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

[2024] SGHC 186

Criminal Motion No 95 of 2023
Magistrate's Appeal No 9176 of 2023

Between

GHA

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Penal Code]
[Criminal Procedure and Sentencing — Appeal — Adducing fresh evidence]

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GHA
v
Public Prosecutor and another matter

[2024] SGHC 186

General Division of the High Court — Criminal Motion No 95 of 2023 and Magistrate's Appeal No 9176 of 2023
Vincent Hoong J
29 February 2024

22 July 2024

Vincent Hoong J:

Introduction

1 The appellant claimed trial to five charges of aggravated outrage of modesty punishable under s 354(2) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). The District Judge ("DJ") convicted him and sentenced him to 16 months' imprisonment for each charge. Three of the sentences were ordered to run consecutively for an aggregate sentence of 48 months' imprisonment.

2 The appellant filed an appeal against his conviction and sentence in respect of the five charges (the "Appeal") and a criminal motion for leave to adduce further evidence (the "Motion"). Prior to the hearing, counsel for the appellant confirmed by way of a letter to the court that they were no longer appealing against the sentence imposed.

3 I dismissed both the Motion and the Appeal. I now set out the detailed reasons for my decision.

Background

4 The appellant was the teacher-in-charge of the co-curricular activity ("CCA") for scouts and the Head of Department ("HOD") for character and citizenship education in a primary school (the "school"). The victim was a student at the primary school and a member of the scouts. The victim was 10 to 11 years old at the time of the offences.

5 In 2016, when the victim was between nine to 10 years old, he became a member of the scouts CCA. By the end of 2016, the victim was appointed as a scouts' leader by the appellant. The victim would meet the appellant either alone or with other scouts' leaders to discuss CCA matters in the appellant's workstation. The appellant's workstation was a cubicle in HOD Room 2 in the school.

6 Sometime in 2017, the victim confided in the appellant regarding his family issues. The appellant was aware that the victim's parents were divorced and that the victim had a poor relationship with his stepfather. Furthermore, the appellant had previously acted as a mediator between the victim and his mother when there were arguments at home.[1]

7 On 8 November 2018, the appellant, the victim and two of the victim's friends celebrated the victim's birthday by having dinner at a restaurant. Sometime after 8 November 2018, during a conversation between the victim and his older brother, the victim revealed that the appellant had touched his

[1] Statement of Agreed Facts ("SOAF") at [6]; Record of appeal ("ROA") at p 3497.

"bird". The victim then shared about the incidents with his uncle and mother. Following this, the victim's mother reported the incidents to the victim's form teacher.[2] On 12 November 2018, the principal of the school informed the appellant of the victim's allegations. A police report was lodged on 13 November 2018.[3]

Prosecution's case below

8 The appellant and the victim had a close relationship. The appellant would speak privately with the victim in his cubicle in HOD Room 2 for matters relating to scouts, the victim's studies and/or family circumstances. Sometime in 2017, the appellant asked the victim to be his godson and the victim agreed.

9 Based on the victim's account, he was molested by the appellant on five different occasions between November 2017 to October 2018 in cubicle 'A' of HOD Room 2 (I term this the "New Cubicle" for reasons that will become apparent shortly). These corresponded to the five charges faced by the appellant. While there were some differences in relation to the circumstances surrounding the five charges, the incidents were broadly similar: while the victim was speaking with the appellant in the appellant's cubicle, the appellant used his finger to touch the victim's penis over his shorts. Each touch lasted a few seconds. After each incident, the victim left the appellant's office feeling uncomfortable.

10 The victim did not report the offences at an earlier juncture for a variety of reasons: (a) he was afraid that the appellant would do something to him; (b) the victim was not close to his family and thought that they would not trust

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2 Exhibit PS4 at [9]; ROA at p 2448.

