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

[2024] SGHC 73

Criminal Case No 64 of 2018

Between

Public Prosecutor

And

Mark Kalaivanan s/o
Tamilarasan

GROUNDS OF DECISION

[Criminal Law — Offences — Sexual offences]
[Criminal Law — Offences — House-trespass]
[Criminal Law — Offences — Personating a public servant]
[Criminal Procedure and Sentencing — Sentencing— Preventive detention]

TABLE OF CONTENTS

Public Prosecutor
v
Mark Kalaivanan s/o Tamilarasan

[2024] SGHC 73

General Division of the High Court — Criminal Case No 64 of 2018
Pang Khang Chau J
9–10, 14–16 January 2020, 16 March 2020, 4, 8–9 June 2020, 19 June 2020, 20 July 2020, 12, 13, 19, 21 August 2020, 20–23 October 2020, 25–24 November 2020, 1 December 2020, 14 March 2022, 19 September 2022, 16 February 2023, 7 August 2023

15 March 2024

Pang Khang Chau J:

Introduction

1 The accused, Mark Kalaivanan s/o Tamilarasan ("the Accused") claimed trial to the following four charges:

(a) one charge of aggravated sexual assault by penetration punishable under s 376(4)(a)(ii) of the Penal Code (Cap 244, 2008 Rev Ed) (the "Penal Code") ("First Charge");

(b) one charge of house-trespass in order to commit the offence of sexual assault punishable under s 448 of the Penal Code ("Second Charge");

(c) one charge of outrage of modesty punishable under s 354(1) of the Penal Code ("Third Charge"); and

(d) one charge of personating a public officer punishable under s 170 of the Penal Code ("Fourth Charge").

2 I convicted the Accused on all four charges and sentenced him to 18 years' preventive detention and 12 strokes of the cane. The Accused has appealed against my decision.

The parties

3 The Accused is a Singaporean male. At the time of the offences, he was 38 years old and employed as a contract worker at Jurong Fishery Port.

4 The victim is an Indonesian female who was working as a domestic helper. She was 30 years old at the time of the offences. As there is a gag order in place to protect her identity from disclosure, I shall refer to her simply as "the Victim" in these grounds. For the same reason, I shall refer to her employer at the material time simply as "FM"[1] and the place they were residing in as either the "9th Floor Flat" or simply "the Flat".

5 The first information report was made by the Victim's upstairs neighbour after his domestic helper informed him that she had heard the Victim's cries for help. For the purpose of protecting the Victim's identity, I

[1] PW15.

shall refer to this neighbour as "TNK"[2], to his domestic helper as "SL"[3] and to the place they were residing in as the "10th Floor Flat".

Facts

6 According to the Statement of Agreed Facts jointly tendered by the Prosecution and the Defence pursuant to s 267 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (the "CPC"), the following facts are undisputed:

(a) On 15 July 2017, sometime before 3.46pm, there was a sexual encounter between the Accused and the Victim in the toilet of the Flat during which the Accused penetrated the Victim's mouth with his penis. (The significance of 3.46pm is that it was the time at which TNK made the first information report.)

(b) At about 4.10pm, two police officers, PW25 Station Inspector Sanjit Singh Bal s/o Manjit Singh ("SI Sanjit") and PW24 Senior Staff Sergeant Tay Wei Siang ("SSSgt Tay") responded to TNK's first information report by meeting TNK and proceeding to the Flat together with TNK. The metal gate of the Flat was open and the wooden door was closed but not locked.

(c) As the two officers entered the Flat, the Victim came running into the living room and towards the two officers. The Accused emerged into the living room after her. He was naked and holding his clothes in his hands. The Accused was subsequently arrested by the two officers.

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2 PW14.

3 PW13.

(d) Earlier in the day, the Accused's movement was captured on various police cameras ("POLCAMs") as follows:

(i) At about 3.12pm, the Accused was seen waiting for a lift *alone* at Block 29 Marine Crescent, and taking the lift to the 12th floor.

(ii) At about 3.23pm, the Accused was seen walking down a flight of stairs *alone* from the second floor to the ground floor of Block 29 Marine Terrace.

(iii) At about 3.26pm, the Accused was seen taking a lift *alone* from the ground floor to the 15th floor of Block 18 Marine Terrace (*ie*, the block in which the Flat was located).

(e) From 1.00pm to 4.00pm, the footages of the POLCAMs located at *all* the ground floor lift lobbies and ground floor staircase landings of Block 18 Marine Terrace ("Block 18") did *not* capture any images of the Victim.

(f) After the Accused's arrest, blood and urine samples were taken from him at 11.36pm. The blood sample was found to contain 47mg/100ml of alcohol while the urine sample was found to contain 92mg/100ml of alcohol.

The Prosecution's case

7 The Prosecution led evidence from SL that, at about 3:30pm on 15 July 2017, while she was sleeping in her bedroom in the 10th Floor Flat, a person tried to open her bedroom window from the corridor outside the 10th Floor Flat.[4]

[4] Notes of evidence ("NE") 14 Jan 2020, at p26, ln 19–21.

In court, SL identified this person as the Accused.[5] The Accused told SL that he was an immigration officer and he wanted to check her passport and work permit.[6] SL alerted TNK, who went to the gate of the 10th Floor Flat to speak to the Accused.[7] The Accused tried unsuccessfully to open the gate as it was locked.[8] TNK did not believe that the Accused was an immigration officer, and asked the Accused for his identification. The Accused did not produce any, and TNK asked SL to ignore the Accused.[9]

8 The Accused then went down one flight of stairs to the Flat.[10] The Accused let himself into the Flat as the front door of the Flat was not locked.[11] At this time the Victim was ironing clothes in her bedroom (which was located behind the kitchen). FM was not at home then.[12] The only other person in the Flat was FM's bedridden mother, who was resting in her own bedroom in a different part of the Flat.[13] FM gave evidence that her mother was not able to communicate with others, in the sense that she could hear but could not speak.[14]

9 The Accused suddenly appeared beside the Victim, identified himself as a police officer and asked for the Victim's passport, work permit and money.[15]

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5 NE 14 Jan 2020, at p 26, ln 31–p 27, ln 8.

6 NE 14 Jan 2020, at p 26, ln 22–28.

7 NE 14 Jan 2020, at p 27, ln 13–21; p 54, ln 8–24..

8 NE 14 Jan 2020, at p 27, ln 21–22.

9 NE 14 Jan 2020, at p 56, ln 10–30.

10 Prosecution's Closing Submission ("PCS") at para 10.

11 PCS at para 11.

12 NE 9 Jan 2020, at p 34, ln 19–31.

13 NE 9 Jan 2020, at p 35, ln 2.

14 NE 14 Jan 2020, at p 80, ln 4–7.

15 NE 9 Jan 2020, at p 35, ln 10–-p 36, ln 12.

The Victim tried calling FM using her handphone but the Accused snatched the handphone away.[16] The Accused told the Victim to face the wall, and proceeded to grab her left breast and touch her right thigh while standing behind her.[17] She pushed his hand away, and asked him to stop.[18] The Accused threatened to hit her by showing his fist to her.[19] She then started shouting for help.[20] The Accused next pulled the Victim into the toilet located in the kitchen.[21] When in the toilet, the Victim continued shouting for help in the direction of the toilet window.[22] The Accused closed the toilet window and told the Victim to keep quiet and sit on the toilet bowl.[23] When she refused, he threatened her with his fist again.[24] The Accused instructed the Victim to remove her clothes but she refused to do so.[25] The Accused then instructed the Victim to close her eyes and open her mouth, and she complied out of fear.[26] The Accused then inserted his penis into her mouth.[27] The Victim testified that she did not consent to this.[28]

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16 NE 9 Jan 2020, at p 36, ln 26–p 37, ln 1.

17 NE 9 Jan 2020, at p 37, ln 3–p 39, ln 14.

18 NE 9 Jan 2020, at p 39, ln 16–25.

19 NE 9 Jan 2020, at p 39, ln 16–17; 26–31.

20 NE 9 Jan 2020, at p 40, ln 13–15.

21 NE 9 Jan 2020, at p 40, ln 26.

22 NE 9 Jan 2020, at p 41, ln 10–12.

23 NE 9 Jan 2020, at p 41, ln 25–29.

24 NE 9 Jan 2020, at p 41, ln 27–p 42, ln 14.

25 NE 9 Jan 2020, at p 42, ln 17.

26 NE 9 Jan 2020, at p 43, ln 26–27.

27 NE 9 Jan 2020, at p 44, ln 16–27.

28 NE 9 Jan 2020, at p 44, ln 28–30.

10 The Victim's shouts for help were heard by SL.[29] SL gave evidence that the shouts were very loud, that she could discern the shouts as coming from the direction of the kitchen of the 9th Floor Flat, and that she recognised that it was the Victim's voice.[30] SL alerted TNK, who decided to go downstairs to ascertain the source of the shouting.[31] While he was standing outside the Flat, he could hear the shouts coming from inside the Flat.[32] TNK then called the police and waited at the staircase landing for the police to arrive.[33] The content of TNK's first information report was "This domestic worker is shouting for help for almost 10 minutes".[34]

11 When SI Sanjit and SSSgt Tay arrived at the Flat, SI Sanjit pushed open the door of the Flat and said "Hello" a couple of times.[35] He then knocked on the door frame and shouted "Police".[36] As SI Sanjit entered the Flat, the Victim ran out of the kitchen towards the two officers while shouting "*Tolong. Tolong!*" ("Help, help!").[37] The Accused also ran out of the kitchen soon after.[38] He tried to push past the two officers towards the front door of the Flat but was stopped

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29 NE 14 Jan 2020, at p 28, ln 29–30.

