

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

**[2024] SGHC 75**

Criminal Case No 60 of 2022

Between

Public Prosecutor

And

CAX

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**JUDGMENT**

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[Evidence — Witnesses — Corroboration]

[Criminal Law — Offences — Rape]

[Criminal Law — Offences — Sexual offences]

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**This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher’s duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.**

**Public Prosecutor**

**v  
CAX**

**[2024] SGHC 75**

General Division of the High Court — Criminal Case No 60 of 2022  
Valerie Thean J  
8–10, 15–18, 22–25 November 2022, 24–25, 31 October 2023, 2–3, 20  
November 2023, 5 February 2024

21 March 2024

Judgment reserved.

**Valerie Thean J:**

**Introduction**

1 The complainant (“C”), at present aged 16, is the biological daughter of the accused (“CAX”), aged 37. C is the elder of two children; CAX and his wife (“C’s mother”) have a son (“C’s brother”) who is 5 years younger than C.<sup>1</sup>

2 CAX faces 13 charges (“A1–A13”) for committing various sexual offences against C from 2012 or 2013, when C was five or six years old, until 2019, when she was 12. CAX denies each of the charges and contends that all the alleged instances of sexual abuse did not occur.

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<sup>1</sup> Notes of Evidence (“NE”) 8 November 2022 at p 14 lines 22–27.

**The Prosecution's version of events**

3 In 2012 or 2013, the family resided at what will be termed in this judgment as “the Former Family Home”.

***A1: Committing an indecent act with a child***

4 The first charge is one of committing an indecent act with a child under s 7(a) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed). The Prosecution alleges that sometime in 2012 or 2013, while C was showering with her brother in the toilet of the Former Family Home, CAX entered the toilet naked and told her to lick his penis. C gave evidence that she complied with his instruction and did lick his penis.<sup>2</sup>

***A2: Exhibiting an obscene object***

5 In 2015, when C was about eight or nine years old, the family moved to a new home (“the Family Home”).<sup>3</sup>

6 The second charge relates to exhibiting an obscene object to a young person under s 293 of the Penal Code (Cap 224, 2008 Rev Ed) (“PC”) by showing C pornographic videos on an iPad at the Family Home in 2016 or 2017, when C was in Primary three or four.

***A3, A4, A5, A6, and A7: Incidents of fellatio***

7 The Prosecution alleges that CAX began a series of penetrative assaults against C as she approached puberty in 2018 or 2019.<sup>4</sup>

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<sup>2</sup> Prosecution's Closing Submissions (29 December 2023) (“PWS”) at pp 12–14.

<sup>3</sup> NE 8 November 2022 at p 15 lines 7–10.

<sup>4</sup> PWS at p 17 at para 22.

8 A3–A7 are five counts of aggravated sexual assault by penetration under s 376(1)(a) of the PC, punishable under s 376(4)(b) of the PC, for penetrating C’s mouth with CAX’s penis without her consent while she was under 14 years of age.

9 A3–A4 relate to allegations of such acts taking place in the Family Home, under a study table in the master bedroom (A3) and at a storeroom (A4). The other charges concern similar acts in 2019, which occurred inside the family car at an outdoor carpark near the Family Home (“the Carpark”) (A5), and at the dining area (A6) and bottom of a staircase (A7) in C’s paternal grandparents’ home (“the Grandparents’ Home”).

***A8, A9, and A10: Incidents of anal penetration***

10 According to the Prosecution, these assaults escalated to include the penetration of C’s anus with CAX’s penis.<sup>5</sup> A8–A10 are three counts of aggravated sexual assault by penetration under s 376(1)(a) of the PC, punishable under s 376(4)(b) of the PC, for penetrating C’s anus with CAX’s penis without her consent while she was under 14 years of age. A8 alleges such an act in 2018 or 2019, at the upper bunk of a double bunk bed that C shared with her brother in their shared bedroom at the Family Home. A9 and A10 are allegations that CAX committed a similar act in 2019, at C’s mother’s office (“the Office”), and in the master bedroom and adjoining toilet of the Family Home respectively.

***A13: Statutory rape***

11 A13 is a count of aggravated statutory rape under s 375(1)(b) of the PC, punishable under s 375(3)(b), for penetrating C’s vagina with CAX’s penis

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<sup>5</sup> PWS at p 31 at para 43.

without her consent while she was under 14 years of age. This allegedly occurred in August 2019, in the master bedroom of the Family Home.<sup>6</sup>

***A11: Incident of fellatio***

12 A11 is a charge of aggravated sexual assault by penetration under s 376(1)(a) of the PC, punishable under s 376(4)(b) of the PC, for penetrating C’s mouth with CAX’s penis without her consent, while she was under 14 years of age. The offence allegedly occurred on 4 September 2019 in the service yard and kitchen area of the Family Home.<sup>7</sup>

***A12: Vaginal penetration with a vibrator***

13 A12 is a count of aggravated sexual assault by penetration under s 376(2)(a) of the PC, punishable under s 376(4)(b) of the PC, for penetrating C’s vagina with a vibrator without C’s consent while she was under 14 years of age. This allegedly occurred on 11 September 2019 at the lower bunk of the double bunk bed that C shared with her brother in the Family Home.<sup>8</sup> According to C, CAX had allegedly used a pink vibrator (“the Pink Vibrator”) to penetrate her vagina.

***Reporting and medical examinations***

14 In 2019, C began disclosing the fact that she had been sexually abused to her friends, E, F, G, and H. E is a girl whom C knew earlier in childhood, while F and H were two of C’s female schoolmates at the time. E and F knew each other. G was C’s male schoolmate who was acknowledged as her

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<sup>6</sup> PWS at pp 40–41 at paras 55–56.

<sup>7</sup> PWS at pp 43–46.

<sup>8</sup> PWS at pp 47–51.



boyfriend, but it is not disputed that, despite this acknowledgment, C and G did not go out on dates alone and interacted primarily through WhatsApp and iMessage text messages.<sup>9</sup> C’s evidence was that the disclosures occurred in the following sequence:

- (a) E was informed of these events first, in June 2019, during a sleepover with C.<sup>10</sup>
- (b) F, as a mutual friend of C and E, was informed during a Facetime call with C and E the next day.<sup>11</sup>
- (c) G was informed of the abuse in a series of iMessages on 2 July 2019:<sup>12</sup>

I’ve been raped  
Technically  
...  
Since 5-6 I have been forced to such his place  
...  
His private part  
...  
Then since p4-6 he would put his place in my place  
But he would put it not my place but the other -lace  
...  
Not the place I get pregnant

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<sup>9</sup> NE 9 November 2022 at p 32 lines 11–18; NE 9 November 2022 at p 33 lines 13–20.  
<sup>10</sup> NE 16 November 2022 at p 66 lines 10–12; NE 9 November 2022 at p 30 line 23 to p 31 line 24.  
<sup>11</sup> NE 9 November 2022 at p 31 line 22 to p 32 line 10; NE 16 November 2022 at p 66 lines 13–14.  
<sup>12</sup> Bundle “E”, Tab 7, Annex B, S/Ns 7299–7325.

Yup that's why I don't wanna live

This was interrupted by the return of C's parents, who had seen, through the iPad of C's mother, the iMessage texts that were sent.<sup>13</sup> The next day, at 7.20 pm, C sent a WhatsApp message to G to retract her allegation:<sup>14</sup>

Hi, I have a feeling you will hate me after you read this message till the end. I was told to tell you: Those texts I texted yesterday it was all fake and I did it only because I wanted you to share with me your family problems. I'm sorry for lying to you and those family problems i shared with you are also not true.

C's evidence was that CAX had stood beside her in the living room of the Family Home when she sent the retraction message.<sup>15</sup> According to C, she had drafted the retraction message because of the pressure that CAX had exerted on her by standing behind her and watching her draft the message.<sup>16</sup>

(d) On 1 September 2019, C wrote a letter addressed to her mother ("the 1 September Letter").<sup>17</sup> She sent a screenshot of this letter to G:<sup>18</sup>

Dear mummy.

[Don't let anyone even daddy to see it if you love me dearly and trust me]

I am [Complainant's name]. I am writing this to inform you on why I ran away.

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<sup>13</sup> NE 9 November 2022 at p 48 line13 to p 50 line 18.

<sup>14</sup> Bundle E, Tab 1, S/N 38770.

<sup>15</sup> NE 9 November 2022 at p 52 line 26 to p 53 line 2.

<sup>16</sup> NE 16 November 2022 at p 58 lines 14–19.

<sup>17</sup> PWS at p 55 at para 77.

<sup>18</sup> Bundle E, Tab 5, S/N 58877–58879.

See, I have been hiding this from you for about ... All my life I have been on earth.

Well, the reason I ran away is ...

- Daddy have been sexually abusing me.
- You do not seem to trust me
- Daddy told me to lie to you saying that I was watching too much of that 'sex' shows that is why I told [G] about Daddy
- I can't tell you in person because I don't want to not be believed and end up getting scolded a few times and then you will ignore me again for a few days.