3 SOAF at [9] to [10]; ROA at p 3498.

him since he had lied to them previously about various matters such as having classes after school; (c) the victim was worried that his friends might spread the information and create a bad reputation for himself; and (d) the victim did not want his relationship with the appellant to sour since the latter had helped him a lot. As such, the victim tried to forget the incidents and continued to meet the appellant in HOD Room 2 as the victim still relied on the appellant for help with his CCA and his family. The victim was not able to anticipate when the appellant would touch him as there were occasions where he met the appellant alone in the office and the appellant did not molest him.

Defence's case below

11 The appellant's defence was one of bare denial. In sum, the appellant argued that:

(a) The victim had reason to falsely implicate the appellant. The victim repeatedly asked the appellant for a bicycle between August and November 2018. During the victim's birthday celebration on 8 November 2018, the victim asked once more for the bicycle and threatened to make allegations of molestation against the appellant if he did not buy him the bicycle.

(b) The appellant could not have committed the offences in respect of the first four incidents (from November 2017 to August 2018) as they allegedly occurred in the New Cubicle, while the appellant had still been seated in cubicle 'C' (the "Old Cubicle") (the "Wrong Cubicle Argument").

(c) The appellant could not have committed the offences as he had a busy schedule and was away from HOD Room 2 (the "After School Alibi").

(d) The appellant initially testified that he never met students in HOD Room 2 alone, with no other students and/or teachers around. The appellant then gave evidence that, even if there were such meetings with students, he would meet them at the common table inside of HOD Room 2 or at the entrance of HOD Room 2.

(e) The appellant's workstation was too cluttered for him to have molested the victim while the former was seated. Furthermore, the height of the cubicle partitions were so low that everyone in HOD Room 2 could see each other.

The decision below

12 The DJ found the victim to be an honest and sincere witness whose evidence was internally and externally consistent. However, there were discrepancies between the victim's account (as narrated in his conditioned statement and oral testimony in court) and Investigative Officer Saravanan's ("IO Saravanan") portrayal of the victim's account that was conveyed to the appellant during the appellant's statement recording on 14 November 2018:

The victim's evidence in his conditioned statement and in court	**IO Saravanan's portrayal of the victim's account**
The appellant, on all five occasions, used his "*finger*" to touch the victim's penis over his shorts.	The appellant, on all five occasions, used his "*fingers*" to

	touch the Victim's penis over his shorts.
The appellant, on the first four occasions, reached out to touch the victim's penis over his shorts *while seated*. The appellant had, on the 5th occasion, stood up from a seated position, hugged the victim before touching the victim's penis over his shorts.	The appellant, on all five occasions, "*got up*" from a seated position and thereafter touched the victim's penis over his shorts.
The appellant, on the 5th occasion, touched the victim's penis over his school shorts. On the other four occasions, the victim was wearing his shorts for physical education (which the victim referred to as his "PE shorts").	The appellant, on all five occasions, touched the victim's penis over his PE shorts.
No mention of hugging on the 4th occasion.	The appellant, on the 4th occasion, used his right arm to hug the victim.

13 However, the above discrepancies were not put to the victim and the Defence did not pursue an application to recall the victim as a witness despite indicating their intention to do so. In the circumstances, the DJ was satisfied with IO Saravanan's explanation that the latter had used his own words and loosely paraphrased the victim's account when drafting the questions in the

appellant's long statement. As such, the purported inconsistencies could not be attributed to the victim.

14 In contrast, the DJ took the view that the appellant had run his defence haphazardly and that his evidence lacked cogency and reliability:

(a) The allegation that the victim had a motive to falsely implicate the appellant was never put to the victim. Furthermore, this was a very belated defence that appeared for the first and only time in the case for Defence which was filed on 22 November 2021. At that point, the appellant had known about the allegations for over three years. Prior to that, he had had multiple opportunities to raise this defence but failed to do so. Moreover, the appellant's claim, that the victim had threatened to make false allegations of molest against the appellant in the presence of two other students, was clearly false. The two students, who were called as the Prosecution's witnesses, testified that there had been no such threat.

