sexual activity is to be regarded as the most serious offence – was in contradistinction to non-penetrative sexual activity generally. The High Court did not necessarily intend to convey that *all* penetrative sexual acts against minors were uniform in terms of severity. As the Accused points out, there is a well-recognised difference between penile-penetration and digital-penetration of the vagina. Penile-vaginal penetration can fairly be said to be of greater severity as it carries the added risks of an unwanted pregnancy and the transmission of sexual diseases, and that it is also a far more intimate act than digital penetration (see *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*") at [150]). Consequently, I find the authorities relied on by the Prosecution that involve penile-vaginal penetration to be of limited assistance.

32 The Prosecution also relies on numerous aggravating factors to underscore the severity of the Accused's offending conduct, namely, the Accused's abuse of trust, the Victim's vulnerability owing to her young age (being well under 14 years of age), her lack of consent and the existence of the TIC Charges. While these factors certainly enhance the severity of the

Accused's actions, they do not necessarily render deterrence the dominant sentencing consideration.

33 Even setting aside the three unreported cases relied on by the Accused (which I should add are fairly recent ones), in *GIJ,* a case where all the aggravating factors relied on by the Prosecution were similarly present, the court found that rehabilitation remained the dominant sentencing consideration and imposed a sentence of probation. The Prosecution seeks to distinguish *GIJ* on the basis of the following factors: the offender there was younger than the Accused at the time of the offences; the offender had fewer charges taken into consideration; the period of offending was much shorter; and the offender demonstrated genuine remorse and insight. The Prosecution also urges the court to give limited weight to the decision as it is pending appeal.[27]

34 It is important to note that although the offender in *GIJ* appears to have demonstrated greater rehabilitative prospects and there appears to be fewer aggravating factors (specifically with reference to the SAP charge), the offender had also attempted to penetrate his sister's vagina with his penis (which was a far more serious offence than digital-vaginal penetration or outrage of modesty). Additionally, the offender was sentenced to probation instead of reformative training. Although I acknowledge that there is a pending appeal, and I do not comment on whether probation is an appropriate sentence, it is notable that before the District Court, the Prosecution did not oppose the imposition of reformative training but only objected to the imposition of probation. While it is unclear what the Prosecution would raise on appeal, it seems to me that the Prosecution should have highlighted to me their sentencing position taken

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[27] PWS2 at para 39.

below. Indeed, as expressed during the hearings, I have some reservations about the consistency in the sentencing positions taken by the Prosecution in such cases.[28]

35 Similarly, in *GBC*, although the offender digitally penetrated the vagina of his sister who was merely 10 years old, rehabilitation was not found to be displaced as the primary sentencing consideration. In *GBC*, many of the aggravating factors identified by the Prosecution here were similarly present, and to a greater degree. For instance, although the victim was also around 10 years old and the offender's sister, the offender was older (18 years old) at the time of the offence, perpetrated his assault over a longer period (three years) and had more serious charges taken into consideration (such as penile-oral penetration) (*GBC* at [4]). It also bears highlighting that, as observed in *GBC* (at [35]), a sentence of reformative training could also give due accord to the serious nature of the offender's actions, as the regime carries with it a commensurate dose of deterrence.

36 For present purposes, although the Accused committed SAP on a young vulnerable victim and abused the trust reposed in him (due to the familial setting), the precedent cases do not support the Prosecution's contention that rehabilitation is automatically displaced as the primary sentencing consideration. Despite the undeniably serious nature of the Accused's Aggravated SAP Charge, and even taking into account the TIC Charges (*ie,* the Second Aggravated SAP Charge and the six OM Charges), in my view, his offending conduct does not cross the threshold of severity which would warrant displacing rehabilitation as the dominant sentencing consideration.

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[28] Notes of Evidence (dated 23 February 2024) at p 7 at lines 8–11.