You can take a look at the shelf in my room, behind my bed that there is a thing you call 'sex toy'. Daddy used it on me a few times already. I hope that is enough proof on what he did. He only cried to not because he was sad of ... being assumed but sad that I betrayed him and told [G] about it.

Yours sincerely,

[Complainant's name], your daughter.

(e) On 2 September 2019, C told G over WhatsApp that she had lost her virginity to her father.<sup>19</sup>

(f) On 3 September 2019, the teacher in charge of student counsellors at C's school noticed several scars on C's wrist and asked her why she had self-harmed.<sup>20</sup> C shared that she was feeling stressed and unhappy as she was neglected at home. Later that day, C showed the 1 September Letter to F and H at her school's library.<sup>21</sup> Several other friends were also present in the library at the material time. C then asked H if she could stay with her if she ran away from home.<sup>22</sup>

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<sup>19</sup> Bundle C, Tab 9, S/N 37462.

<sup>20</sup> NE 10 November 2022 at p 10 lines 16 to p 11 line 17.

<sup>21</sup> NE 10 November 2022 at p 11 line 19 to p 12 line 1.

<sup>22</sup> NE 10 November 2022 at p 12 lines 1–3.

15 On 4 September 2019, C’s school counsellor spoke to her about self-harm. C reported that she was upset that her mother had been ignoring her at home.<sup>23</sup> Later that day, the school counsellor arranged to meet her parents on 5 September 2019.<sup>24</sup> On 5 September, during the meeting with the parents and C, the school counsellor suggested that C should attend counselling. CAX stated that they would think about the various options.<sup>25</sup>

16 In the meantime, after C’s disclosure to H in the library, H had told her mother about C’s revelation.<sup>26</sup> In turn, H’s mother told H’s Chinese teacher about these allegations.<sup>27</sup> On 13 September 2019, C was taken aside by the school counsellor, who queried her on these allegations.<sup>28</sup> C then told the school counsellor that she had been sexually abused by CAX and shared certain incidents with her.<sup>29</sup> Thereafter, the school counsellor informed the school’s principal of what C had told her.<sup>30</sup>

17 A police report was made and C was referred to KK Women’s and Children’s Hospital for a sexual assault examination later that same day. She was seen by Dr Samantha Yeo (“Dr Yeo”), who was, at the time, a Senior Resident with the Division of Obstetrics and Gynaecology.<sup>31</sup> The medical

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<sup>23</sup> NE 24 October 2023 at p 17 lines 1–18.

<sup>24</sup> NE 10 November 2022 at p 14 lines 1–24.

<sup>25</sup> NE 10 November 2022 at p 14 line 25 to p 15 line 7.

<sup>26</sup> NE 22 November 2022 at p 46 lines 9–11.

<sup>27</sup> NE 22 November 2022 at p 46 lines 9–11.

<sup>28</sup> NE 10 November 2022 at p 16 lines 2–29.

<sup>29</sup> NE 10 November 2022 at p 16 lines 29–31.

<sup>30</sup> NE 10 November 2022 at p 17 lines 6–8.

<sup>31</sup> NE 18 November 2022 at p 2 line 31.

examination commenced at 6.04pm and concluded at 6.43pm.<sup>32</sup> Following this examination, C was subsequently diagnosed with Chlamydia Trachomatis.<sup>33</sup>

18 On 24 January 2020, Dr Lim Choon Guan (“Dr Lim”), a Senior Consultant of the Department of Developmental Psychiatry, conducted a forensic psychiatric assessment for C at the Child Guidance Clinic at the Institute of Mental Health.<sup>34</sup>

### **The accused’s version of events**

19 The accused denies all the charges against him and contends that none of the incidents happened. He also contends that he was not next to C on 3 July 2019, when C sent a text message to G retracting her iMessage allegation of 2 July 2019.<sup>35</sup> His specific allegations in respect of each charge are set out briefly as follows.

#### ***A1: Committing an indecent act with a child***

20 CAX testified that the first incident, which is alleged to have taken place in 2012 or 2013, could not have happened as C’s brother would have been, at most, one year and one month old in December 2013. CAX contends that he could not have bathed C’s brother since he did not dare to bathe infants as they were very fragile.<sup>36</sup> C’s mother would bathe C’s brother instead.<sup>37</sup> In much the same vein, CAX testified that he was also not allowed to bathe C when she was

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<sup>32</sup> Agreed Bundle (“AB”) at p 241.

<sup>33</sup> Exhibit P55.

<sup>34</sup> AB at p 252.

<sup>35</sup> NE 2 November 2023 at p 58 lines 27–29.

<sup>36</sup> NE 31 October 2023 at p 18 lines 4–17.

<sup>37</sup> NE 31 October 2023 at p 18 lines 7–11.

an infant.<sup>38</sup> Further, CAX contends that he had never been in the bathroom of the Former Family Home with his children<sup>39</sup> and that he had never asked C to put his penis in her mouth.<sup>40</sup>

***A2: Exhibiting an obscene object***

21 CAX denies ever showing his daughter pornography.<sup>41</sup> Instead, he testified that she had accessed adult material by herself. In this regard, CAX recounted two incidents. Firstly, CAX averred that C's mobile phone was changed to a non-internet phone when she was in Primary one or two because C's mother had discovered that C had accessed adult material on the internet via her phone.<sup>42</sup> Secondly, CAX recounted an instance where he caught C watching pornography in the living room with a vibrating comb.<sup>43</sup> During this incident, he told her to speak to her mother about what she had done.<sup>44</sup>

***A3: Fellatio at the master bedroom of the Family Home***

22 CAX contends that the events of the third charge never happened and that he had never asked C to enter the master bedroom while his wife was sleeping.<sup>45</sup> While he did watch movies at the desk in the master bedroom in the middle of the night while his wife was sleeping, the volume would be reduced

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<sup>38</sup> NE 31 October 2023 at p 95 lines 9–18.

<sup>39</sup> NE 31 October 2023 at p 18 lines 22–24.

<sup>40</sup> NE 31 October 2023 at p 18 lines 25–26.

<sup>41</sup> NE 31 October 2023 at p 16 line 29 to p 17 line 1.

<sup>42</sup> NE 31 October 2023 at p 15 lines 17–31.

<sup>43</sup> NE 31 October 2023 at p 17 lines 2–16.

<sup>44</sup> NE 31 October 2023 at p 17 lines 20–21.

<sup>45</sup> NE 31 October 2023 at p 37 lines 29–32.

to zero to avoid bothering his wife while she was asleep.<sup>46</sup> CAX would read the subtitles of the movie instead.<sup>47</sup>

***A4: Fellatio at the storeroom of the Family Home***

23 CAX contends that the fourth charge never occurred as he had never asked C nor any other members of the household to help him in the storeroom.<sup>48</sup> This was because the items in the storeroom were very heavy.<sup>49</sup> Further, the storeroom was filled with items such that no one could stand inside it.<sup>50</sup>

***A5: Fellatio at the Carpark***

24 In denying the fifth charge, CAX contends that he had never parked at the Carpark with his children.<sup>51</sup> Instead, CAX contends that he would only park at the Carpark after dropping his wife off to buy takeaway food.<sup>52</sup> Thereafter, he would wait at the Carpark for C's mother. Once C's mother was ready, CAX would drive back to the pickup point to pick her up.<sup>53</sup> When CAX was with C and her brother, he would instead park at the multi-storey carpark near the

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<sup>46</sup> NE 31 October 2023 at p 38 lines 1–16.

<sup>47</sup> NE 31 October 2023 at p 38 lines 17–18.

<sup>48</sup> NE 31 October 2023 at p 36 lines 20–22.

<sup>49</sup> NE 31 October 2023 at p 36 lines 23–27.

<sup>50</sup> NE 31 October 2023 at p 36 lines 28–31.

<sup>51</sup> NE 31 October 2023 at p 19 lines 6–19.

<sup>52</sup> NE 31 October 2023 at p 19 lines 13–19.

<sup>53</sup> NE 31 October 2023 at p 19 lines 6–19.

Family Home because it was nearer to the coffee shop<sup>54</sup> where he bought food.<sup>55</sup> He also denies ever sexually assaulting C at the Carpark.<sup>56</sup>

***A6 and A7: Fellatio at the Grandparents' Home***

25 CAX denies ever sexually assaulting C at the Grandparents' Home.<sup>57</sup> Although A7 allegedly occurred when CAX had asked C to help wash his car, CAX gave evidence that it was primarily his wife who assisted him in washing the car, although his children would assist him sometimes.<sup>58</sup> He denies ever asking C to help him wash the car alone.<sup>59</sup>

***A8: Anal-penile penetration at the shared bedroom of the Family Home***

26 The accused denies the events of the eighth charge. He testified that he had never climbed to the top bunk of C's shared bunk bed.<sup>60</sup>

***A9: Anal-penile penetration at the Office***

27 The accused denies ever sexually assaulting C in the Office.<sup>61</sup> He testified that he had never brought C to the Office alone, without his wife or C's brother.<sup>62</sup> Further, CAX contends that he could not have accessed the cubicle

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<sup>54</sup> NE 31 October 2023 at p 96 line 7.