(b) Next, the Wrong Cubicle Argument was a belated defence that was first raised during the cross-examination of the victim on 14 June 2022. The appellant, prior to that point, did not mention any change of his cubicle between 2017 and 2018. In any event, the DJ rejected the Wrong Cubicle Argument as it was contradicted by the independent evidence of both the Prosecution's and Defence's own witnesses. The evidence placed the appellant as having occupied the New Cubicle from as early as 2017.

(c) The After School Alibi was also a belated defence that arose only when the appellant took the stand. In any event, the calendars, photographs and other evidence did not establish a complete alibi and

there were still pockets of time for the appellant to have committed the offences. According to the expert witness, the metadata of photographs could also be manipulated and it was not ascertainable when the tendered photographs were actually taken. The DJ was mindful that it was difficult to establish a complete alibi for every single school day, which no one would usually be expected to keep or create documentary evidence of.

(d) The appellant's claim that he would never meet students alone in HOD Room 2 was similarly refuted by the evidence of both the Prosecution's and Defence's own witnesses, who all testified to having seen students approach him in HOD Room 2 either alone, in pairs or in groups.

(e) Apart from the case for Defence, the appellant made no further mention of the arguments that his workstation was too cluttered and that the partitions were too low for him to have molested the victim without other people in the room seeing him.

15 Finally, the DJ also noted that the appellant's overall credibility was questionable in view of his conduct of the proceedings:

(a) The appellant's defences were raised belatedly and he failed to put the right questions to the relevant witnesses.

(b) The appellant steadfastly refused to answer straightforward questions, indicating a marked propensity for evasion and insincerity on the stand. The appellant also refused to acknowledge blatant discrepancies in his evidence.

(c) The appellant would fill in the gaps in his memory with supposition as to what would or could have been. His unwavering insistence on the accuracy of these flawed recollections left the DJ with considerable scepticism of the reliability of the appellant's statements.

(d) The appellant lied to the court regarding the timing that he obtained certain WhatsApp messages between the appellant's colleagues, ("PW10") and Ms J, in order to conceal the fact that he had been informing Ms J of PW10's testimony in court while PW10 was giving it. The appellant had updated Ms J of the proceedings so that Ms J could testify on certain matters to "correct all the wrongs that [PW10] had done".[4] Ms J was ultimately not called as a Defence witness.

(e) Related to (d) above, the appellant had defiantly disregarded the court's directions. Not only did the appellant contact a Prosecution's witness via email in breach of his bail conditions, but he persisted in his conduct even after receiving a warning from the court by texting the witness and leaving a gift on her doorstep. He also attempted to coordinate the evidence of *four* of the Defence's witnesses. Two of the witnesses, who were the appellant's former students, admitted to having sat through a "refresher" on 18 June 2022 where the appellant reminded them on where he had been seated.[5] The DJ thus rejected any evidence given by the appellant's former students in relation to the appellant's seat at the time of the offences. Furthermore, as soon as the first tranche of the trial began in June 2022, the appellant started sending pieces of evidence that he found to be exonerative of himself to two other

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4 Exhibit P30; ROA at p 2235.

5 Notes of Evidence ("NEs") Day 20 p 79 at lines 1 to 25; ROA at 1396.

witnesses who were his former colleagues. From June 2022 to February 2023, the appellant continued to update the two witnesses regarding the trial proceedings. The DJ found that the two witnesses' memories may have been subconsciously tainted by the months of close communication with the appellant. The full extent of the conversation between the appellant and his two former colleagues was not available as the appellant had arranged for them to delete the WhatsApp group chats in which they had discussed the evidence.