(2) The harm to the Victim

37 The Prosecution relies on the Victim's victim impact statement dated 15 January 2024, in which she reported developing fear in several areas of her life, such as when getting close to boys. She also reported that, till today, she continues experiencing anxiety attacks. Moreover, she has been ostracised from her family as she feels that her mother blames her for her brothers' arrest, and she has not been able to see her younger sisters for a year.[29]

38 This is further supplemented by a psychology report dated 20 July 2022, where the Victim reported experiencing trauma symptoms such as hypervigilance, frequent strong feelings of disgust, fear and sadness when she is reminded about the sexual abuse, changes in her thinking and mood (*eg*, a negative view of herself as well as frequent irritable moods) and an avoidance of thoughts and feelings about the abuse.[30] Despite the lack of a formal diagnosis of any post-traumatic stress disorder ("PTSD") or major mood disorder ("MMD"), the Victim's trauma symptoms were severe enough to warrant a referral for trauma-focused cognitive behavioural therapy.[31] Thus, it is clear that the Victim continues to suffer from long-lasting emotional and psychological harm as a result of the Accused's sexual assault.

39 In reply, the Accused argues that, from the various reports tendered by the Prosecution, there is no evidence that the Victim suffered from any severe physical or psychological harm beyond what would normally be expected of

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29 PWS1 at para 15(f).

30 Victim's psychological report (dated 20 July 2022) at p 3.

31 PWS2 at paras 29–30.

offences of a similar nature.[32] With respect to the Victim's psychology report, the Accused highlights that the report itself stated that the Victim's trauma and depressive symptoms do not appear to meet the clinical criteria for a diagnosis of PTSD or MMD, respectively.[33] Moreover, the report indicated that the Victim has shown improvements in her trauma symptoms through therapy, and that there does not appear to be any evidence of long-term psychiatric harm.[34] Moreover, the Accused had not taken any additional measures, such as the use of violence or threats or engaged in degradation or humiliation, to heighten the harm perpetrated on the Victim.[35]

40 I agree with the Prosecution that the Victim suffered significant harm. To this end, I do not accept the Accused's claim that the harm to the Victim cannot be regarded as severe simply because the clinical criteria for conditions like PTSD or MMD were not met. As the Prosecution rightly points out, the Court of Appeal in *CJH (CA)* affirmed that "harm is not limited to specific categories such as … a specific psychiatric illness that is a consequence of the offence" and that the mere fact that "many victims in a similar position would also experience such harm" is no reason to exclude or downplay it (at [16]). Regardless of the lack of a formal diagnosis, the Victim's referral for trauma-focused cognitive behavioural therapy and the severe self-reported symptoms clearly demonstrate that she has suffered a significant degree of harm. Relatedly, I also cannot accept the Accused's claim that the Victim's improvements through therapy supports a finding that there was limited harm

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32 AWS1 at para 45.

33 AWS2 at paras 15–17; Victim's psychological report (dated 20 July 2022) at p 6.

34 AWS2 at paras 18–19.

35 AWS1 at para 43.

suffered. Such improvements in the Victim's trauma symptoms cannot be regarded in the Accused's favour. Moreover, the Victim has been isolated from the rest of her family and deprived of the support structure that would have assisted her in making a full and proper psychological recovery.

41 However, it bears noting that the harm suffered by the Victim is not solely a result of the Accused's offending, but also the sexual assault and abuse committed by the Accused's three other brothers. While this fact in no way diminishes the level of harm suffered by the Victim, it detracts from the Prosecution's reliance on the harm suffered by the Victim to displace rehabilitation as the dominant consideration in respect of sentencing the Accused. In this connection, it is worth highlighting that the Prosecution does not dispute that of the four brothers, the Accused's offending conduct was the least egregious.

42 More importantly, at the end of the day, in past instances where the court found that rehabilitation had been displaced by deterrence, the harm suffered by the victims had been much more severe than present in this case. For instance, in *See Li Quan Mendel v Public Prosecutor* [2020] 2 SLR 630 (at [12]), the High Court found that the use of a chopper to threaten the victim heightened the harm suffered and thus justified the displacement of rehabilitation. In *Public Prosecutor v CJH* [2022] SGHC 303 (at [66]–[69]), the High Court found that in addition to the considerable psychological and emotional harm sustained by the victim, she also suffered significant physical pain during the instances of penile-anal and penile-vaginal penetration. Hence, the court concluded that rehabilitation had been displaced in favour of deterrence. In *CJH (CA),* the Court of Appeal upheld the decision to impose imprisonment. Significantly, in *both* of these instances, the offenders had committed rape, which is recognised

as causing appreciably greater harm and suffering to the victim (see above at [31]; see also *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [23]).