<sup>55</sup> NE 31 October 2023 at p 19.

<sup>56</sup> NE 31 October 2023 at p 20 lines 1–2.

<sup>57</sup> NE 31 October 2023 at p 40 lines 21–23.

<sup>58</sup> NE 31 October 2023 at p 39 lines 16–20.

<sup>59</sup> NE 31 October 2023 at p 39 lines 24–26.

<sup>60</sup> NE 31 October 2023 at p 97 lines 11–27.

<sup>61</sup> NE 31 October 2023 at p 71 lines 20–24.

<sup>62</sup> NE 31 October 2023 at p 71 lines 20–22.



after office hours, as an access card was required to open the main door.<sup>63</sup> CAX's wife had possession of the access card, and CAX only had possession of it when he borrowed it from her to smoke when they were both at the Office together. CAX contends that he would not have borrowed his wife's access card to access the Office when his wife was not present, since it also served as her employee identity card.<sup>64</sup>

***A10: Anal-penile penetration at the master bedroom of the Family Home***

28 The accused denies the events of the tenth charge.<sup>65</sup> He avers that he had never sexually assaulted C in the master bedroom of the Family Home,<sup>66</sup> or the attached toilet in the bedroom.<sup>67</sup> Further, he had never been in that toilet with C.<sup>68</sup>

29 C's allegation was that her brother was at home at the time of this offence. CAX contends that 22 July 2019 was the only day where the events of the tenth charge could have possibly transpired, since that was the only day where he had messaged his wife to state that C was suffering from "stomach pain" in 2019.<sup>69</sup> CAX contends that, contrary to C's assertion, C's brother was not home that day. C's brother was at the Office with C's mother and a staffer

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<sup>63</sup> NE 31 October 2023 at p 70 lines 3–7.

<sup>64</sup> NE 31 October 2023 at p 71 lines 7–10.

<sup>65</sup> NE 31 October 2023 at p 72 lines 13–14; NE 31 October 2023 at p 38 lines 22–24.

<sup>66</sup> NE 31 October 2023 at p 37 line 29 to p 38 line 24.

<sup>67</sup> NE 31 October 2023 at p 97 lines 28–31.

<sup>68</sup> NE 31 October 2023 at p 98 lines 2–4.

<sup>69</sup> NE 31 October 2023 at p 75 lines 25–28.

because he was sick and had not gone to school.<sup>70</sup> CAX had fetched C home from school because she had complained of stomach pain.<sup>71</sup>

***A13: Statutory rape***

30 CAX denies the events of the August rape charge.<sup>72</sup>

***A11: Fellatio at the kitchen of the Family Home***

31 A11 is alleged to have occurred on 4 September 2019 at the Family Home, at night. CAX's denial is premised on the fact that he did not bake cookies with C as he was very tired that day. He had attended an event the night before, and on the evening in question, he was rushing a piece of work for a client when he returned to the Family Home.<sup>73</sup>

***A12: Vaginal penetration with a vibrator***

32 CAX denies A12. His evidence was that the vibrator was not purchased for C and was not used on C on 11 September 2019.<sup>74</sup>

**Legal context**

33 The first issue in analysing a series of offences such as the present is to ascertain whether there is any corroborative evidence. Where a complainant's testimony is uncorroborated and forms the sole basis for conviction, it is unsafe

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<sup>70</sup> NE 31 October 2023 at p 71 line 27 to p 73 line 28.

<sup>71</sup> NE 31 October 2023 at p 71 lines 25 to p 72 line 8.

<sup>72</sup> NE 31 October 2023 at p 97 line 28 to p 98 line 4.

<sup>73</sup> NE 31 October 2023 at p 34 lines 19–27 and 34–35; NE 31 October 2023 at p 35 lines 1–8.

<sup>74</sup> NE 31 October 2023 at p 43 lines 11–12.

to convict the accused unless the complainant's testimony is so "unusually convincing" as to overcome any doubts that might arise from the lack of corroboration: *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 ("GCK") at [89]. Therefore, this judgment is organised in the following way. I will first examine whether C's evidence is corroborated in any way by the evidence, such that C's testimony need not be "unusually convincing". If the first question is answered in the negative, I will proceed to examine whether her evidence meets the "unusually convincing" standard.

### **Is there corroboration in the present case?**

34 Evidence may be corroborative in two ways: (a) it may be independent evidence implicating the accused in a particular matter ("Baskerville corroboration"); or (b) it may, upon considering its substance and relevance, be supportive or confirmative of the weak evidence which it is meant to corroborate ("liberal corroboration") (*GCK* at [96]; *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [43]). In the present case, the Prosecution submits that C's account of the charges is supported by corroborative evidence. This assertion is premised upon, first, medical evidence; and second, complaints made by C to various witnesses, including friends, teachers, and doctors. I deal with both in turn.

### ***Is the medical evidence corroborative?***

35 The Prosecution contends that several pieces of medical evidence are corroborative of the fact that C had been sexually assaulted *in general*: (a) C's diagnosis of a viral wart on her buttock cleft and vaginal discharge in 2018;<sup>75</sup>

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<sup>75</sup> PWS at p 93 at para 119.

(b) C’s diagnosis of molluscum contagiosum on her right buttock in 2020;<sup>76</sup> (c) the presence of notches on C’s hymen during a medical examination on 13 September 2019;<sup>77</sup> and (d) C’s diagnosis of Chlamydia Trachomatis following her medical examination on 13 September 2019.<sup>78</sup> I will discuss (a)–(c) first, and thereafter, (d).

*Vaginal discharge, viral wart, Molluscum Contagiosum, and hymenal notches*

36 During a consultation at the KK Women and Children’s Hospital Paediatric Dermatology Clinic (“the Clinic”) on 29 June 2018, C presented with a lesion on her buttock cleft and vaginal discharge. The lesion was eventually diagnosed as a viral wart.<sup>79</sup> C was diagnosed with Molluscum Contagiosum on her right buttock during a subsequent visit to the Clinic on 13 January 2020.<sup>80</sup>

37 Regarding the vaginal discharge, Dr Gan Yiping Emily (“Dr Gan”) testified that there were many possible reasons for vaginal discharge, such as over-washing or over-douching.<sup>81</sup> It did not necessarily have to originate from sexual contact.

38 Regarding C’s viral wart, Dr Mark Koh Jean Ann (“Dr Mark Koh”) testified that viral warts were not conclusive evidence of sexual contact.<sup>82</sup> Although the presence of warts on a patient’s intimate areas would raise a

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<sup>76</sup> PWS at p 96 at para 124.

<sup>77</sup> PWS at p 87 at para 114.

<sup>78</sup> PWS at p 95 at para 123.

<sup>79</sup> AB at p 245.

<sup>80</sup> AB at p 245.

<sup>81</sup> NE 22 November 2022 at p 34 lines 22–25.

<sup>82</sup> NE 22 November 2022 at p 25 lines 22–23.

suspicion that it was spread by sexual contact, this had to be assessed against the social history of the patient.<sup>83</sup> This was because warts could also be spread through the sharing of items such as towels and bedsheets.<sup>84</sup> Dr Gan gave similar evidence and testified that viral warts could be spread by non-sexual contract, and in particular, by touching a surface with the Human Papillomavirus and thereafter touching an area with broken skin.<sup>85</sup> Relatedly, C had testified that she shared towels with her brother,<sup>86</sup> who reportedly had an untreated viral wart on his finger for one to two years.<sup>87</sup> Dr Gan took C's social history on 29 June 2018<sup>88</sup> and did not believe that there was a very high probability that the wart was transmitted sexually after interviewing both C and her mother separately.<sup>89</sup>

39 Regarding the Molluscum Contagiosum, Dr Mark Koh's evidence was that while the presence of the condition on a patient's buttocks would, if not also found elsewhere on the body, raise a suspicion that it was spread sexually,<sup>90</sup> it was not conclusive evidence of sexual contact.<sup>91</sup> For instance, the condition could be spread by the sharing of towels or clothing<sup>92</sup> or through autoinoculation, whereby an infected patient would spread the Molluscum from one area of their body to another by scratching themselves, especially if they

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<sup>83</sup> NE 22 November 2022 at p 7 lines 12–31.

<sup>84</sup> NE 22 November 2022 at p 25 lines 13–16.

<sup>85</sup> NE 22 November 2022 at p 34 lines 15–21.

<sup>86</sup> NE 16 November 2022 at p 14 lines 1–7.

<sup>87</sup> AB at pp 245 and 248.

<sup>88</sup> NE 22 November 2022 at p 32 lines 28–29.

<sup>89</sup> NE 22 November 2022 at p 36 lines 15–23.

<sup>90</sup> NE 22 November 2022 at p 8 line 30 to p 9 line 4.