16 With respect to the sentence, the DJ found that the case fell into the lower end of band two of the sentencing framework in *GBR v PP and another appeal* [2018] 3 SLR 1048 at [31], which corresponded to a sentence of one to three years' imprisonment. The DJ determined that 14 months' imprisonment for each charge was an appropriate starting point, having regard to the following offence-specific factors:

(a) The degree of sexual exploitation: it was undisputed that the touches were fleeting with no direct skin contact.

(b) The circumstances of the offences: whether or not the appellant was the victim's godfather, the appellant, as the victim's teacher, had clearly breached his position of trust. There was no evidence of premeditation as the offending appeared to be opportunistic.

(c) Harm caused to the victim: the victim stated that he now had trust issues with teachers and had given up anything related to scouts due to the associated negative memories. However, there was no evidence of any psychiatric condition arising out of these incidents.

17 While the appellant had no prior antecedents or charges taken into consideration, his conduct of the trial was disappointing. As such, the DJ applied an uplift to the sentence and arrived at 16 months' imprisonment for each charge. The DJ declined to impose caning after considering the nature of the inappropriate touches and that there were no other aggravating acts accompanying the offences.

The Motion

18 The appellant applied to adduce two pieces of evidence ("the additional evidence") under s 392(1) of the Criminal Procedure Code 2010 ("CPC"):

(a) A WhatsApp message and two photo attachments dated 23 November 2017 from the vice principal of the school indicating the seating plans in HOD Room 2 and HOD Room 3 as of January 2018 ("AM-1").

(b) A photograph taken by the appellant dated 8 January 2018 of PW10 standing at cubicle 'F' in HOD Room 2 as late as 8 January 2018 ("AM-2").

19 To succeed in the application, the appellant needed to fulfil the three requirements set out in *Ladd v Marshall* [1954] 1 WLR 1489 and as adopted in *Sanjay Krishnan v Public Prosecutor* [2022] 2 SLR 49 ("*Sanjay Krishnan*") (at [11]). These requirements were that the additional evidence: (a) could not have been obtained with reasonable diligence for use at trial (the "non-availability" requirement); (b) would probably have an important influence on the result of the case, although it need not be decisive – in other words, it must be "material" (the "materiality" requirement); and (c) be credible, although it need not be incontrovertible (the "reliability" requirement).

20 I was of the view that these requirements were not fulfilled in the present case.

Non-availability of the additional evidence

21 According to the appellant, AM-1 was found in his old phone and AM-2 was in a hard disk. The appellant changed his phone sometime in 2021, did not back up the messages from his old phone, and then found his old phone along with a hard disk in the storeroom of his home on 30 August 2023, which was a few days after the trial verdict had been delivered.[6]

22 I found that the additional evidence could have been furnished at trial and the appellant did not provide any convincing explanation for his failure to do so (*Sanjay Krishnan* at [16] and [19]). Based on the appellant's own account, AM-1 had always been in the appellant's possession since investigations commenced on 13 November 2018. The appellant was still using his old phone from 13 November 2018 till sometime in 2021 and would have had ready access to AM-1. Furthermore, during the trial itself, the appellant produced WhatsApp messages dating back to 2016 (for example, see exhibits D1, D23, D24 and P31). The Appellant was also able to locate AM-1 on the same day or within a day of asking his mother about the whereabouts of his old phone.[7] In my view, AM-1 could have been obtained for use at the trial if the appellant had exercised reasonable diligence.

23 According to the appellant, AM-2 was a photograph taken by him on 8 January 2018. Similarly, it was undisputed that this was always in the Appellant's possession from the time investigations against him commenced.

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6 Appellant's affidavit dated 13 December 2023 at [9] to [14].

7 Appellant's affidavit dated 13 December 2023 at [12].

The appellant also failed to provide any explanation as to why or how the photograph was stored in a separate hard disk and kept away in the storeroom.