30 NE 14 Jan 2020, at p 29, ln 3–4; 20–31.

31 NE 14 Jan 2020, at p 58, ln 6–22.

32 NE 14 Jan 2020, at p 58, ln 30–p 59, ln 5.

33 NE 14 Jan 2020, at p 59, ln 7–28.

34 P68.

35 P65 at timestamp 16:10:07; P62 at s/n 10.

36 P65 at timestamp 16:10:23; P62 at s/n 13.

37 NE 16 Mar 2020, at p 37, ln 11–18.

38 NE 16 Mar 2020, at p 37, ln 20–25.

by the officers from leaving.[39] In his attempt to escape, the Accused repeatedly told the two police officers that he too was an enforcement officer.[40]

The Defence's case

12 The Accused's version of events evolved and shifted as the case proceeded. What I set out in this section is the final version of the Accused's account, as summarised in the Defence's written closing submissions ("Defence's Closing Submissions").

13 On the evening of 14 July 2017 (*ie*, the day before the alleged offences), the Accused attended a birthday celebration at a friend's home at Block 16 Marine Terrace.[41] After the birthday party, the Accused and a few friends sat at the staircase landing outside the friend's home, and chatted and drank till about 5:00am or 5:30am, when they adjourned to a nearby coffee shop.[42] After spending about two to three hours at the coffee shop, one of the Accused's friends suggested buying a bottle of liquor and continuing their drinking session at the void deck of a nearby block of flats.[43] They spent about four to five hours at the said void deck, drinking, chatting and singing.[44] Sometime between 12.00pm and 1.00pm, several police officers approached the group and advised them to keep their volume down as complaints had been received about the noise level.[45]

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39 NE 16 Mar 2020, at p 37, ln 28–p 38, ln 19.

40 NE 16 Mar 2020, at p 43, ln 713; p 48, ln 20–23.

41 Defence's Closing Submissions ("DCS") at para 147.

42 NE 19 June 2020, at p 16, ln 9–p 17, ln 15.

43 NE 19 Jun 2020, at p 17, ln 24–p 18, ln 3.

44 NE 19 Jun 2020, at p 18, ln 4–8.

45 DCS at para 148.

14 Subsequently, the Accused had an argument with one of his friends. He decided to leave the group to walk around and cool down.[46] When he was walking back with the intention of rejoining the group, he saw some police officers checking his friends. He decided to walk away as he did not want to be screened by the police officers. He then decided to go up one of the nearby blocks of flats and come down later so that he could kill some time while waiting for the police officers to leave.[47] As he came down that block of flats and walked back towards the group again, he noticed that the police officers were still there. He therefore decided to walk on, and ended up at Block 18.[48]

15 The Accused took the lift up Block 18. He could not remember on which floor he exited the lift. According to the Accused, while heading towards the staircase at the other end of the corridor with the intention of walking down the stairs to the ground floor, the Victim approached him and spoke to him. After a while, the Accused realised that he had met the Victim before in clubs located in Orchard Towers.[49] The Accused first met the Victim in July or August 2016, and the two of them had previously gone to a hotel to have consensual sex once.[50]

16 Returning to the Accused's narrative concerning the events of 15 July 2017, after the Accused and the Victim ran into each other along the corridors of Block 18, the Victim asked the Accused "What happened? Why are you here?" The Accused explained that he was drinking with friends but decided to

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46 DCS at para 149.

47 DCS at para 150.

48 DCS at para 151.

49 DCS at paras 151–152.

50 DCS at paras 153–154.

come upstairs because the police were downstairs. They then engaged in a casual conversation, during which the Victim asked the Accused if he could sponsor a "special pass" for her from the Ministry of Manpower, as her relationship with her employer was not good. The Accused responded that he did not know about the special pass, and would need to check on the matter. The Victim then said "You help me, I help you". According to the Accused, he initially did not understand what the Victim meant. However, after she repeated the expression a few times, he realised that the Victim was offering to be intimate with him in return for his help.[51]

17 The Victim then held the Accused's hands and brought him down the staircase. They passed the 10th Floor Flat on the way, and the Victim stopped outside the 10th Floor Flat to speak to SL, with the Accused standing beside the Victim. As the conversation between the Victim and SL went on, a lady whom the Accused described variously as a "Chinse elderly lady" or "Chinese aunty" came from inside the 10th Floor Flat to the front door and asked why the Accused was speaking to her domestic helper. The Accused explained that it was the Victim, and not him who was speaking to SL. As the Victim and the Accused were leaving, a younger man whom the Accused subsequently identified in court as TNK also came to the front door and asked him "why are you talking to my maid?".[52]

18 The Victim then led the Accused to the 9th Floor Flat. After entering the Flat, the Victim brought the Accused to her bedroom, where she repeated the "you help me, I help you" request while standing very close to him. She even placed her hand on his waist. She then held the Accused by his hand and brought

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51 DCS at para 156–158.

52 DCS at paras 159–162.

him to the toilet. After entering the toilet, she started to kiss him and remove his T-shirt and his shorts. She next sat on the toilet bowl, removed her own T-shirt, pulled down the Accused's underwear and performed fellatio on him.[53]

19 At some point, the Victim said "*ada orang datang*" ("someone had arrived") and started to put on her clothes hastily, looking afraid. The Accused looked out of the toilet and told the Victim that he saw police officers. She then started shouting, stood up and rushed out of the toilet. This left the Accused in a state of shock and confusion. He could not understand why the Victim was shouting for help. Panick-stricken, the Accused attempted to leave the Flat, but was stopped by the police officers from leaving.[54]

The parties' submissions

20 The Prosecution submitted that the Victim was an unusually convincing witness. Her evidence was detailed and internally consistent. Her evidence that she had been shouting for help was corroborated by the testimony of SL, TNK, SI Sanjit and SSGT Tay. The account given by the Victim in court was largely consistent with the account she gave to the female police officer, PW 28 Sergeant Sia Wan Xin ("SGT Sia") less than an hour after the offence, to PW16 Dr Ee Tat Xin ("Dr Ee") at KK Women's and Children's Hospital ("KKH") later the same day and to PW23 Dr Nisha Chandwani ("Dr Nisha") of the Institute of Mental Health ("IMH") about two months later. Dr Ee also found fresh scratch marks on the Victim's neck which were consistent with the Victim's account that the Accused had restrained her by the neck.

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53 DCS at paras 163–169.

54 DCS at paras 170–172.

21 As for the Accused's version of events, the Prosecution submitted that the Accused's claim of having met the Victim before 15 July 2017 was an afterthought, as he mentioned this only for the first time about half a year after his arrest, in his *fourth* police statement. Further, his evidence concerning when he first met the Victim and when he had consensual sex with her in a hotel was internally inconsistent. As for the events of 15 July 2017, the Accused's claim to have been brought to the 9th Floor Flat by the Victim and to have met SL, TNK and the "Chinese aunty" at the 10th Floor Flat when he was together with the Victim was contradicted by the testimony of SL, TNK and TNK's mother. SL and TNK gave evidence that they did not see the Victim with the Accused. SL, TNK and TNK's mother all gave evidence that TNK's mother was not at home at the material time, and there was no one else staying at the 10th Floor Flat who would match the Accused's description of the "Chinese aunty". The Accused's claim that the Victim began shouting only after the police officers had entered the Flat was contradicted by the testimony of SL, TNK, SI Sanjit and SSGT Tay. Finally, the Prosecution submitted that an adverse inference should be drawn against the Accused pursuant to s 221(*b*) of the CPC as the case put forth by the Defence at trial was inconsistent with the Case for the Defence filed pursuant to s 215 of the CPC.

22 The Defence submitted that there were reasonable doubts over the veracity of the Victim's evidence. The Defence pointed out that, if the Victim was indeed fearful of the Accused, there were opportunities for her to run away but she did not do so. This suggested that she was in fact comfortable in the Accused's presence. Some of the answers which the Victim gave to SGT Sia suggested that the Victim performed fellatio on the Accused voluntarily. The presence of the Victim's DNA on the outside of the Accused's underwear also suggested that the Victim touched the Accused's underwear voluntarily. The

Defence also pointed out that, based on the video footage from the police officers' body-worn camera, there was a 21-second interval between SI Sanjit shouting "hello, hello" outside the Flat and the Victim running out of the toilet. This interval was more consistent with the Accused's evidence that the Victim had voluntarily taken off her T-shirt earlier and therefore needed some time to put it back on before exiting the toilet. The Defence next submitted that the Accused could not have let himself into the Flat since FM had testified that she always instructed the Victim to lock the door. The Defence further submitted that the Victim's claim that she had been shouting for help prior to the arrival of the police officers was not believable. This was because the Accused was aware that the Victim was not alone in the Flat and there was an elderly lady resting in one of the bedrooms. Had the Victim been shouting for help, the Accused would have panicked and quickly left the Flat knowing that there was another person in the Flat who would have heard the Victim's shouts. Finally, the Defence also relied on certain perceived inconsistencies in the Victim's evidence concerning when and for what reasons she would leave the Flat for the purpose of inferring that it was possible for the Victim to have met the Accused before.