(3) Whether the Accused is a hardened or recalcitrant offender

43 The Prosecution submits that despite being aware that he had done "something very wrong", the Accused nevertheless persisted in his assault of the Victim. In fact, the callous manner in which the Accused regarded the Victim, as a means of satisfying his sexual gratification after his own romantic relationship ended, further highlights his culpability.[36] Further, the Accused committed the offences over a prolonged period, having persisted in his assault of the Victim for a year.[37] In fact, the only reason the Accused ceased his assaults was because he was busy with schoolwork and lacked the time to touch the Victim, as opposed to any genuine remorse or regret.[38]

44 The Accused argues that as he pleaded guilty at the earliest instance, this is a clear indication of genuine remorse and contrition.[39] Also, the Accused did not have any antecedents, and it could not be said that he is a hardened or recalcitrant offender.[40] The Accused further stresses that he had ceased his offending well before the Victim informed her school, not merely because he was busy with schoolwork but because he also experienced genuine remorse

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36 Prosecution's Written Submissions (dated 10 May 2024) ("PWS2") at para 5; citing Reformative Training Suitability Report (dated 1 April 2024) ("RTSR") at pp 6–7.

37 PWS1 at para 15(e); Prosecution's Written Submissions (dated 10 May 2024) ("PWS2") at paras 22–23.

38 PWS2 at paras 20–21.

39 PWS1 at paras 7–11.

40 AWS1 at paras 46–49.

and regret.[41] In this regard, the Accused points to the fact that he had ceased his offending two years before police investigations had begun.[42] In sum, the Accused argues that, as the cessation of his offending was attributable, at least in part, to a realisation of the errors of his ways, he does not demonstrate any persistent criminal tendencies, associated with hardened or recalcitrant offenders.

45 In ascertaining whether the Accused can be said to be hardened or recalcitrant, the overall period of his criminal activity is one relevant consideration. In this respect, there is a dispute between the parties as to the exact length of the Accused's period of offending. While the Prosecution submits that the offences spanned over a year,[43] the Accused argues that there is no clear evidence on the exact length of his offending to show that it spanned the entirety of the 12 months in 2020.[44]

46 I agree with the Accused that the phrase "over the course of the year" in the SOF is somewhat vague as to the precise timeframe of his period of offending. I note that the Accused relies on a medical report dated 28 April 2022 by Dr Shayna Siew Jia Yun of KK Women's and Children's Hospital (annexed to the SOF), reflecting the Victim's account that the Accused had ceased his assault "after 1 or 2 months in 2020".[45] The Prosecution urges the court to place limited weight on this aspect found within the medical report as the Victim has had a tendency of underreporting the severity of the sexual assault by her

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41 AWS2 at para 8.

42 AWS2 at para 11.

43 PWS2 at paras 22–23.

44 AWS2 at paras 3–4.

45 AWS2 at para 5; and Annex B of the SOF.

brothers.[46] While I am cognisant of the Prosecution's caution against relying on the Victim's account, it remains the only piece of evidence available in the SOF which aids in the interpretation of the phrase "over the course of the year". I find that this points away from an inference that the Accused's offending spanned across the entire period of 12 months. Having said that, I also cannot accept the Accused's further claim that the offences could "conceivably … all have been within the same week or within the same month".[47] In my view, in light of the specific instances highlighted in the SOF, I proceed on the basis that the Accused persisted in his offending for some time in 2020 on *at least* four occasions, but not across the entire span of 2020.

47 I move to another relevant factor, which is the Accused's reasons for stopping his assault on the Victim. Although both the Prosecution and the Accused agree that the Accused ceased his assault due in part to his schoolwork, the Accused further contends that he also did so due to genuine regret. In *Public Prosecutor v CDL* [2022] SGHC 122 (at [37]–[39]), the High Court accepted that the Accused's voluntary cessation of his sexual abuse, was indicative of his remorse and awareness of his wrongdoing. In the circumstances, I am prepared to accept the Accused's cessation of his assault as an indication of some degree of guilt and remorse. This finding is buttressed by the Accused's decision to plead guilty at the earliest opportunity.