Reliability of the additional evidence

24 With respect to AM-1, the appellant asserted that it was reliable because it was on his phone. I disagreed with this reasoning. I noted that the images sent by the vice principal via WhatsApp at page 1 of AM-1 were blurred, *ie*, the images were not actually downloaded, and it was uncertain if the images truly reflected the updated seating plans of HOD Room 2 and 3 that were provided at pages 2 and 3 of AM-1. Furthermore, there was no indication that these were the seating plans *as of January 2018*. There was no mention of when the updated seating plans were to take effect, and whether there were any subsequent changes to the seating plans. Indeed, there was no mention of the date "January 2018" in AM-1 at all. In any event, it was doubtful that the attached seating plan in AM-1 represented the actual seating plan as of January 2018. In AM-1, one of the appellant's former colleagues ("PW12") was indicated to be seated at cubicle 'F'. However, PW12 only joined the primary school in June 2018.[8]

25 AM-2 was also similarly unreliable. Not only was it unclear which specific cubicle was pictured in AM-2, it was also uncertain if the photograph was actually taken on 8 January 2018, *ie*, whether the date of the file, "8 January 2018", referred to the date that the photograph was taken or the date that the photograph was uploaded onto the hard disk. It was also unclear whether such information was susceptible to manipulation. The appellant further argued that AM-2 was credible since PW10 could be cross-examined on the new material.

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8 NEs Day 9 p 74 at lines 1 to 3; ROA at 657.

However, the fact that PW10 *could* be cross examined on the additional evidence did not lend actual credibility to AM-2.

26 Curiously, even taking the appellant's account at its highest, *ie*, that AM-1 represented the seating plan of the offices as of January 2018 and AM-2 showed that PW10 was occupying the New Cubicle as late as 8 January 2018, the fact remained that AM-1 and AM-2 were inconsistent with each other regarding the identity of the occupant of cubicle 'F' of HOD Room 2. AM-1 showed that PW12 was seated at cubicle 'F' as of January 2018. At the same time, AM-2 showed that PW10 was occupying cubicle 'F' as late as 8 January 2018.

Relevance of the additional evidence

27 Given that the additional evidence was not reliable, it followed that it could not have any material influence on the outcome of the case even if the evidence had been taken into account. Nonetheless, even taking the additional evidence at its highest, it was unlikely to have an important influence on the case:

(a) According to the appellant, AM-1 revealed that he was seated at the Old Cubicle as of January 2018. However, the New Cubicle was indicated as 'vacant' and it remained open for the appellant to have moved into the New Cubicle. The appellant himself had testified that he did not have to seek permission to switch cubicles within HOD Room 2 and that he had started shifting his belongings into the New Cubicle before informing anyone.[9] As such, AM-1 did not materially contribute to the Wrong Cubicle Argument.

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9 NEs Day 13 p 15 at lines 24 to 28 and p 16 at lines 3 to 19; ROA at pp 899 to 900.

(b) With respect to AM-2, the fact that PW10 was holding a birthday cake and standing at a cubicle did not mean, by itself, that PW10 was the occupant of the pictured cubicle. Even if it was accepted that AM-2 was evidence of PW10 still occupying cubicle 'F' as late as 8 January 2018, this did not mean that her recollection of the appellant "straddling" both the Old Cubicle and the New Cubicle during the school time of term four of 2017 (between September 2017 to the middle of November 2017) was wrong.[10] Moreover, PW10's evidence that the appellant had occupied the New Cubicle from as early as 2017 was corroborated by other witnesses.[11]

Disproportionality of allowing the Motion

28 Based on the appellant's failure to satisfy the three conditions of non-availability, reliability and relevancy, I dismissed the Motion. As such, there was no need for me to make any finding regarding the implications and likely consequences of allowing the Motion (*PP v Mohd Ariffan bin Mohd Hassan* [2018] 1 SLR 544 ("*Mohd Ariffan*") at [72]). However, if I had to make a finding, I would have found that it was disproportionate to allow the Motion.