Overview of applicable legal principles

23 As the present case concerned sexual offences, I warned myself that the uncorroborated testimony of a complainant may constitute proof beyond reasonable doubt *only* when it is so "unusually convincing" as to overcome any doubts that might arise from the lack of corroboration (see *AOF v PP* [2012] 3 SLR 34 ("*AOF*") at [111]). A complainant's testimony would be considered unusually convincing if the testimony "when weighed against the overall backdrop of the available facts and circumstances, contains that ring of truth which leaves the court satisfied that no reasonable doubt exists in favour of the

accused" (*PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 ("*Mohammed Liton*") at [39]). The "relevant considerations in determining whether a witness is unusually convincing are his or her demeanour and the internal and external consistencies found in the witness' testimony" (*Haliffie bin Mamat v PP and other appeals* [2016] 5 SLR 636 ("*Haliffie*") at [28], citing *AOF* at [115]). The requirement that the complainant's evidence should be "unusually convincing" does not change the ultimate rule that the Prosecution must prove its case beyond a reasonable doubt, but it sets the threshold for preferring the complainant's testimony over the accused's evidence where there is no other evidence and it boils down to one person's word against another's (*XP v PP* [2008] 4 SLR(R) 686 at [31] and [34]).

24 Where the complainant's evidence is not unusually convincing, an accused's conviction is unsafe unless there is some corroboration of the complainant's story (*Haliffie* at [30], citing *AOF* at [173]). The approach to corroborative evidence is a "liberal" one. To determine whether a piece of evidence can amount to corroboration, the court looks at "the substance as well as the relevance of the evidence, and whether it is supportive or confirmative of the weak evidence which it is meant to corroborate" (*Mohammed Liton* at [43]). But such "liberal corroboration" is nevertheless subject to certain "inherent conceptual constraints" (*AOF* at [175]). Under s 159 of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act"), former statements may corroborate later testimony as to the same fact but this is only if the former statements were made "at or about the time when the fact took place, or before any authority legally competent to investigate the fact".

25 Next, as these are criminal proceedings, the Prosecution bears the burden of proving its case beyond reasonable doubt. The principle of proof beyond reasonable doubt is grounded in the presumption of innocence. In a

passage affirmed by the Court of Appeal in *AOF v Public Prosecutor* [2012] 3 SLR 34 (at [315]), V K Rajah J (as he then was) observed in *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 ("*Jagatheesan*") (at [59]):

> It cannot be assumed that an individual is guilty by mere dint of the fact that he has been accused of an offence, unless and until the Prosecution adduces sufficient evidence to displace this presumption of innocence. *That threshold below which society will not condone a conviction or allow for the presumption of innocence to be displaced* is the line between reasonable doubt and mere doubt.
>
> [emphasis added]

26 Rajah J further observed (at [61]):

> An accused is presumed innocent and this presumption is not displaced until the Prosecution has discharged its burden of proof. Therefore, if the evidence throws up a reasonable doubt, it is not so much that the accused should be given the benefit of the doubt as much as the Prosecution's case simply not being proved. In the final analysis, the doctrine of reasonable doubt is neither abstract nor theoretical. It has real, practical and profound implications in sifting the innocent from the guilty; in deciding who should suffer punishment and who should not. The doctrine is a bedrock principle of the criminal justice system in Singapore because while it protects and preserves the interests and rights of the accused, it also serves public interest by engendering confidence that our criminal justice system punishes only those who are guilty.

27 Thus, the task of the Defence is simply to cast a reasonable doubt on the Prosecution's case. As noted by the Court of Appeal in *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 ("*GCK*") (at [134]–[135])), the notion of reasonable doubt could be conceptualised in two ways. One, a reasonable doubt could arise from within the Prosecution's case. Two, a reasonable doubt could arise on an assessment of the totality of the evidence, which includes a holistic assessment of both the Prosecution's and the Defence's cases and the interactions between the two.

28 Finally, it bears repeating that not all doubts about the Prosecution's case are reasonable doubts. As noted by Rajah J in *Jagatheesan* at [51], "[o]ne must distinguish between a 'real and reasonable' doubt and a 'merely fanciful' doubt". Rajah J went on, at [53], to cite with approval the *dictum* of Wood JA in *R v Brydon* (1995) 2 BCLR (3d) 243 that a reasonable doubt is "a doubt for which one can give a reason, so long as the reason given is logically connected to the evidence".

First Charge: sexual assault by penetration

29 Given the way the First Charge was framed, the elements which the Prosecution needed to prove for the First Charge are:

(a) the Accused penetrated the Victim's mouth with his penis;

(b) the Victim did not consent; and.

(c) the Accused had put the Victim in fear of hurt to herself in order to facilitate the commission of the offence.

30 Since it is undisputed that the Accused had penetrated the Victim's mouth with his penis, the facts in issue which require determination are:

(a) whether the Accused put the Victim in fear of hurt to herself; and

(b) whether the Victim consented to the penetration of her mouth by the Accused's penis.

31 In this regard, it is also relevant to determine the following factual disputes as their resolution would assist in the determination of the facts in issue identified in the previous paragraph:

(a) whether the Accused and the Victim knew each other prior to 15 July 2017;

(b) whether the Accused let himself into the Flat or was let into the Flat by the Victim;

(c) whether the Victim had been shouting for help for some time before the police arrived or only began shouting for help after the police arrived.

Whether the Accused and the Victim knew each other prior to the date of the incident

32 The Victim's evidence was consistent throughout that she had never met the Accused prior to 15 July 2017.[55] The Accused's position on this issue, however, shifted and evolved over time.

33 On the day of the incident, the Accused told SI Sanjit and SSGT Tay that he met the Victim for the first time that day.[56] In the first three investigative statements he gave to the investigation officer, Assistant Superintendent of Police Christine Tai ("IO Christine Tai"), on 18, 19 and 20 July 2017 respectively, he did not indicate that he had known the Victim prior to 15 July 2017.[57] In fact, in his second statement, given on 19 July 2017, he specifically said that he met the Victim for the first time on 15 July 2017.[58] The Accused was examined on four occasions in August 2017 by PW26 Dr Derrick Yeo of

55 NE 9 Jan 2020, at p 35, ln 13–14; NE 25 Nov 2020, p 30, ln 17–21; .

56 NE 21 Aug 2020, at p 42, ln 26–29.

57 P116, P117 and P118

58 P117 (Ans 1).

the Institute of Mental Health ("IMH"). In none of these four interviews did the Accused tell Dr Derrick Yeo that he had known the Victim previously.

34 It was only in the statement he gave to IO Christine Tai on 10 January 2018 that he stated for the first time that he had previously met the Victim, sometime in July or August 2016, at a club in Orchard Towers. He added that they became friends and met again on two or three more occasions, on Sundays, at various clubs in Orchard Towers, and they even checked into Hoover Hotel to have consensual sex on a Sunday sometime in late 2016 or early 2017.[59]

35 In court, the Accused shifted his position on the time of his initial meeting with the Victim. During examination-in-chief, he said this could have been in *June*, July or August 2016.[60] During cross-examination, he said this could have been in 2015.[61]

36 The timing of the occasion when he allegedly had consensual sex with the Victim in Hoover Hotel also shifted, from "late 2016 or early 2017" in his police statement to "June, July, August [2016] or at the beginning of the year 2017" during examination-in-chief,[62] to "December 2016 and January 2017" during cross-examination.[63]

37 The Accused called three witnesses whom he alleged were present when the Accused first met the Victim at the club in Orchard Towers. It turned out that one of them (DW 4 Ahmed Bazeer) was incarcerated from 17 March 2016

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59 P120 (Ans 1).

60 NE 19 Jun 2020, at p 40, ln 11–29.

61 NE 12 Aug 2020, at p 68, ln 21–p 69, ln 8.

62 NE 19 Jun 2020, at p 46, ln 7–9.

63 NE 21 Oct 2020, at p 27, ln 15.

to 14 June 2017, and so could not have been at the club during the period when the Accused allegedly first met the Victim.[64] A second witness (DW 2 Ramesh s/o Pannesilvam) testified that he could not remember whether he saw the accused with any girls from July to December 2016.[65] The evidence of this second witness therefore did not assist the Accused. The third witness (DW 3 Shatish s/o Arjunan) testified that the Accused would always be with two Indonesian ladies in the clubs in Orchard Towers. However, he could not identify the Victim when asked to pick her out from a set of photographs.[66] What this means is that the Accused's account is not borne out or supported by any of the witnesses he called.

38 Further, the Accused's account was also not borne out by the objective facts. The Prosecution produced the booking records of Hoover Hotel, which showed that the Accused had stayed at Hoover Hotel on six occasions between January 2016 and June 2017 but none of these occasions was on a Sunday.[67] Between December 2016 and January 2017, he only checked into Hoover Hotel once, which was on 6 December 2016, a Tuesday. Further, on none of those six occasions was the name of the companion he checked in with, as shown on the booking records, the Victim's name. When confronted with this evidence, the Accused suddenly changed tack and said he must have checked into some other hotel with the Victim, claiming that he was quite forgetful.[68]

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64 NE 1 Dec 2020, at p 51, ln 20–24.