<sup>91</sup> NE 22 November 2022 at p 25 lines 22–23.

<sup>92</sup> NE 22 November 2022 at p 8 lines 15–20.

suffered from underlying Eczema.<sup>93</sup> Dr Mark Koh also testified that Molluscum Contagiosum was not usually transmitted sexually, and opined that 99% of such patients who were seen at the Clinic had contracted Molluscum through non-sexual means.<sup>94</sup>

40 On 13 September 2019, two notches on C’s hymen at the three and nine o’ clock positions were found when C underwent a medical examination at the Urgent Obstetrics and Gynaecology Clinic of the KK Women’s and Childrens’ Hospital.<sup>95</sup> Dr Yeo testified that while such notches were commonly associated with sexual activity, they could also occur in the absence of sexual activity.<sup>96</sup> For instance, they could occur in “day-to-day activities” where a girl falls and sustains some form of blunt trauma to the vulva region.<sup>97</sup> Notably, Dr Yeo conceded on cross-examination that the presence of a hymenal notch was not conclusive of vaginal penetration.<sup>98</sup>

41 In my view, these three categories of medical evidence detailed above have no corroborative value at all. All three categories reflect only a *suspicion* of sexual contact, and suspicion alone cannot carry corroborative value.

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<sup>93</sup> NE 22 November 2022 at p 24 lines 8–24.

<sup>94</sup> NE 22 November 2022 at p 8 line 30 to p 9 line 4.

<sup>95</sup> AB at p 243.

<sup>96</sup> NE 18 November 2022 at p 9 lines 21–30.

<sup>97</sup> NE 18 November 2022 at p 9 lines 23–30.

<sup>98</sup> NE 18 November 2022 at p 24 lines 1–3.

*Chlamydia Trachomatis*

42 C tested positive for Chlamydia Trachomatis after being tested for the same at the medical examination on 13 September 2019.<sup>99</sup> Dr Mark Koh testified that Chlamydia Trachomatis was generally spread by sexual contact and opined that it was “almost 99%” caused by sexual contact.<sup>100</sup> In my view, C’s diagnosis is corroborative evidence that C was sexually active. However, it is not corroborative of C’s account that she was sexually assaulted by CAX.

43 Further, CAX tested negative for Chlamydia Trachomatis at the Department of STI Control (“DSC”) on 4 December 2019.<sup>101</sup> Dr Koh Yun Pei (“Dr Koh YP”), who was an Associate Consultant at the DSC, testified that C and CAX’s differing results could be explained by either: (a) a sampling error; or (b) CAX having been treated for Chlamydia prior to the Chlamydia test.<sup>102</sup> The Prosecution produced no evidence relating to either possibility. Further, Dr Koh YP testified that it was very unlikely for patients with Chlamydia Trachomatis to recover without seeking medical treatment.<sup>103</sup> While Chlamydia could be treated with a course of oral antibiotics, such as doxycycline, erythromycin, azithromycin, and amoxicillin,<sup>104</sup> a patient would require a doctor’s prescription to obtain such antibiotics in Singapore.<sup>105</sup> It is undisputed that CAX was remanded from the date of his arrest, 13 September 2019,<sup>106</sup> until

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<sup>99</sup> Exhibit P52-1; Exhibit P55.

<sup>100</sup> NE 22 November 2022 at p 19 lines 2–14.

<sup>101</sup> AB at pp 261–262.

<sup>102</sup> NE 23 November 2022 at p 10 lines 3–11.

<sup>103</sup> NE 23 November 2022 at p 6 line 25 to p 7 line 6.

<sup>104</sup> NE 23 November 2022 at p 7 lines 7–20.

<sup>105</sup> NE 23 November 2022 at p 7 lines 11–13.

<sup>106</sup> Exhibit P51-1.

the date of the Chlamydia test.<sup>107</sup> The only recorded medications that were dispensed to CAX during this time were Omeprazole and Domperidone.<sup>108</sup> Dr Koh YP testified that these two medications would not have had any bearing on the Chlamydia test results as they were not antibiotics.<sup>109</sup> As the Prosecution did not adduce any evidence suggesting that CAX had been treated for Chlamydia prior to his remand, or that there had been a sampling error in CAX's Chlamydia test, CAX's negative Chlamydia test detracted from the confirmatory value of C's diagnosis of Chlamydia.

#### *Conclusion on the medical evidence*

44 The medical evidence reflects that C was sexually active. Rather fundamentally, however, there is no evidence linking any sexual activity to CAX. In my view, there is nothing of sufficient probative value to amount to corroboration.

#### *Are C's complaints corroborative?*

45 Section 159 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") allows former statements to be corroborative evidence. In determining whether there is such liberal corroboration, the court will focus on the substance, relevance, and confirmatory value of the evidence in question (*GCK* ([33] supra) at [96]; *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [173]). Thus, the court will examine the extent to which the evidence is supportive or confirmative of the complainant's testimony at trial (*AOF* at [192]). Liberal corroboration is subject to the following conceptual constraints.

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<sup>107</sup> PWS at pp 96–97 at para 125.

<sup>108</sup> AB at pp 258–260.

<sup>109</sup> NE 23 November 2022 at p 8 lines 7–25.



46 Firstly, s 159 of the EA mandates that these statements must be made *at or about the time when the fact took place*:

**159.** In order to corroborate the testimony of a witness, any former statement made by such witness, whether written or verbal, on oath, or in ordinary conversation, relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

47 In *AOF*, the first complainant had disclosed, during an interview with a doctor, an incident of sexual assault that she had suffered. This complaint was then recorded in the doctor's medical report. The court held that the victim's complaint (within the medical report) could not be liberal corroborative evidence of her account of events, since the interview was conducted *three to five years* after the purported act (*AOF* at [194]). Similarly, in *Lee Kwang Peng v Public Prosecutor* [1997] 2 SLR(R) 569, the court held (at [80]) that the complaints by the first and second complainants could not be corroborative evidence under s 159 of the EA since they were made *one year and six months* respectively after the alleged incidents. Even when complaints are made in a timely manner, the fact that such corroboration is non-independent is likely to adversely affect the *weight* accorded to it (*AOF* at [177]).

48 In the present case, the complaints are not relevant under s 159 of the EA for the majority of the charges. The earliest complaint of sexual abuse by C would have been made in June 2019 to E, during a sleepover.<sup>110</sup> This would have been close to six years after the events of A1. Accordingly, C's subsequent complaints of the events relating to A1 do not amount to liberal corroboration. In the same vein, C's complaints are not relevant to A2, which purportedly occurred in 2016 or 2017 when C was in Primary three or four. C's first

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<sup>110</sup> NE 9 November 2022 at p 30 line 24 to p 31 line 24.

complaint that CAX had made her watch pornography was made to Dr Lim Choon Guan (“Dr Lim”) on 24 January 2020, some four years after A2 had allegedly occurred.<sup>111</sup> None of the other witnesses to whom C had confided in prior to the psychiatric assessment with Dr Lim on 24 January 2020 had mentioned anything about pornography in their respective testimonies in court.

49 Secondly, liberal corroborative evidence must, at the minimum, relate to the facts which form the basis of the charges proceeded upon by the Prosecution. In *AOF*, the court held (at [184]–[186]) that the second complainant’s testimony was not liberal corroborative evidence of the first complainant’s testimony. This was because none of the three episodes recounted by the second complainant disclosed incidents of *rape* or *fellatio*, which were the offences in the charges against the accused. Instead, the second complainant had merely stated that: (a) in the first episode, she had been told by the accused to leave the bedroom and *did not see what happened inside the bedroom*; (b) in the second episode, she had only seen the accused on top of the first complainant, and nothing more; and (c) in the third episode, she had been told by the first complainant that the accused had touched her vagina and body.

50 In the present case, C’s complaints are too vague to be liberally corroborative. Regarding the charges relating to oral sex (*ie*, A3–A7 and A11), for instance, F’s testimony was that C told her that CAX would inappropriately touch her vagina and try to have penile-vaginal intercourse with her.<sup>112</sup> No mention was made of fellatio. C’s complaints to G, H, Dr Lim, Dr Yeo, and her school counsellor are not specific to the charges. Instead, C had complained that

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<sup>111</sup> AB at p 253.

<sup>112</sup> NE 18 November 2022 at p 45 line 24 to p 47 line 4.

CAX had made her suck his penis in general.<sup>113</sup> No mention was made of the location or circumstances surrounding these incidents of oral sex.