29 As comprehensively chronicled by the DJ, and summarised at [15] above, the appellant's conduct of the trial was sorely disappointing.[12] In particular, the appellant drip-fed evidence, and raised multiple defences belatedly despite their apparent centrality to his case. His disrespect for procedure was also aggravated by his stubborn attempts at contacting and

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10 NEs Day 9 p 12 at lines 12 to 16 and p 24 at lines 22 to 24; ROA at pp 595 and 607.

11 GD at [367]; ROA at p 2050.

12 GD at [373] to [383]; ROA at pp 2054 to 2059.

coordinating the evidence of witnesses despite clear indications to not do so.[13] As held by the Court of Appeal, accused persons do themselves a disservice by adopting such a drip-feed approach to their defence; they should and are expected to put their best case forward at the earliest time possible (*Iskandar bin Rahmat v PP and other matter*s [2017] 1 SLR 505 at [67]). Indeed, the court retained the discretion to reject such drip-feed applications. In the present case, I also noted that the appellant filed no less than 11 notices under s 231 of the CPC to disclose 55 exhibits and 13 witnesses that were not disclosed in the case for Defence. These notices were served on the Prosecution either at the eve of trial or during the trial itself, despite the fact that all of the exhibits had been in the appellant's possession for years before the commencement of the first tranche of trial.[14] Similarly, the additional evidence that the appellant sought to adduce in the present Motion had always been in his possession, and no convincing reason was provided as to why they were not adduced earlier. As such, I agreed with the Prosecution that the Motion was a clear continuation of the appellant's drip-feeding tactics.

The Appeal

30 The appellant's case on appeal could be summarised into three main arguments:

(a) The discrepancy between the victim's account of events and IO Saravanan's portrayal of the victim's account amounted to a reasonable doubt in the Prosecution's case. Relatedly, in light of the above discrepancy, the Prosecution's failure to disclose the

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13 GD at [398]; ROA at pp 2068 to 2069.

14 Prosecution's written submissions for the Motion dated 15 February 2024 at [33] to [34].

victim's prior statements was a breach of their disclosure obligations.

(b) The DJ wrongly rejected the Wrong Cubicle Argument.

(c) The victim's inability to remember the exact dates on which the alleged molests occurred raised a reasonable doubt as to the Prosecution's case. Relatedly, the Defence was severely handicapped by the fact that the charges do not mention specific dates and times but were framed in terms of a range of dates.

The discrepancy between the victim's account and the IO's portrayal of the victim's account of events

31 The appellant rehashed the same argument on appeal as he did in the court below that there were discrepancies between the victim's account and IO Saravanan's portrayal of the victim's account that were conveyed to the appellant during the appellant's statement recording (see [12] above for a summary of the differences between the two accounts). As the DJ correctly observed, IO Saravanan admitted that he had used his own words when summarising the victim's account to the appellant when formulating questions for the appellant's long statement. As such, the purported inconsistencies could not be attributed to the victim. However, the appellant went on to argue that "[a]lthough the IO clarified that he may have paraphrased what the [victim] told him, it did raise an issue and the best course would have been to examine the [victim's] statements".[15] The appellant essentially submitted that the Prosecution should have disclosed the victim's statements once they were aware of these discrepancies. According to the appellant, the Prosecution had breached

[15] Appellant's written submissions for the Appeal dated 15 February 2024 at [22].

their disclosure obligations as set out in *Muhammad bin Kadar and another v PP* [2011] 3 SLR 1205 ("*Kadar*").