65 NE 22 Oct 2020, at p 36, ln 26–28.

66 NE 24 Nov 2020, at p 2, ln 17–29.

67 P121.

68 NE 22 Oct 2020, at p 17, ln 1–23.

39 The Prosecution also tendered the Victim's travel records obtained from the Immigration and Checkpoints Authority ("ICA"), which showed that the Victim was out of Singapore from 28 September 2016 to 29 January 2017.[69] This meant that it was not possible for the Victim to have checked into any hotel in Singapore with the Accused on any of the Sundays in December 2016 or January 2017 (29 January 2017 being the last Sunday in that month). The Defence did not seek to challenge this evidence.[70]

40 The Defence submitted that the Victim knew how to travel around Singapore, and admitted to having visited the shopping malls around the Orchard Road area, including Lucky Plaza.[71] This may well be true, but it is a very far stretch to suggest that, just because the Victim had visited some Orchard Road shopping malls, she must have or would have also been to the clubs at Orchard Towers. Overall, I did not accept that this was sufficient to cast any reasonable doubt on the conclusion, drawn from the discussion at [33]–[39] above, that the Accused did not actually know the Victim prior to 15 July 2017.

41 For the reasons discussed above, I did not accept the Accused's evidence that he and the Victim had known each other prior to 15 July 2017.

Whether the Accused let himself into the Flat or was let into the Flat by the Victim

42 The Victim's evidence is that she was in the Flat the entire day and that the front door of the Flat was left unlocked after FM went out of the Flat earlier

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69 P123.

70 NE 1 Dec 2020, at p 54.

71 DCS at paras 144–145.

that day. She only realised that the Accused had let himself into the Flat when he suddenly appeared in her bedroom.

43 The Accused initially told SI Sanjit and SSGT Tay that he was brought to the Flat by the Victim after meeting her *downstairs*. In his statement to IO Christine Tai, he said that he met the Victim at the staircase of one of the upper floors of Block 18, although he could not remember which floor it was. In the Case for the Defence filed on 30 October 2019 pursuant to s 163 of the Criminal Procedure Code ("CPC"), it was alleged that the Accused met the Victim on the 12th floor.

44 According to the Accused, the Victim then led him downstairs, passing the 10th Floor Flat on the way, where the Victim stopped to speak with SL. This part of the Accused's evidence was contradicted by SL, who testified that she did not speak to the Victim at all on the day in question. Instead, SL's evidence was that, when she saw the Accused standing outside the 10th Floor Flat, she did not see the Victim accompanying the Accused. TNK also testified that, when he spoke to the Accused, he did not see the Victim with him. In the circumstances, I did not find it believable that the Victim had met the Accused on one of the upper floors of Block 18 and led the Accused to the Flat.

45 One key plank of the Defence's submission was that the door to the Flat must have been locked, thus making it improbable that the Accused could have let himself in.[72] In this regard, the Defence relied on FM's evidence that she would instruct the Victim to lock the door whenever FM left the Flat.[73] In my view, the more pertinent aspects of FM's evidence are: (a) she would close the

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72 DCS at para 115.

73 NE 15 Jan 2020, at p 16, ln 6–12.

door to the Flat *but not lock it* when she went out, (b) she left it to the Victim to lock the door as the Victim knew that it was her duty to do so, (c) when she returned home, she would *usually* find the door locked, (d) on 15 July 2017, she left the door unlocked as usual, expecting the Victim to lock the door later, and (e) she did not specifically remind the Victim to lock the door on 15 July 2017.[74] FM's evidence therefore corroborates the Victim's testimony that FM would close the door to the Flat but not lock it.[75] What this means is that the prospects of the door being unlocked on 15 July 2017 was not as improbable as the Defence's submissions made it out to be.

46 Also relevant is SL's evidence that, when the Accused was outside the 10th Floor Flat, he asked SL to open the gate to the 10th Floor Flat and also tried to open the gate himself (but unsuccessfully because the gate happened to be locked).[76] This demonstrates that the Accused was not averse, on the day in question, to approaching certain flats at random and trying opportunistically to test whether the doors/gates to the flats were locked or unlocked, with a view towards gaining unauthorised entry into such flats.

47 In the light of the foregoing, I found as a fact that the Accused was not let into the Flat by the Victim, but had instead let himself into the Flat.

Whether the Victim had been shouting for help before the police arrived

48 According to the Victim's evidence, there were three episodes during which she shouted for help. The first episode was in the Victim's bedroom, when the Accused threatened to beat her up after he molested her left breast and

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74 NE 14 Jan 2020, at p 85, ln 13–p 86, ln 31.

75 NE 9 Jan 2020, at p 51, ln 12–23.

76 NE 14 Jan 2020, at p 27, ln 9–23.

right thigh and she pushed his hands away.[77] The second episode was when the Accused pulled the Victim out of her bedroom into the toilet located in the kitchen. She began shouting for help as she was being pulled to the toilet and continued shouting after she entered the toilet. She shouted "many times" and "as loud as possible". She only stopped shouting when she was ordered by the Accused to keep quiet and sit down.[78] The third episode was after the police arrived at the Flat, when she ran out of the toilet shouting for help.[79]

49 The Accused accepted that the third episode occurred. This third episode was, in any event, witnessed by the two police officers and captured on their body-worn cameras. However, the Accused denied that the first two episodes of shouting for help by the Victim occurred.

50 The Victim's evidence on this issue is corroborated by the evidence of SL and TNK. SL testified that she first heard the shouting for help about three minutes after the Accused walked away from the 10th Floor Flat following his conversation with TNK.[80] SL also testified that she heard two episodes of shouting for help – the first episode lasted about three to five minutes while the second episode occurred intermittently for about 20 minutes.[81] SL said in court that the shouting was "very loud" and that it came from below her flat.[82] SL could also recognise that the shouting voice was that of the Victim's because

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77 NE 9 Jan 2020, at p 40.

78 NE 9 Jan 2020, at p 41.

79 NE 9 Jan 2020, at p 46.

80 NE 14 Jan 2020, at p 29, ln 14–17, read with PS 13 (SL's Conditioned Statement) at paras 3–4.

81 NE 14 Jan 2020, at p 29, ln 7–13; p 31 at ln 27–28.

82 NE 14 Jan 2020, at p 29, ln 4; p 39, ln 15–16.

she had previously met and spoken with the Victim twice.[83] SL alerted TNK when she heard the second episode of shouting for help.[84]

51 TNK's evidence was that, after being told by SL that she heard someone shouting for help and that the shouts were coming from the flat below, he went down to the 9th floor to investigate.[85] When TNK reached the outside of the 9th Floor Flat, he could hear that the shouting was coming from inside the 9th Floor Flat.[86] TNK also confirmed that this voice coming from inside the 9th Floor Flat was the same voice that he heard shouting for help when SL first alerted him to the matter.[87]

52 The Accused maintained that the Victim did not shout for help until after the police officers entered the Flat. In relation to SL's and TNK's evidence that they heard the Victim's shouts for help coming from inside the Flat before the police officers arrived, the Accused testified that while he was in the Flat he had heard sounds of a man and a woman shouting very loudly at each other from somewhere else.[88] The Defence therefore submitted that the shouts which SL and TNK heard could have been of this couple shouting at each other, and not shouts from the Victim.[89]

53 I did not find this submission persuasive. Both SL and TNK were very clear that they heard a women's voice, and not the voice of a man and a

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83 NE 14 Jan 2020, at p 29, ln 29–31; 15 Jan 2020, at p 6, ln 11–13.

84 NE 14 Jan 2020, at p 39, ln 1–3.

85 NE 14 Jan 2020, at p 58, ln 5–22.

86 NE 14 Jan 2020, at p 58, ln 29–31.

87 NE 14 Jan 2020, at p 59, ln 3–5.

88 NE 12 Aug 2020, at p 57, ln 14–26.

89 DCS at para 122.

woman.[90] SL could even identify the voice as the Victim's. Further, TNK went to the front door of the Flat, and heard for himself that the shouting indeed came from inside the Flat. Given the nature of the disagreement on this issue between the Accused on the one hand and SL and TNK on the other hand, there was no room for explaining the discrepancy on the basis that SL and TNK might have been mistaken. In other words, either the Accused was lying or both SL and TNK were lying. The Defence had not suggested any reason why both SL and TNK would lie on this matter. As a matter of logic, if TNK did not actually hear the Victim's shouts coming from within the Flat when he was standing at the door of the Flat, it would be inconceivable that he would call the police and then stand on the staircase for 20 minutes waiting for the police to arrive. Having heard the testimony of SL and TNK, and observed them on the witness stand, I found them to be credible and convincing witnesses.