51 This is also the case for the charges relating to anal penetration (*ie*, A8–A10). Firstly, some of her complaints do not refer to anal intercourse at all. In both her complaints to F and to the school counsellor, no mention was made of anal intercourse.<sup>114</sup> Secondly, where she did complain of anal intercourse, these complaints were not specific to the charges levied against CAX. For instance, although C had complained to Dr Yeo, Dr Lim, and G that she had been anally penetrated by CAX, C made no mention of the location or circumstances of the penetration.<sup>115</sup> Thirdly, while C had provided the circumstances of the offence in her complaint to H, this complaint cannot be liberal corroborative evidence as it was not made at or around the time of the purported act. H’s evidence was that C had told her, sometime after either August or September 2019, that CAX often penetrated her vagina and anus in her bedroom in the wee hours of the morning.<sup>116</sup> This closely mirrored the circumstances of A8. Nonetheless, C had conceded on cross-examination that A8 occurred when she was in Primary five,<sup>117</sup> which would have been in 2018. C’s complaint to H in September 2019 cannot be liberal corroborative evidence as it would have been made at least eight months after the purported act. Again, C’s complaint to H cannot be corroborative of A9 or A10 as C had told H that the incidents occurred in her

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<sup>113</sup> NE 28 November 2022 at p 7 line 22 to p 8 line 2; NE 22 November 2022 at p 44 lines 27–29; Bundle E, Tab 7, S/N 7311.

<sup>114</sup> NE 18 November 2022 at p 45 line 24 to p 47 line 4; NE 24 October 2023 at p 8 line 27 to p 9 line 16.

<sup>115</sup> NE 18 November 2022 at p 8 lines 7–17; NE 25 November 2022 at p 47 lines 11–17; Bundle E, Tab 7, S/Ns 7321–7322.

<sup>116</sup> NE 22 November 2022 at p 45 lines 5–17.

<sup>117</sup> NE 16 November 2022 at p 12 lines 17–23.

shared bedroom at the Family Home,<sup>118</sup> whereas A9 and A10 purportedly occurred at the Office and master bedroom of the Family Home respectively.

52 As for A12, the charge relating to a vibrator, it allegedly occurred on 11 September 2019. In this regard, the only possibly relevant complaints by C would have been to her school counsellor and Dr Yeo on 13 September 2019, and Dr Lim on 24 January 2020. H also testified that C made a complaint to her sometime in August or September 2019, but she was unsure of the exact date; this disclosure could therefore have been before the events of A12.<sup>119</sup> C's complaint to her school counsellor and Dr Lim are not liberally corroborative of A12 as they do not relate to the facts which form the basis of the charge. Firstly, C's school counsellor testified that C told her that CAX had used sex toys on her private parts when she was in Primary four to five.<sup>120</sup> Notably, no mention was made of the events of A12, which allegedly occurred just two days prior to the making of the complaint. Secondly, Dr Lim's testimony did not include any allegation that C had complained of a sex toy or vibrator being used on her.<sup>121</sup> As these complaints do not relate to the facts which form the basis of A12, they cannot amount to liberal corroborative evidence (see [49] above).

53 Regarding A13, the charge relating to vaginal penetration, it took place in August 2019. C disclosed to G on 2 September that she had lost her virginity,<sup>122</sup> but this is a vague reference with no specifics. She also disclosed

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<sup>118</sup> NE 22 November 2022 at p 45 lines 15–17.

<sup>119</sup> NE 22 November 2022 at p 57 lines 16–22 and p 42 lines 18–20.

<sup>120</sup> NE 24 October 2023 at p 9 lines 13–16.

<sup>121</sup> NE 25 November 2022 at p 47 lines 5–32.

<sup>122</sup> Bundle C, Tab 9, S/Ns 37459–37471.

incidents of sexual abuse to H in September 2019,<sup>123</sup> but again this is vague and refers to assaults in the shared bedroom of the Family Home. On 13 September 2019, C complained to the school counsellor that CAX had penile-vaginal sex with her in early August 2019.<sup>124</sup> On the same date, Dr Yeo recorded an interview that contradicted C's account of A13, as she said there were *two* instances of vaginal penetration in August 2019.<sup>125</sup> The account to Dr Lim was four months later and again, the report is vague.<sup>126</sup>

54 Thirdly, the liberal corroborative evidence should not be inconsistent with the evidence that it seeks to support, *ie*, the complainant's testimony. In *AOF* ([45] *supra*), the court held (at [187]) that the second complainant's account was not corroborative of the first complainant's testimony. This was because the second complainant's account of events was inconsistent with the first complainant's testimony in the following respects: (a) they described *different types of acts* that were performed on the first complainant (*ie*, fellatio, as compared to touching of the vagina and body); and (b) they provided inconsistent accounts as to *where* the first complainant had disclosed the matter to the second complainant (*ie*, in the kitchen of their flat, as compared to their grandmother's house). In the present case, the evidence, which is said to be corroborative, contradicts C's version of events. I deal with these inconsistencies below, in the context of considering whether C is unusually convincing.

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<sup>123</sup> NE 22 November 2022 at p 45 lines 1–20.

<sup>124</sup> NE 24 October 2023 at p 9 lines 8–10; NE 24 October 2023 at p 13 lines 1–7.

<sup>125</sup> AB at p 243.

<sup>126</sup> AB at pp 253–254; NE 25 November 2022 at p 47 lines 20–32.

55 Finally, even if any of C’s complaints could amount to liberal corroborative evidence, it would not dispense with the requirement for unusually convincing testimony (*AOF* at [114(a)], citing *XP v Public Prosecutor* [2008] 4 SLR(R) 686 and *Khoo Kwoon Hain v Public Prosecutor* [1995] 2 SLR(R) 591 (“*Khoo Kwoon Hain*”) at [51]). This is because such subsequent complaints will not be given much *weight* by the court due to their non-independent and self-serving nature (*Khoo Kwoon Hain* at [49]–[51]). This coheres with the observation in *AOF* that the non-independent nature of such complaints will likely adversely affect the weight that the court will accord to them, even if they do constitute liberal corroboration (at [177]).

56 In that regard, C’s complaint to Dr Yeo, which was made two days after A12, could amount to liberal corroborative evidence of A12 as it is broadly consistent with C’s account of events. However, subsequent complaints from the complainant will not be given much weight by the court because the source of both are the same.

57 For completeness, I address the Prosecution’s submission that features of C’s disclosure of the sexual abuse corroborate her account that there was a “bridal carry” incident,<sup>127</sup> where sometime after 2 July 2019, CAX “bridal carried” C and positioned his penis against her buttocks while telling her to treat him like her boyfriend and to not tell others about the acts of sexual abuse.<sup>128</sup> The Prosecution submits that this incident is corroborated by the fact that C referred to a “trust thing” in her text messages to G<sup>129</sup> and had told Dr Lim that

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<sup>127</sup> PWS at pp 108–110 at paras 141–142.

<sup>128</sup> NE 9 November 2022 at p 58 line 6 to p 59 line 8.

<sup>129</sup> Bundle C, Tab 3, S/Ns 25121–25128.

she shared a “special trust” with her father.<sup>130</sup> Further, C had told her school counsellor that she was CAX’s girlfriend,<sup>131</sup> which coheres with C’s account that CAX had told her to treat him like her boyfriend during the bridal carry incident. With respect, I am of the view that this does not corroborate her account of *the events of the charges*, as the bridal carry incident is not the subject of any of the charges levied against CAX. C is also the sole source of all the various aspects of this account from her and recount by the school counsellor and Dr Lim.

*Summation and the need for C to be unusually convincing*

58 Accordingly, most of the complaints do not amount to statements relevant under s 159 of the EA. Even the statements so relevant are not sufficient to lower the evidential threshold because all the statements originated from C. Having considered the allegedly corroborative evidence, I am of the view that C’s testimony must be unusually convincing in order to secure a conviction on any of the charges. In this context, I deal below with various inconsistencies between the content of C’s previous statements and her testimony in court.

**Is C unusually convincing?**

59 This requirement serves as a heuristic tool to remind the court that the complainant’s evidence must be subject to anxious scrutiny because of the severe consequences that follow from a conviction (*GCK* ([33] *supra*) at [91]). In determining whether the complainant’s evidence is unusually convincing, the court will consider: (a) the complainant’s demeanour; and (b) the internal and external consistencies of the complainant’s evidence (*GCK* at [88]).

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<sup>130</sup> NE 25 November 2022 at p 48 lines 10–21.

<sup>131</sup> NE 24 October 2023 at p 8 lines 21–23.

60 In my view, C’s evidence must be considered as a whole, in its full context and circumstances. Central to the consideration is the power of C’s recollection. I deal with three general matters that pertain to the reliability of C’s narrative, before turning to the individual charges.

***The retraction on 3 July 2019***

61 In focus at trial was C’s testimony that CAX stood next to her in the living room of the Family Home<sup>132</sup> when she sent a text message to G retracting her disclosure of the day before that CAX had penetrated her anus.<sup>133</sup> CAX’s testimony, on the other hand, was that he was not even at the Family Home at the time and was instead at the Office. CAX referred to several text messages extracted from his phone to support this narrative,<sup>134</sup> and averred that he only left the Office after 8.43pm on 3 July.<sup>135</sup>

62 C was cross-examined on the issue of whether CAX was at the Family Home when she sent the 3 July text message to G at 7.20pm. Specifically, the Defence contended (and C conceded) that it was possible that she had tuition from 5.00pm on that day. She agreed that CAX would be at work when she had her tuition classes. Her testimony ended on a possibility, that CAX could have been there, and that she was not sure:<sup>136</sup>

Q: Remember you were having tuition then from about 5 o’ clock, sometime after 5 o’ clock, probably at home?