48 In any event, even if I were to accept that the Accused was not motivated by remorse in ceasing his assault of the Victim, what is undisputed is that after 2020, the Accused did not engage in any further acts of sexual assault, and thus,

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46 PWS2 at para 26.

47 Notes of Evidence (dated 5 February 2024) at p 38 at lines 4–6.

had *voluntarily* stopped his offending behaviour. Further, as the Defence stresses, he is untraced and had no antecedents prior to the present charges. In the circumstances, I find that these matters sufficiently indicate to me the Accused's ability to exercise some degree of self-control over his own sexual desires and, more importantly, that he does not exhibit the characteristics of a hardened and recalcitrant offender.

(4) Conclusion on step 1

49 I have two brief points to touch on before I conclude my analysis on step 1 of the *Al-Ansari* framework.

50 First, I wish to address the Prosecution's claim that there was premeditation and planning by the Accused.[48] I did not place significant weight on this factor as I find that the Prosecution has overstated its case. In *Pram Nair* (at [138]), the Court of Appeal clarified that "the kind of premeditation which the law regards as aggravating an offence involves a significant degree of planning and orchestration". Here, the fact that the Accused waited for a favourable moment to assault the Victim (*ie*, after her sisters left the girls' room) appears to be more opportunistic, rather than the result of deliberate planning or orchestration.

51 Second, I note that in addition to specific deterrence for the Accused, the Prosecution submits there is also a need for enhanced general deterrence. In particular, the Prosecution highlights an 8.3% increase in the number of reported intra-familial sexual assault cases (involving victims below the age of 16 regardless of the age of the offenders) from 156 cases in 2018 to 169 cases in

[48] PWS1 at para 15(b).

2023. The Prosecution acknowledges that after sharp spikes in 2020 to 2022, there were dips in the figures from 2021 to 2023. The Prosecution submits that the spikes are likely attributable to the COVID-19 situation in Singapore where families had to spend more time at home. That said, the Prosecution argues that little weight should be given to the dips from 2021 to 2023 as the number of reported intra-familial cases has still increased when compared to pre-pandemic figures. Thus, as flexible working arrangements become more prevalent, the Prosecution submits that these figures are likely to increase, thereby carrying a need for greater general deterrence.[49]

52 I should observe that the statistics are not altogether helpful, as they do not provide a breakdown of the number of intra-familial sexual assault cases involving *young offenders*. The present issue is whether there is an upwards trend involving young offenders, so as to warrant the need for a strong signal of general deterrence to that specific demographic (thereby displacing rehabilitation as the predominant sentencing consideration). In any event, the number of intra-familial sexual assault cases (regardless of the age of the offenders) do not show a drastic sharp upward trend from 2018 to 2023, even accounting for the spikes arising from COVID-19. Therefore, it is unclear to me that the statistics provide any strong basis to support a greater need for general deterrence. Be that as it may, I should highlight that a sentence of reformative training would also serve a need for general deterrence, since it is well-acknowledged that such a sentence does carry a deterrent effect as well, especially for young offenders (*Al-Ansari* at [58]).

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[49] PWS2 at pp 12–13.

53 In summary, having considered the matters above, including the seriousness of the offending conduct and the harm to the Victim, I find that rehabilitation has not been displaced as the dominant sentencing consideration under the first stage of the *Al-Ansari* framework.

*Step 2: What is the appropriate sentence?*

54 I turn to the second stage of the *Al-Ansari* framework to determine the appropriate sentence, and address the Prosecution's position that notwithstanding a finding in favour of the Accused at the first stage, imprisonment with caning remains the appropriate punishment for the Accused.

55 First, the Prosecution argues that even if rehabilitation remains a key sentencing consideration, the court should nevertheless impose imprisonment as "rehabilitation is not incompatible with a lengthier term of imprisonment and can take place in prison".[50] Second, the Prosecution submits that imprisonment might be preferable as it will provide the Accused with a "structured environment for reform" which would facilitate his ability to gain discipline and self-control.[51]

56 As recognised in *Al-Ansari,* although a term of imprisonment "might not be said to completely ignore the rehabilitation of the offender … a term of standard imprisonment cannot be said to place the principle of rehabilitation as a dominant consideration" (at [65]). Indeed, this position was affirmed in *ASR*, where the court held that imprisonment with caning would be "precluded as a matter of principle" in instances where rehabilitation is to be given "primary

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50 PWS2 at paras 14–15.