54 The Defence also submitted that, if the Victim had indeed been shouting for help loudly, the Accused would have panicked and run away immediately, since he knew that there was another person in the Flat (*ie*, FM's bedridden mother). The Defence therefore submitted that it was improbable that the Accused would have continued remaining in the Flat, despite the Victim's shouts for help, until the police officers arrived.[91] This submission would have carried some force if the Accused was in a state of mind to act in a rational and calculated manner at the material time. However, the truth is that the Accused had been up all night drinking with his friends, and he was in a state of intoxication at the material time. (He stated in his police statement that he had consumed about 30 styrofoam cups whiskey.[92]) SI Sanjit testified that the

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90 NE 14 Jan 2020, at p 28, ln 29; p 57, ln 17.

91 DCS at paras 120–121.

92 P116 at para 8.

Accused smelled of alcohol, his speech was slurred and he was "not very steady".[93] The Accused also struggled aggressively in an attempt to leave the Flat notwithstanding that there were two police officers standing in his way.[94] Once this display of the disinhibitory effect and impairment of judgment arising from intoxication is taken into account, it no longer appeared so improbable that the Accused could have remained in the Flat to continue his sexual assault on the Victim even if he had known that there was also an elderly person in the Flat who could hear the Victim's shouts for help.

55 For the foregoing reasons, I saw no reason to doubt the evidence of SL and TNK, and found as a fact that the Victim had been shouting for help even before the police officers arrived.

Whether the Accused put the Victim in fear of hurt to herself and whether the Victim consented to the penetration of her mouth by the Accused's penis

56 I turn now to the dispute over the facts in issue (*ie*, the actual elements of the offence charged). Since the evidence concerning whether the Victim was put in fear and whether the Victim consented were intertwined, I deal with both issues together. As the facts concerning these two issues occurred without any other witnesses present, the resolution of these two issues turned largely on the assessment of the credibility of the Victim's and the Accused's evidence.

57 As noted at [9] above, the Victim's evidence was that the Accused threatened to beat her with his fist, and she complied with the Accused's penetration of her mouth with his penis out of fear, while the Accused's version

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93 NE 16 Mar 2020, at p 50, ln 5–15; p 74, ln 28–30.

94 NE 16 Mar 2020, at p 37, ln 26–p 38, ln 15.

(see [18] above) was that the Victim offered to get intimate with him in exchange for his help to obtain a "special pass".

58 In the present case, it is arguable that the "unusually convincing" standard does not apply. Aspects of the Victim's evidence were corroborated by SL and TNK (*ie*, that the Victim was shouting for help even before the police officers arrived and that the Victim did not meet the Accused on one of the upper floors and led him to the Flat). The Victim's interview with SGT Sia almost immediately after the offences would, pursuant to s 159 of the Evidence Act, also serve to corroborate the Victim's testimony. In any event, as the discussion below would demonstrate, the Victim is an unusually convincing witness. As noted at [23] above, the relevant considerations in determining whether a witness is unusually convincing are his or her demeanour and the internal and external consistencies found in the witness' testimony.

59 Having observed the Victim on the witness stand, I found her to be a convincing witness. Her evidence was textured and detailed. She was able to describe with relevant details how the Accused approached her, what he had said to her, how he had grabbed her left breast and touched her left thigh, how he threatened her and, finally, how he forced her to fellate him. She was able to demonstrate with relevant hand gestures how the Accused grabbed her left breast, how the Accused threatened to beat her up and also how the Accused move her heard back-and-forth when forcing her to fellate him.[95] The Victim was also candid in admitting that there were certain details she could not remember, such as whether the Accused had used his right fist or left fist to

[95] NE 9 Jan 2020, at p 38, ln 15–20; p 39, ln 26–31; p 45, ln 8–16.

threaten her.[96] I also agreed with the Prosecution that the Victim's evidence had remain largely unshaken despite extensive cross-examination by the Defence.

60 As for internal inconsistency, there are two aspects to consider. First, whether her testimony in court was, taken on its own, internally consistent. Second, whether her testimony in court was consistent with statements she had previously made out of court.

61 On the first aspect, the Defence pointed to an alleged inconsistency concerning how the Victim would arrange to meet up with her friends on her days off. The Defence submitted that, when the Victim said initially that she did not call or message other domestic workers whom she had met and befriended at the neighbourhood market because she did not wish to inconvenience them, she was giving the court the impression that she had the phone numbers of these other domestic workers but decided not to use those numbers to contact them. However, the Victim subsequently said that she did not take down their numbers, and her communications with them occurred only when they ran into each other at the market. With respect, I did not consider this to be an inconsistency. The relevant part of the Victim's evidence read:[97]

> Q On these days that you don't bump into them, do you call them and ask them if they are coming to the market?
>
> A No, I don't.
>
> Q Do you call them before leaving your house to the market to say, "Hey, I'm going to the market. Are you coming to the market also?"
>
> A No, I don't.
>
> Q What---why don't you call them?

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96 NE 9 Jan2020, at p 40, ln 2–4.

97 Ne 25 Nov 2020, at p 15, ln 9–27.

> A *I don't call because I don't want to disturb*, because they might have work with the employers or whatnot.
>
> Q So do you ever communicate with them on---even if, let's say, you don't go to the market, do you message them? Do you call them?
>
> A It---because it's the first time I meet so I don't exchange phone numbers or whatnot.
>
> Q So you're saying you didn't exchange phone number at all?
>
> A No, *I don't exchange phone numbers because different employers means different rules so I don't want to disturb.*
>
> Q So I'm speaking about your third employer. So you didn't exchange number with them when you see them at the market?
>
> A No. I just meet at the market is enough.
>
> [emphasis added]

62 In the first part of this exchange, the Victim was simply giving a direct answer to the question "why don't you call them?" by providing the *normative* reason for not calling her friends – "I don't want to disturb". In a subsequent part of this exchange, it was disclosed that there was another *technical or practical* reason she did not call them, which was that she did not even have their numbers. However, I did not think it was fair for the Defence to read the Victim's failure to mention this technical or practical reason initially as a deliberate attempt give the court the impression that she had possession of her friends' numbers. The normative reason she gave was a perfectly valid answer to the question "why don't you call them", as it can be seen in a later part of this exchange that it was also for the same reason that she did not exchange phone numbers in the first place.

63 As for the second aspect of internal inconsistency, the Victim had spoken to SGT Sia within an hour after the offence, to Dr Ee of KKH later the same day, and Dr Nisha of IMH on 6 September 2017. SGT Sia was the women

police officer who interviewed the Victim at the Flat after the Accused was arrested. Although the footage of the interview from SGT Sia's body-worn camera was not recoverable, the audio of some parts of the Victim's interview with SGT Sia was captured on SI Sanjit's body-worn camera. The transcript of those parts of the interview which had been captured on SI Sanjit's body-worn camera was tendered in evidence.[98] Having studied the accounts which the Victim gave to SGT Sia, Dr Ee and Dr Nisha, I found that all three accounts are largely consistent with each other and with the Victim's testimony in court in all material aspects.

64 In this regard, there is one submission from the Defence which required more detailed consideration. At one point during the interview, SGT Sia asked the Victim whether the Accused did anything to her.[99] The Victim was recorded in the transcript of the body-worn camera footage as answering "*Aku bilang aku tak mau, kalau dia mau ini. Yang ini aja. Dia cakap macam tu.*" which was translated by the transcriber as "I said I didn't want, if he want this. Only this. He said like that."[100] The Defence submitted that this meant that the Victim had told SGT Sia that, while the Victim did not agree to have sex with the Accused, she was fine with fellating the Accused.[101] As this detail was not found in the Victim's testimony in court, the Defence submitted that there was an inconsistency between what she told SGT Sia and what she said in court.[102] The Prosecution responded that there was no inconsistency, since SGT Sia had explained in court that, by the statement "I said I didn't want, if he want this.

98 P63.

99 P63, at s/n 55.

100 P63, at s/n 56.

101 DCS at para 104.

102 DCS at para 101–103.

Only this. He said like that", SGT Sia understood the Victim to be saying that "she doesn't want to do the blowjob but he wants that and only that".[103] As against this explanation from SGT Sia, the Defence pointed out that, in a later part of the transcript, in response to SI Sanjit's question whether the Accused had penetrated the Victim, SGT Sia had responded "Never never. Because she said uh that one cannot if he want blowjob can."[104] The Defence submitted that this meant that the Victim had indeed given SGT Sia the impression that the Victim agreed to perform fellatio on the Accused.[105]

65 In my view, what the foregoing demonstrates is that the Victim's statement that "I said I didn't want, if he want this. Only this. He said like that." was ambiguous, and capable of being interpreted in at least two ways. One interpretation was what SGT Sia had suggested to SI Sanjit, as captured on SI Sanjit's body-worn camera (*ie*, "…if he want blowjob can") while another interpretation was what SGT Sia told the court (*ie*, "she doesn't want to do the blowjob but he wants …"). In the light of this ambiguity, I did not accept that there was a material inconsistency between the Victim's testimony and what she told SGT Sia.

66 As for external consistency, the Victim's account of her shouts for help was consistent with SL's and TNK's account. The fresh scratch marks found by Dr Ee on the Victim's neck were consistent with the Victim's account of the Accused restraining her by her head.[106]

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103 Prosecution's Reply Submissions ("PRS") at para 7; NE 8 Jun 2020, at 28, 6–9.