A: I do remember that I did have tuition but I’m not sure if it’s on that day.

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<sup>132</sup> NE 9 November 2022 at p 52 line 27 to p 53 line 2.

<sup>133</sup> NE 17 November 2022 at p 32 lines 1–7.

<sup>134</sup> Exhibit D30 at pp 1422.

<sup>135</sup> NE 31 October 2023 at p 32 lines 2–3.

<sup>136</sup> NE 17 November 2022 at p 4 line 24 to p 5 line 19.



Q: Okay. Tuition is usually after 5.00, right, sometime after 5.00, before 6.00, correct?

A: It depends on my tutor but yes, sometimes it will be in the evenings.

Q: In the evenings after 5.00, sometimes. I'm saying that on the 3rd of July, it was actually after – just after 5.00. Possible?

A: Yes.

Q: Okay. And tuition is for about 2 hours, correct?

A: Yes.

Q: So it was after tuition that you sent this message to [G], if tuition was that day. I accept. Correct?

A: Yes.

Q: Okay. And during tuition, your father is normally not at home, isn't it? He would be at work.

A: Yes.

Q: And so I'm saying to you that when you sent this message on the 7 --- on the 3<sup>rd</sup> of July at 7.10, your father was not standing behind you making sure you sent.

A: I disagree.

Q: You sent it yourself when it was convenient to you after tuition. Do you agree?

A: I disagree. My parents *could have come back, maybe just before my tuition ended or just after my tuition ended. And my dad could have been standing behind when I sent the message.* So it doesn't mean that he totally wasn't there because there were times they came back earlier.

Q: But you don't know what time they came back on the 3rd of July, correct?

A: No.

[emphasis added]

63 The retraction message contained the phrase “I was told to tell you”. If CAX had been present, it would have been strange that he let her send that without amendment. The Prosecution did not cross-examine CAX on his version of events, and neither did they deal with the issue in their submissions.

Instead, the Prosecution accepted at closing arguments that C was mistaken as to whether CAX was standing next to her on 3 July 2019.<sup>137</sup> The Prosecution also conceded that it could not rebut the text messages adduced by CAX, which indicated that he was at the Office at the material time.<sup>138</sup> It is plausible that C was simply mistaken as to whether CAX had stood beside her on 3 July 2019 while she sent the retraction message. However, this would impinge on the reliability of her evidence. This retraction with G is a key event in her narrative of CAX's control and abuse; C testified that she drafted the retraction message because of the pressure that CAX had exerted on her by standing behind her and watching her draft the message.<sup>139</sup> In the light of G's importance to her,<sup>140</sup> the retraction message would also have been important because C feared losing her standing with G. Hence her opening line: "I have a feeling you will hate me after you read this message till the end". This was not a mundane or everyday happenstance.

### *C's recollection of her first complaint*

64 In similar vein, the occasion of C's first disclosure of the sexual abuse to a third party would have been a significant event to her. This is because, although C wanted to disclose the incidents of sexual abuse to others, she had not done so out of fear of being punished by her parents.<sup>141</sup> CAX had told her, from the time of the first offence in 2013, that she would be scolded if she told others of the sexual abuse.<sup>142</sup> Accordingly, the first disclosure marked the

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<sup>137</sup> NE 5 February 2024 at p 15 line 4 to p 16 line 17.

<sup>138</sup> NE 5 February 2024 at p 15 lines 4–7.

<sup>139</sup> NE 16 November 2022 at p 58 lines 16–19.

<sup>140</sup> NE 15 November 2022 at p 18 line 7 to p 19 line 1.

<sup>141</sup> NE 16 November 2022 at p 68 lines 20–32.

<sup>142</sup> NE 8 November 2022 at p 16 lines 21–28.

moment when C finally undertook this risk after labouring under CAX's threat for six years.

65 During investigations, C had told Investigating Officer Regina Chai ("IO Chai") that G was the first person she revealed the assaults to.<sup>143</sup> Further, C's 2 November 2021 police statement states that she told G about the sexual abuse on 2 July 2019 because "[she] felt that [she] really needed to tell someone about it" and that "[u]p till July 2019, [she had] never told anyone about [her] father's sexual abuse".<sup>144</sup> The same statement locates her first disclosure to F in August or September 2019, subsequent to her initial disclosure to G.

66 In contrast, C advanced a different sequence of disclosures at trial. At trial, she testified that she had first complained of the sexual abuse to E during a sleepover in June 2019, followed by a FaceTime call to F the next day.<sup>145</sup> The parties involved in this FaceTime call were C, F, and E. This was congruent with F's testimony at trial, which was in turn consistent with F's police statement dated 19 October 2021. F's police statement mentioned that C had told F, while they were on the phone in June 2019, about her father's sexual abuse.<sup>146</sup> C also had a text message conversation with G where she alluded to her "telling [F] and [E] a secret" involving "one of my family member"; a secret that she had not yet shared with G.<sup>147</sup> E was not called as a witness.

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<sup>143</sup> NE 25 October 2023 at p 7 lines 1–2.

<sup>144</sup> Exhibit D13 at p 4 at para 12.

<sup>145</sup> NE 9 November 2022 at p 31 lines 14–24.

<sup>146</sup> Exhibit D14 at para 3.

<sup>147</sup> Bundle C, Tab 1, S/N 16989.

67 C explained that she had not previously mentioned her initial disclosure to E because she was only thinking about her disclosures to her friends from school, and E did not go to her school.<sup>148</sup> This explanation is unsatisfactory. It is undisputed that F *was* a friend from C's school. The FaceTime call that C had with F was proximate in time to the sleepover disclosure to E; it happened only a day later. In any event, C's testimony was that *E was also a party to the FaceTime call*. Even if C had only been thinking of her disclosures to her friends from school, this would have included the June 2019 FaceTime call to F and E. Therefore, C's account at trial of the sequence in which she disclosed the sexual offences contradicts her account in the November 2021 police statement, in which she had disavowed *any* prior disclosure of sexual abuse to others before July 2019.

68 On one hand, 2 November 2021, the date of the police statement, is closer in time to the first disclosure and hence could arguably be more reliable. On the other hand, C's evidence at trial is supported by F and a 22 June 2019 text message to G. In the round, it could be that she had simply forgotten about her disclosure to E at the time of the 2 November 2021 statement but remembered it later at trial. Nevertheless, such an assumption would raise concerns regarding the quality of her recall.

### ***The contemporary record***

69 C kept a personal diary in which she recorded detailed complaints about the situation in her home. This diary was not meant to be seen by anyone<sup>149</sup> and included references to how her brother, parents, and friends treated her badly,

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<sup>148</sup> NE 17 November 2022 at p 29 lines 1–8.

<sup>149</sup> NE 17 November 2022 at p 43 lines 18–23.

and to C's self-harm.<sup>150</sup> Extracts were angry and unfiltered.<sup>151</sup> One diary entry, dated 7 March 2019, stated that she did not want her parents' love anymore and that only G had been there for her when she needed him. It also professed in large font, red highlights, and repeated exclamation marks, that she did not regret self-harming and did not care if she died – she wanted “more scars, more bruises[,] [so that she would] die faster!!!”<sup>152</sup> In another undated diary entry, C had scrawled in large red font “I don't fit in and they won't leave me alone”.<sup>153</sup> However, despite detailing various grievances with her family and friends that purportedly caused her to contemplate suicide, none of the entries contained any assertions of sexual abuse. This omission, in and of itself, could have been explained. It is therefore salient to consider C's explanation for it.

70 On cross-examination, C gave the following reasons for the omission: (a) that the sexual abuse was not her largest source of stress at the time;<sup>154</sup> (b) that while she knew the acts were wrong, she was still unsure or confused as to the nature of the acts;<sup>155</sup> and (c) she could not put the incidents down into words as she did not know how to describe the parties' genitals.<sup>156</sup>

71 On (a), she explained that she failed to write about the abuse because her biggest source of stress at the time of the diary entry, on 7 March 2019, was her popularity with and attention from her friends.<sup>157</sup> I find this explanation to be

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<sup>150</sup> Exhibit D8.

<sup>151</sup> Exhibit D8.

<sup>152</sup> Exhibit D8.

<sup>153</sup> Exhibit D10.

<sup>154</sup> NE 15 November 2022 at p 20 line 22–26.

<sup>155</sup> NE 15 November 2022 at p 19 line 26–28.

<sup>156</sup> NE 15 November 2022 at p 20 lines 1–2.