32 I disagreed with the appellant. The court in *Kadar* set out the materials that the Prosecution must disclose to the Defence, but these did not include material which was neutral or adverse to the accused. It only included material that tended to undermine the Prosecution's case or strengthen the Defence's case (*Kadar* at [113]). As the Prosecution rightly pointed out, the questions in the appellant's long statement had been prepared and produced by IO Saravanan and *not* the victim. The victim had no control or knowledge as to how his account would be portrayed by the IO when the latter was questioning the appellant. The IO had also conceded that he used his own words when formulating the questions to the appellant.[16] Moreover, the victim's own account of events remained internally and externally consistent in the court below.[17] The inconsistencies between the victim's account and a portrayal of the victim's account which was not prepared by the victim and not entirely based on the information provided by the victim were not sufficient to bring the victim's statements into the two categories set out in *Kadar* at [113] (also see *PP v BNO* [2018] SGHC 243 at [76]).

33 It was also noteworthy that counsel for the appellant at the trial below indicated his intention to recall the victim to explain the discrepancy between the IO's portrayal of the victim's account and the victim's actual account of events, but ultimately made no such application to do so. There was also no application by the Defence for the victim's statements to be disclosed. In fact, there was no further mention by the Defence of these discrepancies in the

16 NEs Day 7 p 50 at lines 1 to 3 and lines 28 to 29; ROA at p 523.

17 GD at [350] to [359]; ROA at pp 2033 to 2045.

proceedings until the present appeal. This issue was absent from the Defence's submissions at the close of trial and in the petition of appeal filed by the appellant. Essentially, up until the filing of written submissions for the present appeal, there was no indication that the Defence itself saw the victim's statements as material that tended to undermine the Prosecution's case or strengthen the Defence's case. As an aside, pursuant to s 378(6) of the CPC, it was improper for the appellant to raise this argument at the appeal without having previously canvassed it in the petition of appeal, or seeking permission to rely on this ground for the appeal. Nonetheless, I dismissed the point on its merits.

The Wrong Cubicle Argument

34 The appellant argued that the DJ wrongly rejected the appellant's colleague's ("DW9") evidence when dismissing the Wrong Cubicle Argument. DW9 had occupied the New Cubicle, which was in HOD Room 2, before the appellant. Sometime in 2017, DW9 moved from HOD Room 2 to HOD Room 3, leaving the New Cubicle vacant. According to the appellant, DW9's move out of HOD Room 2 could have only happened after 12 December 2017, since the renovation of HOD Room 3 was between 20 November 2017 to 12 December 2017. As such, DW9's evidence supported the appellant's claim that the appellant could only have moved into the New Cubicle at a point in time after 12 December 2017. However, when DW9 was prompted with PW10's evidence that he had moved from HOD Room 2 into HOD Room 3 sometime from September 2017 but before the school holidays, DW9 accepted that this was a possibility. DW9 conceded that he was unsure as to the exact timing of when he had moved out of HOD Room 2.

35 The appellant asserted that, even though DW9 was unable to remember precisely, DW9's evidence raised a reasonable doubt that the appellant was occupying the Old Cubicle instead of the New Cubicle in November 2017. There was no further explanation by the appellant. In the circumstances, I saw no reason to disturb the DJ's findings regarding the Wrong Cubicle Argument. As the DJ correctly observed, there was no merit to the Wrong Cubicle Argument as not only did DW9 concede the possibility that he had moved out of the New Cubicle before December 2017, but multiple other witnesses also testified to the fact that the appellant was occupying the New Cubicle by the end of 2017.[18]

36 The appellant also submitted that the DJ wrongly held that the Wrong Cubicle Argument was raised belatedly. I saw no reason to delve into this point since it was clear that the DJ had rejected the Wrong Cubicle Argument on its merits, rather than on any finding of its belatedness.[19] In any event, I agreed that the Wrong Cubicle Argument was raised at a late juncture, despite its centrality in the appellant's case. As noted by the DJ, the Wrong Cubicle Argument was raised for the first time during cross-examination of the victim, despite the fact that the Prosecution had given sufficient notice of their case which referenced the appellant's cubicle and it was clear that they were referring to the New Cubicle.[20]

The dates of the five incidents

37 I then turned to consider the final issue concerning the dates of the five charges. The appellant argued that the victim was inconsistent as to the date of

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18 DJ's grounds of decision ("GD") at [367]; ROA at p 2050.