104 P63 at s/n 78.

105 DCS at para 110.

106 NE 15 Jan 2020, at p 34 ln 20–p 35, ln 22.

67 The Defence submitted that the presence of the Victim's DNA on the *exterior* of the Accused's underwear was inconsistent with the Victim's evidence that she did not touch the Accused's underwear.[107] I did not find this to be an external inconsistency. As explained by PW11 Ms Lim Xin Li of the Health Sciences Authority ("HSA"), since the Victim's DNA was found on the Accused's hands, the Accused could have transferred the Victim's DNA from his hands to his underwear when he was holding the underwear in order to wear it back after the offence.[108] The Defence exhibited two screenshots from SI Sanjit's body-worn camera footage (at timestamps 16:10:47 and 16:12:08) in the Defence's Closing Submissions to argue that the Accused was holding his underwear in such a way, when he came out of the kitchen to the living room, as to render unlikely any such transference of the Victim's DNA from the Accused's hands to the underwear.[109] With respect, this submission was disingenuous. One only needed to play the footage a little further to timestamp 16:12:39 to see the Accused holding his underwear fully with both his hands, thus debunking any notion that transference of DNA material from the Accused's hands to the underwear was unlikely.

68 To be fair to the Defence, there was indeed a reference in the Defence Closing Submission to the footage from timestamp 16:12:39 to 16:13:08 (but without including any screenshots), which the Defence described as "the Accused is seen using both his thumbs, pulling up the *interior* front side *ie,* Area 2 of the waistband [of the Accused's underwear]" (emphasis in original).[110] The submission which the Defence sought to make in this regard was that, since the

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107 DCS at para 96; NE 10 Jan 2020, at p 5, ln 6–7.

108 NE 15 Jan 2020, at p 96, ln 30–p 97, ln 15.

109 DCS at paras 86–88.

110 DCS at para 90.

Accused had touched the *interior* of the underwear with his thumbs, and yet the Victim's DNA was not found on the *interior* of the underwear, this proves that the Victim's DNA found on the *exterior* of the underwear could not be owed to transference from the Accused's hands (and, by implication, must have resulted from the Victim touching the underwear).[111]

69 There are two problems with the foregoing submission. First, Ms Lim from HSA did not say definitively that the Victim's DNA was not found on the interior of the Accused's underwear. Instead, what Ms Lim told the court was that she found a *mixture* of DNA profiles there, with the major contribution to this mixed profile coming from the Accused.[112] However, the fact that this was identified as a *mixed DNA profile* meant that some other person's DNA was also present, but at such a low level that it was not reportable by HSA's laboratory procedures and guidelines.[113] Second, the Defence's focus on the contact between the Accused's thumbs and the *interior* of the underwear ignores that fact that, as clearly shown by the footage from timestamp 16:12:39 to 16:13:08, the rest of the Accused's hands were in full contact with the *exterior* of the underwear, thus providing ample opportunity for the transference of the Victim's DNA from the Accused's hands to the exterior of the underwear.

70 Finally, I should deal with one other submission made by the Defence. The Defence submitted that, based on the footage of SI Sanjit's body-worn camera, there was a gap of 21 seconds between SI Sanjit first saying "hello" when pushing open the front door of the Flat (timestamp 16:10:07) and the

111 DCS at para 92.

112 NE 15 Jan 2020, p 94, ln 30–p 95, ln 4.

113 NE 15 Jan 2020, p 101, ln 22–p 102, ln 6.

Victim running out of the toilet (timestamp 16:10:30).[114] (It would not go unnoticed that the gap between 16:10:07 and 16:10:30 is 23 seconds and not 21 seconds. Nevertheless, I shall continue to refer to it as the 21-second gap as that is the terminology adopted in the Defence's Closing Submissions.) This 21-second delay was owed to the fact that the Victim needed time to put on her clothes before running out of the toilet.[115] This shows that the Victim voluntary removed her clothing and was therefore a voluntary participant in the sexual acts.[116] In my view, it is speculative for the Defence to submit that the explanation for the 21-second gap must be that the Victim needed time to put on her clothes. The gap could be also explained on the basis that the Victim, being in a state of fear and confusion, having been threatened by the Accused and having been forced to perform fellatio, needed the time to assess the situation and decide what was the best thing for her to do in the circumstances. I therefore did not accept that the existence of this 21-second gap, when viewed in the light of all other indicia of the truthfulness of the Victim's evidence, was sufficient to raise a reasonable doubt.

71 For the foregoing reasons, I found the Victim's evidence to be both internally and externally consistent. I further found the Victim to be an unusually convincing witness and accepted her testimony as truthful.

72 As for the Accused's evidence, for the reasons already discussed at [32]–[55], I found several aspects of his testimony to be untrue. I therefore did not regard the Accused as a truthful or credible witness.

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114 DCS at paras 47–48.

115 DCS at para 50.

116 DCS at para 51.

73 On the question of consent, since I have taken the view, at [65] above, that the statement made by the Victim to SGT Sia was ambiguous, I had to consider whether this raised a reasonable doubt as to whether the Victim had given consent. I did not think a reasonable doubt had been raised, as I considered that any agreement by the Victim to fellate the Accused under the circumstances which existed at the time would not constitute valid consent at law. Consent given under fear of injury or wrongful restraint is not valid consent.

74 The relevant provision of the Penal Code on this point reads:

> **Consent given under fear or misconception, by person of unsound mind, etc., and by child**
>
> 90. A consent is not such a consent as is intended by any section of this Code —
>
> (*a*) if the consent if given by a person –
>
> (i) under fear of injury or wrongful restraint to the person or to some other person; or
>
> (ii) …
>
> and the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear …

In this regard, Tay Yong Kwang J (as he then was) had in *PP v Iryan bin Abdul Karim and others* [2010] 2 SLR 15 ("*Iryan*") at [123] cited with approval the following passage from *Ratanlal & Dhirajlal's Law of Crimes: A Commentary on the Indian Penal Code 1860* vol 2 (C K Thakker & M C Thakker eds) (Bharat Law House, 26th Ed, 2007) ("*Ratanlal*") at p 2061:

> A mere act of helpless resignation in the face of inevitable compulsion, quiescence, non-resistance or passive giving in, when volitional faculty is either clouded by fear or vitiated by duress, cannot be deemed to be 'consent' as understood in law. Consent on the part of a woman, as a defence to an allegation of rape, requires voluntary participation, not only after the exercise of intelligence, based on the knowledge of the significance and the moral quality of the act, but after having

> freely exercised a choice between resistance and assent. Submission of her body under the influence of fear or terror is not consent. There is a difference between consent and submission. Every consent involves submission but the converse is not true. A woman is said to consent only when she freely agrees to submit herself, while in free and unconstrained possession of her physical and moral power to act in a manner she wanted. Consent implies the exercise of free and untrammelled right to forbid or withhold what is being consented to; it is always a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former.

75 The testimony of the Victim showed clearly that she was threatened by the Accused and put in fear of injury. As SGT Sia explained to the court, her overall impression of what the Victim was conveying to her during the interview was that that the Victim fellated the Accused "not willingly because she was being threatened by accused".[117] The fact that the Victim was shouting for help while in the toilet (*ie*, the second episode of shouting) also proves that she did not willingly consent to fellate the Accused. Thus, even if there had been a discussion between the Victim and the Accused pursuant to which she agreed to fellate him, as alleged by the Defence, this would merely be a passive giving in, at a time when her volitional faculty was either clouded by fear or vitiated by duress, which could not be valid consent at law.

Conclusion on the First Charge

76 For the reasons discussed above, I found that the Prosecution had proven beyond a reasonable doubt all the elements set out at [29] above. I therefore found the Accused guilty of the First Charge.

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117 NE 8 Jun 2020, at p 28, ln 23–26.

Second Charge: House trespass

77 Given the way the Second Charge was framed, the elements which the Prosecution needed to prove for the Second Charge are:

(a) the Accused entered the Flat;

(b) the Flat was used as a human dwelling; and

(c) the Accused intended to commit an offence of sexual assault by penetration.

78 The first element is undisputed while the second element is indisputable. As for the third element, given my finding that the Accused was guilty of the First Charge (sexual assault by penetration), it follows that the Accused's intention to commit the offence of sexual assault by penetration had also been proven.

79 I therefore found the Accused guilty of the Second Charge.

Third Charge: Outrage of modesty

80 Given the way the Third Charge was framed, the elements which the Prosecution needed to prove for the Third Charge are:

(a) the Accused intentionally grabbed the Victim's left breast and touched her left thigh;

(b) the Victim did not consent; and

(c) the Accused intended to outrage the Victim's modesty.

81 As noted at [9] above, the Victim gave evidence that the Accused told the Victim to stand facing the wall, and then he proceeded to grab her left breast and touch her right thigh while standing behind her. The Accused denied this.[118] As noted at [16] above, the Accused's case is that the Victim willingly got intimate with him in return for his help to obtain a "special pass". In the light of my decision at [71] to accept the truthfulness of the Victim's testimony, I found that the Prosecution had proven the elements of the Third Charge beyond reasonable doubt.

82 I therefore found the Accused guilty of the Third Charge.

Fourth Charge: Personating a public officer

83 Given the way the Fourth Charge was framed, the elements which the Prosecution needed to prove for the Fourth Charge are:

(a) the Accused pretended to hold the office of a police officer;

(b) the Accused knew he did not hold such office; and

(c) the Accused asked the Victim to hand over her passport and work permit under colour of such office.