<sup>157</sup> NE 15 November 2022 at p 20 line 28 to p 21 line 6.

out of sync with her revelation to G that she had been contemplating suicide because of CAX's sexual abuse.<sup>158</sup> While the diary entry was written on 7 March 2019, which was before C had revealed her suicidal thoughts to G in August 2019, it is undisputed that C had already been anally penetrated by CAX in 2018.<sup>159</sup>

72 On (b), her explanation that she knew that these acts were wrong, but was nonetheless unsure, contradicts her police statement dated 2 November 2021. In her police statement, C stated that she realised that what CAX had done to her was wrong after going through sexuality education at her school while in Primary five:<sup>160</sup>

It was only in 2018, when I was in Primary 5, after going through sexuality education in school, that I realised that what my father was doing to me was wrong. I would not have allowed my father to perform these sexual acts on me, but I complied because I felt that I had to listen to him.

73 When queried about this inconsistency on cross-examination, C gave a starkly different account from that in her police statement. C stated on cross-examination that she did not remember what she had been taught in her sexuality education class, and that she that she *only* knew that the acts were wrong in Primary five because she had seen warnings on pornographic websites requiring viewers to be at least 18 years old. C confirmed that it was *only* through these warnings on adult websites, and *not* her sexuality education class, that she knew that the acts were wrong in Primary five.<sup>161</sup>

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<sup>158</sup> Bundle E, Tab 3, S/Ns 58382–58436.

<sup>159</sup> NE 16 November 2022 at p 12 lines 12–23; NE 17 November 2022 at p 38 lines 4–16.

<sup>160</sup> Exhibit D13 at p 5 at para 16.

<sup>161</sup> NE 15 November 2022 at p 37 lines 4–23.

74 On (c), there is no need to refer to genitals explicitly in order to put the incidents down into words. Contrary to C’s claim that she did not know how to refer to genitals, she had in fact detailed the sexual abuse in her text messages to G by referencing the parties’ genitals. In particular, C managed to refer to the parties’ genitals without doing so explicitly, by disclosing that she had been forced to “suck [her father’s] place” or that he would “put his place in [her] place”.<sup>162</sup>

75 Therefore, C did not provide a satisfactory explanation for her omission of any allegation of sexual abuse from her diary. Nonetheless, there are several possible reasons for this omission. Firstly, C did not detail several other notable incidents in the diary entries. For instance, while C’s mother had threatened to cane her twice for every mark that she scored below 90 in her school assessments,<sup>163</sup> this incident was not recorded in the diary entries. It is possible that she simply did not have a habit of detailing *every* negative incident in her diary. Secondly, it is unclear how robust the contemporaneous record was. The Defence had only tendered screenshots of three diary entries. C’s evidence was that these entries were written on different notebooks – one entry had been written on a notebook that she brought to school everyday,<sup>164</sup> while another entry had been written in a different notebook where C wrote about school-related matters.<sup>165</sup> While C conceded on cross-examination that she had not written anything in her diary which suggested that CAX had sexually abused her,<sup>166</sup> it is unclear as to whether C wrote diary entries regularly or only

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<sup>162</sup> Bundle E, Tab 7, S/Ns 7311 and 7321.

<sup>163</sup> NE 31 October 2023 at p 14 lines 7–11.

<sup>164</sup> NE 17 November 2022 at p 43 lines 18–19.

<sup>165</sup> NE 17 November 2022 at p 44 lines 10–11.

<sup>166</sup> NE 15 November 2022 at p 20 lines 11–14.

occasionally. As such, the diary entries that the Defence adduced were not satisfactory contemporaneous records of C's personal thoughts. Accordingly, I am of the view that C's omission to diarise any incident of sexual abuse does not weigh against her credibility.

*Summation on the three points*

76 In my view, while C's omission to mention any sexual abuse in her diary does not impact her credibility, her inconsistency regarding the circumstances of her retraction message and her first disclosure of the sexual abuse impinges on the quality of her recall. These two issues do not mean that C's evidence, when subsequently taken as a whole, cannot be unusually convincing. They are nonetheless part of the overall context in which her evidence is to be assessed. In particular, A1 and A2 are charges that date from many years before and the reliability of C's recollection will therefore play an especially important role. I deal with these two charges in this context.

***A1: Committing an indecent act with a child***

77 A1 concerns the earliest instance of sexual abuse by CAX. C initially testified that the events of the first charge occurred at the toilet of the Former Family Home in 2012 or 2013, when she was in Kindergarten one or two.<sup>167</sup> C clarified on cross-examination that the incident occurred when she was in Kindergarten two,<sup>168</sup> which would place the incident in 2013. C recalled that she had initially been showering with her brother in a pink bathtub in the toilet when CAX entered the toilet naked. CAX then sat on the toilet bowl and told C to lick his penis like an ice cream. While C was licking his penis, CAX purportedly left

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<sup>167</sup> NE 8 November 2022 at p 16 lines 10–20.

<sup>168</sup> NE 16 November 2022 at p 62 lines 4–10.



the toilet to retrieve a can of chrysanthemum tea from the kitchen. Upon returning to the toilet, CAX sat on the toilet bowl again and poured the drink over his penis. He then told C to lick his penis again.<sup>169</sup> C could not recall if CAX ejaculated on this occasion.<sup>170</sup> C recalled that her mother was not at home when the incident occurred.<sup>171</sup> After the incident, CAX purportedly warned C not to tell anyone about the incident as she would be scolded.<sup>172</sup>

78 C's account of A1 appears to be consistent with what she had told Dr Lim. Dr Lim testified that on 24 January 2020, C told him that the first incident of sexual abuse began when she was five or six. She stated that on this occasion, she was in the bathtub with her brother when her father walked in naked.<sup>173</sup> He then sat on the toilet bowl and made C put her mouth over her penis. This largely mirrors C's recount of A1 in court.

79 Nonetheless, there are several points of concern with C's evidence. First, her account of events is inconsistent with an earlier police statement that she provided on 2 November 2021. In her police statement, C stated that she and her brother were showering together with CAX when the latter told her to move closer to him and pushed her head towards his penis.<sup>174</sup> In other words, CAX was already in the toilet with C and her brother, and all three of them were naked and showering together. However, C testified in her examination-in-chief that

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<sup>169</sup> NE 8 November 2022 at p 16 lines 10–20.

<sup>170</sup> NE 8 November 2022 at p 16 lines 20–21.

<sup>171</sup> NE 8 November 2022 at p 16 line 13.

<sup>172</sup> NE 8 November 2022 at p 16 lines 21–28.

<sup>173</sup> NE 25 November 2022 at p 47 lines 5–10.

<sup>174</sup> Exhibit D13 at p 2 at para 5.

she was already showering in the toilet with her brother when CAX entered the toilet naked.<sup>175</sup>

80 A second area relates to the sequence of facts within A1. In her police statement dated 2 November 2021, C did not mention any sucking or licking of CAX's penis before the chrysanthemum tea was poured. Instead, the statement only stated that C *licked* his penis, and implied that she did so after and not before he poured the drink:<sup>176</sup>

...My father then told me to open my mouth and lick his penis. I did as I was told. *Before I licked his penis*, my father poured some drink (which he took out from the fridge in the kitchen) over his penis. My father told me not to tell anyone about this.

[emphasis added]

81 On the other hand, C's testimony in court was that she had *sucked* and licked his penis *before* he poured the tea over it.<sup>177</sup> When questioned on this omission during cross-examination, C explained that she had forgotten to mention in the police statement that she had licked and sucked CAX's penis before he had poured the drink over it.<sup>178</sup>

82 The Defence pointed out in addition that C failed to mention in her police statement that she had *sucked* CAX's penis. In my view, this is not necessarily inconsistent with her testimony in court. In the statement, C stated, "My father then told me to open my mouth and lick his penis. I did as I was

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<sup>175</sup> NE 8 November 2022 at p 16 lines 10–15.

<sup>176</sup> Exhibit D13 at p 2 at para 5.

<sup>177</sup> NE 8 November 2022 at p 16 lines 9–22.

<sup>178</sup> NE 15 November 2022 at p 57 lines 13–18.

told”. There would be less need for her to “open her mouth” if the incident involved licking only.

83 Thirdly, C was inconsistent as to whether the first charge was an isolated incident of fellatio or whether it formed part of a continuing series of acts that occurred in Kindergarten. In her police statement on 2 November 2021, C stated that A1 was the first time that CAX had sexually abused her, and that she did not recall the accused performing any other sexual act on her until the family shifted to the Family Home in 2015.<sup>179</sup> This was also C’s position in court.<sup>180</sup> However, this contradicts C’s account to Dr Yeo on 13 September 2019, where she stated that CAX had asked her to suck his penis “on an almost weekly basis” starting from when C was in Kindergarten one.<sup>181</sup> When cross-examined, C testified that she could not recall what she had told Dr Yeo.<sup>182</sup> However, C accepted that it would be wrong to say that she was forced to perform oral sex on a weekly basis since Kindergarten, and that she would not have said that to Dr Yeo:<sup>183</sup>

Q: Okay. Would you say that the oral sex was on an almost weekly basis, starting from when it started, K1 or K2, whatever?