51 PWS2 at para 14.

effect … as a sentencing consideration" (at [136]). It seems to be, therefore, that the Prosecution's first argument – that rehabilitation is not incompatible with imprisonment (as imprisonment has some rehabilitative elements) – may be misplaced. As for the second argument, a structured regime is not unique to imprisonment. Indeed, it has been recognised that reformative training enables the court to sentence a young offender "to a rehabilitative programme under a *structured environment* while avoiding the danger of exposing the young offender to the potentially unsettling influence of an adult prison environment" [emphasis added] (*Boaz Koh* at [38]). Having found that rehabilitation remains the dominant sentencing consideration in the present case, the Prosecution's arguments are not persuasive.

57 Turning to reformative training, if imposed as recommended in the RT Report, the Accused will be detained at the reformative training centre for a minimum period of 12 months to undergo a series of programmes, such as psychology-based correctional programmes, to address his criminogenic needs. At this juncture, I note that the RT Report opines the following:[52]

> [The Accused] presents with several areas of need that require intervention. These include more effective parental supervision, addressing his sexual preoccupation and management of his sexual impulses, enhancing his understanding of the boundaries of sexual behaviours, and addressing his unhelpful attitudes, which have contributed to his offending behaviours.

58 The Prosecution submits that reformative training is not suitable. Relying on matters in the RT Report, the Prosecution argues that the Accused's rehabilitative prospects are severely diminished as he has demonstrated "limited insight" into his offending conduct, shown limited ability to "assume

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52 RTSR at p 8.

responsibility" and displayed "superficial remorse" to the Victim.[53] In particular, as further reflected in the RT Report, the Accused sought to downplay his own culpability and shift the blame to the Victim by claiming that the Victim "never pulled [him] off" and "could walk off" but did not, despite the fact that she had made attempts to resist his sexual advances.[54] Moreover, the Accused also sought to downplay his culpability by claiming that "he had no knowledge of his brothers' offending behaviours" although he previously admitted to having knowledge that his two older brothers were sexually assaulting the Victim.[55] Thus, the Prosecution argues that given the Accused's lack of self-awareness and genuine remorse, this casts serious doubts on whether he can be meaningfully rehabilitated even with reformative training.[56]

59 The Prosecution also raises the fact that the Accused has presented with sexual preoccupation and difficulties in managing his sexual urges which places him at risk of future reoffending. This is especially so, since he has "no plans on how he could better manage his sexual behaviour".[57] This concern is exacerbated by the fact that the Accused lacks adequate familial support to meaningfully curb his addiction to pornography, since parental sanctions have proven ineffective in the past.[58] In support of this, the Prosecution cites the case of *Public Prosecutor v Siow Kai Yuan Terence* [2020] 4 SLR 1412 ("*Terence Siow*") (at [56] and [79]), where the High Court found that for real change to

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53 PWS2 at para 6; citing RTSR at p 7.

54 PWS2 at para 7; citing RTSR at p 8 and SOF at para 11.

55 PWS2 at para 8; citing RTSR at p 4 and SOF at para 9.

56 PWS2 at para 9.

57 PWS2 at para 10; citing RTSR at pp 7–8.

58 PWS2 at paras 11–12.

occur, the offender should demonstrate, *inter alia*, self-awareness of the wrongfulness of his actions and the availability of parental intervention and supervision. Therefore, should reformative training be imposed, upon the Accused's release after a year of reformative training, there is a high chance that he will go back to watching pornography and consequentially reoffend.

60 Conversely, the Accused points out that despite his admittedly problematic attitude and beliefs, the RT Report ultimately found him physically and mentally fit for the reformative training regime. The Accused emphasises that there are various psychology-based correctional programmes to address his criminogenic needs, in areas such as familial support, companions and recreation as well as improving his behaviour and attitude to better understand boundaries and consent in sexual behaviour. Moreover, at Level 2 intensity, the reformative training regime ensures that the Accused will not be released from the reformative training centre for a minimum of 12 months. During that period, he would be provided with targeted interventions to reduce his risk of reoffending.[59]

61 Additionally, the Accused highlights that a person sentenced to reformative training must be detained until the Reformative Training Centre Review Committee ("the Committee") releases the person under a supervision order. If the Accused is ascertained to remain a risk and not fit for release, there is a real possibility for his detention to be extended by the Committee up to a total of 54 months (including any period of supervision), as provided by ss 305(7) and 305(8) of the CPC and Regulations 4 and 5 of the Criminal Procedure Code (Reformative Training) Regulations 2018 (the "RT

[59] AWS2 at paras 57–59.