19 GD at [367]; ROA at p 2050.

20 GD at [366]; ROA at pp 2049 to 2050.

the incident in respect of the 5th charge. The First Information Report ("FIR") indicated the "Date/Time of Incident" as "10/10/2018" (which presumably meant that the incident in respect of the 5th charge had taken place on 10 October 2018). However, the 5th charge was initially framed such that the date of incident was on 11 October 2018.[21] The charge was eventually amended to "sometime in October 2018".[22] Relatedly, the Appellant also argued that the Defence was severely handicapped by the fact that the victim did not identify the specific dates that the incidents allegedly occurred.

38 I disagreed with the appellant's reasoning. The discrepancy of whether the 5th charge occurred on 10 October 2018 or 11 October 2018 was not a material one in view of the four to five years that elapsed between the incidents and the trial. It was reasonable for the victim to have difficulty recalling the specific dates and this did not necessarily mean that the charges were not proven (*Tay Wee Kiat and another v PP and another appeal* [2018] 4 SLR 1315 at [32]). Moreover, although the victim testified that he was unable to remember precisely which day in October 2018 the incident in respect of the 5th charge occurred, he maintained that it was "near the PSLE period" ("PSLE" referred to the primary school leaving examinations).[23] During the trial, the victim was not asked to elaborate on what he meant by "near" or "PSLE period". The appellant then interpreted "PSLE period" as referring to 1 to 3 October 2018, with the result that 10 October 2018 was not "near" the period.[24] However, given the ambiguity of the phrase "near the PSLE period", the DJ correctly declined to find any inconsistency in the victim's words.

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21 Appellant's cautioned statement recorded on 8 July 2021; ROA at p 2188.

22 Charge sheet DAC-913077-2021; ROA at p 12.

23 NEs Day 1 p 65 at lines 10 to 16; ROA 88.

24 NEs Day 11 p 55 at lines 1 to 7; ROA at p 817.

39 Next, it is not uncommon for charges to be framed in terms of a broad range of dates (*Tay Wee Kiat* at [32]). In my view, the particulars of the charge satisfied s 124(1) of the CPC in that they were reasonably sufficient to give the appellant notice of the matter with which he was charged. Each charge was framed in terms of a specific month and year. The Appellant offered no convincing explanation as to why or how the Defence was "severely handicapped" as a result of the manner in which the charge was framed. In any event, I was unable to accept the argument that the Defence was disadvantaged on the sole basis that the charges were framed in a broad range of dates. Such an argument, if valid, would mean that very few cases of sexual abuse against young victims would proceed to trial (*PP v DU* [2004] SGHC 238 ("*DU*") at [22]), since a young victim's concept of time may be less reliable (*DU* at [22] and *PP v BZT* [2022] SGHC 91 at [231]). In this regard, there may be occasions where young victims would be unable to recall the specific time and date of the offence if they did not mention the incident till much later, whether it be out of fear, ignorance or some other reason (*DU* at [21]).

40 As such, I dismissed the appeal against conviction.

The appeal against sentence was discontinued

41 Based on the petition of appeal, the appellant intended to appeal against his conviction and sentence. However, the appellant did not file any written submissions in relation to the appeal against sentence. Subsequently, upon a request for clarification from the court, counsel for the appellant confirmed by way of a letter that they were not appealing against the sentence imposed. In any event, I agreed with the DJ's reasoning in respect of the sentence imposed and would have found that the appellant's sentence was not manifestly excessive or inadequate.

Conclusion

42 For the above reasons, I dismissed the criminal motion to adduce fresh evidence and the appeal against conviction.

Vincent Hoong
Judge of the High Court

Ramesh Tiwary (Ramesh Tiwary Advocates & Solicitors) for the appellant;
Lim Ying Min and Gladys Lim (Attorney-General's Chambers) for the respondent.