84 The second element is undisputed.[119] As for the first and third elements, as noted at [8] above, the Victim gave evidence that the Accused identified himself as a police officer to her, and asked her for her passport, work permit and money. The Accused denied this.[120] In the light of my decision at [71] to

118 NE 22 Oct 2020, p 4, ln 16–22.

119 NE 22 Oct 2020, p 3, ln 32–p 4, ln 1.

120 NE 22 Oct 2020, p 3, ln 29–31; p 4, ln 2–8.

accept the truthfulness of the Victim's testimony, I found that the Prosecution had proven the elements of the Fourth Charge beyond reasonable doubt.

85 I therefore found the Accused guilty of the Fourth Charge.

Sentence

86 After I convicted the Accused of all four charges, the Prosecution applied for and the Accused consented to nine other charges being taken into consideration for sentencing.[121] The nine charges are: one charge of impersonating an immigration officer to SL, one charge of impersonating an immigration officer to TNK, one charge of possession of obscene films, one charge of possession of films without a valid certificate, one charge of theft, one charge of voluntarily causing hurt and three charges of being a member of an unlawful society.

Parties' submissions on sentence

87 At the first sentencing hearing, the Prosecution submitted that the Accused should be sentenced to preventive detention for the protection of the public. The Prosecution further submitted that the maximum term of 20 years' preventive detention should be imposed. The Defence submitted that a global sentence of 12 years and eight months' imprisonment and 12 strokes of the cane would be appropriate.

Preventive detention suitability report

88 The Accused met the technical requirements for preventive detention a set out in s 304(2)(*b*) of the CPC in that (a) he is above 30 years of age, (b) he

[121] NE 19 Sep 2022, p 4–8.

had been convicted in these proceedings of three or more distinct offences punishable with imprisonment of two years or more, and (c) he has been sentence to imprisonment for at least a month since he reached the age of 16 for an offence punishable with imprisonment for two years or more.

89 In respect of the last point, the Accused's previous convictions include:

(a) Two charges of theft for which he was fined $2,000 (date of conviction: 5 September 1995).

(b) One charge of theft in dwelling for which he was sentenced to six weeks' imprisonment (date of conviction: 18 January 1996).

(c) One charge of theft in dwelling for which he was sentenced to reformative training (date of conviction: 9 February 1996).

(d) One charge of theft of motor vehicle, one charge of driving without licence and one charge of driving without insurance, for which he was sentenced to 24 months' imprisonment, fined $1,600 and disqualified from driving for six years (date of conviction: 14 May 1999).

(e) One charge of theft of motor vehicle, one charge of driving while under disqualification and one charge of permitting the use of a motor vehicle without insurance, for which he was sentenced to four years and six months' imprisonment and fined $1,000 (date of conviction: 25 June 2003).

(f) One charge of aggravated rape and two charges of abetting by intentionally aiding aggravated rape, for which he was sentenced to 16

years' imprisonment and 24 strokes of the cane (dated of conviction: 8 August 2003).

90 In the light of the foregoing, I ordered the preparation of a preventive detention suitability report ("PD Report") and directed that further sentencing submissions be filed three weeks after receipt of the PD Report. The PD Report was submitted to court on 11 October 2022 and forwarded to parties the next day. The PD Report found the Accused to be of normal mental condition and of generally good physical condition and therefore suitable for preventive detention.

91 A second sentencing hearing was fixed for 1 December 2022. On 30 November 2022, Defence counsel wrote in to request vacation of the hearing on the basis that he was on medical leave. The further sentencing hearing was therefore refixed to 6 February 2023. On the morning of 6 February 2023, Defence counsel wrote in again to request vacation of the hearing as he was taken ill again. The second sentencing hearing was therefore refixed to 16 February 2023.

92 At the second sentencing hearing on 16 February 2023, the Prosecution submitted that the Accused is a habitual offender who is beyond the reach of reformation and redemption and who constitutes a menace to the community at large, given his long string of previous convictions and especially having regard to the fact that he committed the present serious sexual offence merely three years after being released from a 16-year sentence for rape and abetment of rape. Furthermore, the PD Report indicates that the Accused remained unremorseful and unrepentant, and was assessed to have a 70.2% probability of recidivism within two years of release and a high risk of sexual reoffending. The Defence submitted that a long sentence of preventive detention would be

disproportionate given its earlier submissions that the appropriate sentence should be around 12 to 13 years' imprisonment. Although he had a long string of previous convictions, most of them were non-violent offences and were committed while he was very young. The Accused was therefore not beyond rehabilitation or redemption. The Defence also informed the court that Accused's uncle has made plans for the Accused to go overseas to live in a missionary home when he is released from prison.

93 After I heard both sides' submissions, the Accused's uncle, who was sitting in the public gallery, and who identified himself as Anthony Victor, sought and obtained permission to address the court directly. Mr Victor said that he had been visiting the Accused in prison regularly. Although Mr Victor agreed that there was no sign of remorse during the initial period of remand, Mr Victor told the court that he had more recently observed a change in the Accused's attitude. The Accused had been telling Mr Victor that what he did was wrong and he wanted to change his life.

94 I noted that, given the multiple adjournments referred to at [91] above, the PD Report had become rather dated. I therefore decided that there was some utility in ordering a second PD Report to verify what Mr Victor told the court concerning signs of improvement in the Accused's attitude. Another reason for ordering a second PD Report was the fact that Mr Victor appeared to earnestly believe what he told the court about his recent observations concerning the Accused. I was therefore unwilling to dismiss what Mr Victor said offhand without looking into the matter further.

95 At the same time, I was also conscious that it had been said in *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") at [67] that "where a sentencing judge adjourns sentencing to ascertain whether there *will*

be signs of reform pending the imposition of sentence, the conduct of the offender during the period of the adjournment may be of questionable probative value" (emphasis in original). One key difference between the facts of *Boaz Koh* and the present cases is that, in *Boaz Koh* the district judge adjourned the sentencing hearing specifically for the purpose of assessing the offender's *progress* at the Hiding Place *over the next three months* while the purpose of my ordering a second PD Report was to obtain an updated *current snapshot* of the Accused's condition. Nevertheless, I was mindful that similar concerns about probative value may still apply, albeit to a lesser degree, in the present case. Consequently, I was prepared to consider any positive assessment which may be made in the second PD Report with an appropriate level of caution.

96 As it turned out, the second PD Report found little or no change to the Accused's attitude since the first PD Report. The Accused continued to deny or minimize his responsibility for the present offences as well as for his earlier conviction for sexual assault occurring in 2002. The Accused's expression of remorse was largely centred on the potential impact which his conviction and sentence would have on him and his family. There was therefore no need for me to grapple with the issues highlighted in the previous paragraph.

My decision on sentence

97 In deciding whether to sentence an offender to preventive detention, the court needs to be satisfied that "it is expedient for the protection of the public that the person should be detained in custody for a substantial period of time". In this regard, the overarching principle is the need to protect the public. As explained by the Court of Appeal in *Public Prosecutor v Rosli bin Yassin* [2013] 2 SLR 831 at [11] ("*Rosli*"):

> … if the individual offender is such a habitual offender whose situation does not admit of the possibility of his or her reform, thus constituting a menace to the public (and this would include, but is not limited to, offences involving violence), a sentence of preventive detention would be imposed on him or her for a substantial period of time in order to protect the public.

There are therefore two questions to be answered: (a) is the Accused beyond the reach of redemption and reformation, and (b) does he constitute a menace to the public?

98 The Accused has spent most of his adult life in prison. He was sentenced to a stint of reformative training in 1996, when he was 16 years old, but this appeared to have no effect in rehabilitating or reforming him. Most alarmingly, within three years after his release on 21 April 2014 from serving a 16-year sentence for aggravated rape and abetment of aggravated rape, the Accused began committing a spate of offences beginning with theft (committed on 23 December 2016) and culminated in the aggravated sexual assault which is the subject matter of the Accused's conviction in the present case (committed on 15 July 2017).

99 Both the first and second PD Reports noted that the Accused had shown no remorse and had refused to accept responsibility for his sexual offences. The PD Reports also assessed that the Accused presented a high risk of recidivism and a high risk of sexual violence re-offending. While the PD Reports cannot be treated as conclusive of questions on which the court needs to reach its own conclusion, I found the observations and conclusions in the PD Reports before me both sound and reliable, as they were sufficiently supported by factual foundations recorded in the reports.

100 I therefore concluded that the Accused is beyond the reach of redemption and reformation and he therefore constitutes a menace to the public. As a result, I was satisfied that it is expedient for the protection of the public that the Accused should be detained in custody for a substantial period of time.

101 As for the Defence's submissions that the Accused's uncle had made plans for the Accused to go overseas to live in a missionary home when he is released from prison, I considered that this represented no more than a hope, and was not sufficient to persuade me that it would adequately address the risk of the Accused re-offending and being a menace to the public.

102 As for the period of preventive detention to be imposed, it depends on the following factors (Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2nd Ed, 2019) at para 28.259):

(a) The offender's sense of remorse for the offence.

(b) The nature and extent of his antecedents and sentence(s) previously imposed.

(c) His responses to previous punishment.