Regulations").[60] Even upon release, during the Accused's period of supervision, conditions could be imposed, as deemed necessary, including electronic monitoring and mandatory counselling, in order to ensure that he does not reoffend (see Regulation 12 of the RT Regulations).[61]

62 As a preliminary point, I consider the Prosecution's reliance on *Terence Siow*, for the proposition of the necessity of establishing an offender's self-awareness of the wrongfulness of his actions and the availability of familial support, to be flawed. In *Terence Siow* (at [56]–[57]), the High Court stressed the importance of these factors, in the context of determining whether the offender had demonstrated "an extremely strong propensity for reform". However, the test of an extremely strong propensity for reform is for determining whether an adult offender should be granted probation (*Terence Siow* at [40]). It would be wrong to require the Accused to satisfy the same elements of self-awareness and familial support to the same extent as he is a young offender, and it is not contended by any party that probation remains on the cards. *Terence Siow* is thus of little to no relevance to the present case.

63 I turn to the Prosecution's emphasis that the Accused displays a limited acceptance of responsibility for his offending conduct and limited insight into the harm he has inflicted on the Victim. He also possesses a troubling view of concepts such as consent for sexual behaviour. As the Prosecution points out, the Accused had viewed the Victim as a possible means of satisfying his sexual needs and attempted to shift the blame onto her as well as understate his knowledge of his brothers' sexual assault. While I agree with the Prosecution

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60 AWS2 at paras 60–61 and 65–67.

61 AWS2 at para 63.

that these are troubling aspects, I do not think that they justify a finding that reformative training is inappropriate. Although such problematic views are certainly reprehensible, it is precisely these sorts of views and mindsets that the reformative training programme is designed to address *via* its specifically curated psychology-based programmes that provide targeted intervention for young offenders at risk of sexual reoffending.

64 As for the Prosecution's concern about the Accused's lack of familial support, I am persuaded by the Accused's suggestion that adequate safeguards are in place. If the Accused is assessed to continue to pose a significant risk of reoffending, the Committee would be empowered to extend his detention and impose appropriate conditions under his supervision order. In my view, these measures sufficiently address any concern raised by the Prosecution about a potential lack of external support in meaningfully controlling the Accused's addiction to pornography which might lead him to reoffend.

65 I also wish to emphasise the potential corruptive influence of the prison environment on young offenders (see *Public Prosecutor v Mok Ping Wuen Maurice* [1999] 1 SLR 138 at [21]). If the Accused's pre-occupation with pornography is indeed one of his more significant risk-factors, I do not think that imposing a sentence of imprisonment would be more congruous with the objective of curbing such an addiction, as compared to the interventions and programmes available under the reformative training regime. Indeed, this point is equally applicable to all the other concerns raised by the Prosecution about the Accused's behaviour and attitudes, which would be more appropriately addressed within the reformative training regime.

66 Finally, I note that in arriving at its conclusion that reformative training was an appropriate sentence, the Court of Appeal in *ASR* also took into account the fact that the offender had already been incarcerated for almost four years and that a sentence of reformative training could not be backdated (at [159]). A similar point can be made in this case. The Accused has been in remand for more than two years and four months since 12 February 2022. This period, in my view, is sufficient specific deterrence to the Accused and serves a retributive effect. Consequently, in order to give full effect to the principle of rehabilitation, a sentence of reformative training, would be the most appropriate.

**Conclusion**

67 For the foregoing reasons, I find that reformative training is the most appropriate sentence for the Accused. Accordingly, I impose a sentence of reformative training at Level 2 intensity for a minimum period of detention of 12 months to commence from 26 June 2024.

Hoo Sheau Peng
Judge of the High Court

Muhamad Imaduddien, Lim Ying Min and M Kayal Pillay (Attorney-General's Chambers) for the Prosecution;
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