(d) His likelihood of re-offending; and

(e) His age.

103 On sense of remorse, as I have already noted at [99] above, the Accused demonstrated lack of remorse.

104 On nature and extent of antecedents, the Accused has been convicted previously no less than six times and been sentenced to a total of no less than

22 years in prison in total. Of particular relevance is his last set of convictions in 2003, which similarly concerned serious sexual offences involving violence. The facts of this last case were reported in *Public Prosecutor v Mark Kalaivanan s/o Tamilrasan and Ors* [2003] SGHC 174. In that case, the Accused was having supper at a hawker centre with the victim and six other friends. The Accused and two other friends deceived the victim into believing that her boyfriend was on the way to take her home, and she was to wait for him at a nearby automated teller machine ("ATM"). She therefore followed the three of them to the ATM, where all three of them took turns to rape her. She was assaulted on the head and face in the course of the rapes. The medical evidence also showed that there was tenderness in her abdomen region.

105 On responses to previous punishment, it is clear that the Accused did not respond to his previous punishment but had continued to commit more and more serious offences as the years went by. In 1995, he was convicted of two charges of theft and fined $2,000. The following year, he was convicted of theft in dwelling and imprisoned for six weeks. Later in the same year, he was convicted again of theft in dwelling and sentenced to reformative training. In 1999, he was convicted of theft of motor vehicles and sentenced to two years' imprisonment. In 2003, he was convicted again of theft of motor vehicle and sentenced to four years' imprisonment. Most importantly, later that year, he was convicted of aggravated rape and abetting aggravated rape and sentenced to 16 years' imprisonment and 24 strokes of the cane. Yet the Accused was not deterred from committing another offence of a similar nature soon after his release from prison in 2014.

106 Defence counsel submit that I should view the last conviction in 2003 not as a global sentence of 16 years but as two individual sentences of 8 years. This submission is misguided. In assessing how the Accused has responded to

previous punishments meted out to him, it is more logical to analyse the deterrent effect of the sentence as a combined 16-year sentence rather than two individual eight-year sentences, because that was the actual punishment he suffered. In any event, an eight-year sentence still represents an escalation over the previous four-year sentence for theft.

107 On the likelihood of reoffending, as noted at [99] above, the Accused's likelihood of reoffending is high.

108 Lastly, as for age, I was of the view that, given the Accused's relatively young age of 44 years at the time of sentencing, a preventive detention sentence of 20 years would not be excessive, disproportionate or crushing.

109 I was therefore of the view that this is a suitable case for imposition of the maximum preventive detention term of 20 years. In this regard, I agree with the Prosecution that there are no relevant mitigating factors which would merit a shorter term of preventive detention.

110 Since the Accused had already been in remand for about six years at the time of sentencing, I needed to consider the question of possible backdating of the preventive detention sentence. At the time the offences were committed in 2017, there were no express provisions in the CPC on the backdating of sentence of preventive detention. In this regard, the Court of Appeal had observed in *Rosli* as follows:

> 17 … [T]here is no provision equivalent to s 223 of the CPC which (in the context of a sentence of *imprisonment*) confers on the court concerned a discretion to, *inter alia*, take into account the time the accused has spent in remand. However, even under s 223 of the CPC, there is *no obligation* as such to do so (see the Singapore High Court decision of *Chua Chuan Heng Allan v Public Prosecutor* [2003] 2 SLR(R) 409 at [9]–[11] as well as Kow Keng Siong, *Sentencing Principles in Singapore* (Academy

> Publishing, 2009) ('*Sentencing Principles*') at para 27.141). It would appear, therefore, to be the case that **there is no express statutory provision conferring on the court the discretion to take into account the time the accused has spent in remand** in so far as a sentence of *preventive detention* is concerned. Indeed, as already emphasised above at [11], the overarching principle is to protect the public. …
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> …
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> 20 As already emphasised several times above, the paramount focus is on the protection of the public. To reiterate, it is the court's duty to 'simply address its mind to the appropriate period of custody merited by the offences for which the offender has been convicted before it, and his criminal record' (see *Yusoff bin Hassan* at [11]; also cited above at [12]). **Hence, although there is no statutory provision as such which confers on the court an express power to backdate a sentence of preventive detention, it is consistent with both logic, common sense as well as justice and fairness that, in considering the overall length of the sentence of preventive detention to be meted out to the offender concerned, the time the offender has spent in remand could be a possible factor which the court takes into account** (*cf* also the observations in the Singapore High Court decision of *Public Prosecutor v Rahim bin Basron* [2010] 3 SLR 278, especially at [57]). However, we would observe that such a factor would probably operate in favour of the offender only in *exceptional* cases. Given the overarching principle to protect the public, if, in fact, the offender's situation is an *extremely serious* one, then we would think that the court would *not* consider taking into account the time the offender has spent in remand. We think that this is likely to be the norm rather than the exception simply because, in principle, situations warranting a sentence of preventive detention are likely to be very serious to begin with. Indeed, in the *most extreme* situations, the court might not only disregard the time the offender has spent in remand but also sentence him or her to the maximum period of 20 years of preventive detention. However, as alluded to above, we would not rule out the exceptional situation where, whilst a sentence of preventive detention is warranted, there is nevertheless some justification for sentencing that offender to *less* time in preventive detention, which would, *inter alia* (and *in substance* at least), take into account the time the offender has already spent in remand. This (more general) approach is preferable in light of the fact that (as already noted) s 223 of the CPC is not, *stricto sensu*, applicable to sentences of preventive detention. …
>
> [emphasis added in bold; italics in original]

111 Section 318 of the CPC was amended with effect from 31 October 2018 by s 90 of the Criminal Justice Reform Act 2018 (Act 19 of 2018) ("CJRA") through the insertion of, among other things, a new subsection (3) which read:

> (3) To avoid doubt, a court may under subsection (1) direct that a sentence of imprisonment, reformative training, corrective training or *preventive detention is to take effect on a date earlier than the date the sentence is passed*.

This new s 318(3) was amended in 2019 by the Criminal Procedure Code (Amendment) Act 2019 (Act 14 of 2019) to delete the words "reformative training" therefrom.

112 Since the offences in the present case were committed in 2017, a question which arose was whether the new s 318(3) of the CPC was applicable to offences committed before the coming into force of s 90 of the CJRA. The transitional provisions of the CJRA did not address this question. Both the Prosecution and the Defence seemed to have proceeded on the assumption that the new s 318(3) of the CPC was applicable to the present case.[122] I saw no objection in principle to this assumption, and therefore treated s 318(3) of the CPC as applicable to the present case.

113 The Prosecution next submitted that, notwithstanding the existence of the new s 318(3) of the CPC, I should continue to be guided by the Court of Appeal's observations in *Rosli* when exercising my discretion under s 318(3) of the CPC in relation to preventive detention sentences, and confine the backdating of preventive detention sentences to exceptional cases. I considered that the Prosecution's submission could be justified on the basis that the s 318(3) of the CPC merely placed the pre-existing discretion already recognised in *Rosli*

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122 NE 7 Aug 2023, at p 2, ln 15–p 3, ln 8; p 6, ln 13–28.

on a statutory footing, such that the actual exercise of that discretion continues to be guided by pre-existing case law. In particular, I was persuaded that the paramount focus on the protection of the public emphasised in *Rosli* at [20] was not intended to be diluted by the introduction of the new s 318(3) of the CPC in 2018. I therefore accepted the Prosecution's submission on this point. (To avoid possible confusion, I should highlight that, at the time I came to this decision, the case of *Kamis bin Basir v Public Prosecutor* [2023] SGHC 348 had not been decided yet and I therefore did not have the benefit of considering the views expressed by the court in that case.)

114 In the present case, the trial commenced on 9 January 2020 and there were multiple delays along the way attributable to the poor health of the Defence counsel. *Eg*, in addition to the two to three months' delay to the holding of the second sentencing hearing referred to at [91] above, the holding of the third sentencing hearing was similarly delayed by another three months because Defence counsel was unwell. Further, at least 10 trial dates from June to December 2020 were vacated because Defence counsel was medically unfit to attend court leading to significant protraction of proceedings. (In addition, the Defence took eight months to file the Defence's Closing Submissions and five months to file its written sentencing submissions, after seeking multiple extensions of time in each case, although it is not clear from the court records how much of these delays were attributable to Defence counsel and how much to the Accused himself.) As I did not think it fair to visit the consequences of the delays attributable to Defence counsel on the Accused, I considered this a suitable case for me to exercise my discretion to take partial account for the period of remand by reducing the period of preventive detention by two years, without having to backdate the sentence.

115 Lastly, as the sentence of preventive detention is, pursuant to s 304(2) of the CPC, only in lieu of imprisonment and fine but not in lieu of caning, I was obliged to impose the mandatory minimum of 12 strokes of the cane prescribed by s 376(4) of the Penal Code.

Conclusion

116 For the reasons given above, I convicted the Accused of all four charges and sentenced him to preventive detention for 18 years and to 12 strokes of the cane.

Pang Khang Chau
Judge of the High Court

Wong Kok Weng, Chew Xin Ying and Tan Yen Seow (Attorney-General's Chambers) for the Prosecution;
Riyach Hussain (H C Law Practice) for the accused.