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<sup>179</sup> Exhibit D13 at p 2 at paras 5–6.

<sup>180</sup> NE 15 November 2022 at p 64 lines 20–24.

<sup>181</sup> AB at p 243.

<sup>182</sup> NE 16 November 2022 at p 61 lines 1–4.

<sup>183</sup> NE 16 November 2022 at p 62 lines 18–26.

But starting from K1 or K2, would it be right to say that the oral sex was on an almost weekly basis?

A: No.

Q: No, right, that's completely wrong, correct?

A: Yes.

Q: And you would not have said that to the doctor or anybody else, correct? You agree?

A: Yes.

84 The Prosecution contends that this discrepancy could be explained by the fact that: (a) the interview with Dr Yeo was conducted late in the day on 13 September 2019; (b) the entire sexual assault examination was conducted in a mere 39 minutes, with the implication being that the interview was rushed and conducted in a cursory manner; and (c) Dr Yeo would not have read C's responses back to her for confirmation, unlike in the recording of a police statement.<sup>184</sup> I do not agree. Firstly, Dr Yeo testified that the history-taking component of the assessment would likely have taken "quite [a] significant" amount of time".<sup>185</sup> Secondly, she also testified that history-taking was important as it would allow the medical staff to ascertain whether there was any risk of pregnancy or transmission of sexually transmitted diseases.<sup>186</sup> To that end, there was a checklist which required Dr Yeo to inquire about prior incidents of sexual assault, as well as inquire into the nature of such incidents.<sup>187</sup> Given the importance of ascertaining the nature of prior sexual assaults during the

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<sup>184</sup> PWS at p 87 at para 113.

<sup>185</sup> NE 18 November 2022 at p 4 line 30 to p 5 line 2.

<sup>186</sup> NE 18 November 2022 at p 4 lines 8–13.

<sup>187</sup> NE 18 November 2022 at p 4 lines 1–7.

history-taking exercise, I find it unlikely that Dr Yeo would have been careless in eliciting information from C during the interview.

85 Fourthly, C’s account of A1 is inconsistent with her account of events that was given to her school counsellor on 13 September 2019. C’s school counsellor testified that C had told her that when she was six years old, CAX had asked her to go to the corner of “another room” in the Former Family Home, where he asked her to put her mouth over his penis.<sup>188</sup> This is inconsistent with C’s account in court, where she testified that CAX had *entered the bathroom that she was in* and had asked her to lick his penis there. There was no mention of CAX asking C to go from the bathroom to another room.

86 The Prosecution contends that such a discrepancy could be due to deficiencies in the school counsellor’s recall because: (a) she was testifying to events that occurred more than four years prior; (b) she did not take contemporaneous notes of the disclosure; and (c) it was unclear whether she refreshed her memory of the disclosure before leaving C’s school at the end of 2019.<sup>189</sup> This submission, which contradicts its earlier submission that the school counsellor’s evidence is liberal corroboration,<sup>190</sup> is not persuasive. The school counsellor was able to recall granular details of C’s disclosure, such as the fact that the first incident of sexual abuse purportedly occurred when C was 6 years old,<sup>191</sup> and that CAX had penile-vaginal sex with C in August 2019.<sup>192</sup> She was also able to recall C’s explanation as to why she was sure that sex toys

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<sup>188</sup> NE 24 October 2023 at p 8 lines 27–30.

<sup>189</sup> PWS at pp 83–84 at para 110.

<sup>190</sup> PWS at pp 79–83 at paras 108–109.

<sup>191</sup> NE 24 October 2023 at p 8 line 28.

<sup>192</sup> NE 24 October 2023 at p 9 line 8–10; NE 24 October 2023 at p 12 line 25 to p 13 line 7.

were used on her, viz, that C had seen the object vibrating and had seen it around the house.<sup>193</sup> Further, the school counsellor testified that she recorded a note of the disclosure a few days after it transpired, which was then kept with C's school.<sup>194</sup>

### *Summation on A1*

87 C's account of A1 in court is inconsistent with her previous complaints to others of the incident. These inconsistencies relate to both the specifics of the incident as well as the broader context in which it occurred. The nature of the inconsistencies and their effect on the credibility of the complainant must be considered in the light of the facts of each case: *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2019] 2 SLR 490 ("*Mohd Ariffan*") at [79]. In the present case, the inconsistencies could have arisen because A1 is an offence that dates from many years prior to C's first complaint and C was also extremely young at the time. Viewed in this light, the evidence may not be reliable. Conviction on this charge would be unsafe. I acquit CAX of the charge.

### ***A2: Exhibiting an obscene object***

88 C's account of the second charge was that it occurred at the Family Home when she was nine years old and in Primary three.<sup>195</sup> The incident occurred when the rest of her family was about to leave the Family Home in the evening to buy dinner. C's mother and brother were already at the main door of the Family Home when CAX entered the room that C was in. CAX then passed C his iPad, which was logged onto a website called "PornMonkey", and

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<sup>193</sup> NE 24 October 2023 at p 9 lines 13–16.

<sup>194</sup> NE 24 October 2023 at p 13 line 27 to p 14 line 6.

<sup>195</sup> NE 8 November 2022 at p 19 line 29.

instructed C to watch the video playing on the iPad. Thereafter, CAX left the Family Home with the rest of the family to buy dinner. Once the rest of the family had left the Family Home, C watched the video that was already selected.<sup>196</sup> C testified that she recalled seeing a video (“the Group Sex Video”) wherein a woman with long hair slowly took off her clothes, was surrounded by naked men, and sucked on their penises. The woman then inserted their penises into her vagina and anus and moaned.<sup>197</sup>

89 C also testified that after the events of A2, she would watch pornography once every two or three months, using either CAX’s iPad, which he had given her access to, or her own mobile phone.<sup>198</sup> C’s mother discovered that C was watching pornography sometime later, when C was in Primary three or four.<sup>199</sup> C’s mother came to know of this after looking at C’s internet search history on C’s mobile phone. When C’s mother asked her why she had watched pornography, C explained she remained silent because she was scared of getting punished or scolded by her parents.<sup>200</sup>

90 A single iPad belonging to C’s mother was seized at the time of CAX’s arrest,<sup>201</sup> and forensic analysis did not show any past links to pornographic websites.<sup>202</sup> It is also undisputed that C had previously been caught by her parents for searching for pornography on her cell phone. However, the evidence

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<sup>196</sup> NE 8 November 2022 at p 19 lines 14–27.

<sup>197</sup> NE 8 November 2022 at p 20 lines 1–5.

<sup>198</sup> NE 8 November 2022 at p 20 lines 9 and 11.

<sup>199</sup> NE 8 November 2022 at p 21 lines 19–23.

<sup>200</sup> NE 8 November 2022 at p 21 line 26 to p 22 line 12

<sup>201</sup> NE 25 October 2023 at p 19 line 15.

<sup>202</sup> NE 25 October 2023 at p 3 lines 17–18.

is inconclusive as to whether this was before or after the events of A2. C's evidence was that it was CAX who had taught her how to access pornography on her cell phone, and had later taught her how to conceal her internet activity by using the web browser's incognito mode.<sup>203</sup>

91 Despite her evidence on the regularity of access to pornography, in her disclosures to her friends F, H or G or school counsellor, C did not mention that CAX had shown her pornography.<sup>204</sup> While this omission is insufficient in and of itself to give rise to doubt, it is concerning in the overall context of the lack of evidence. C would have known it was a relevant fact. C admitted on cross-examination that her mother was not pleased on discovering that she had accessed pornographic sites, and that she had known, by the time she was in Primary five or six, that she should not have accessed adult sites.<sup>205</sup>

92 Further, C's recollection that CAX had showed her the Group Sex Video is contradicted by her cross-examination. When C was questioned as to whether she was sure that she had seen the Group Sex Video during A2, she conceded that she could not remember the content of the pornographic video that was shown to her on that occasion. Instead, she conceded that the Group Sex Video could have been shown on another occasion.<sup>206</sup> Nonetheless, I do acknowledge that C had been broadly consistent in her account that CAX had given her his iPad, which was preloaded with the PornMonkey webpage, and that A2 was the first time that she had viewed pornography.

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<sup>203</sup> NE 8 November 2022 at p 22 line 4 to p 23 line 18.

<sup>204</sup> Exhibit D14 at para 3; Exhibit D15 at para 3; NE 18 November 2022 at p 45 line 31 to p 47 line 4; NE 22 November 2022 at p 44 line 27 to p 45 line 8.

<sup>205</sup> NE 15 November 2022 at p 44 lines 5–7.

<sup>206</sup> NE 15 November 2022 at p 58 line 8 to p 59 line 2.



*Summation on A2*

93 C may have overlooked mentioning the events of the second charge when recounting the more varied and traumatising incidents of fellatio and anal penetration. Nevertheless, the offence dates from many years ago and there is no other evidence of it, save for her recollection. In this regard, the general inconsistencies in C's ability to recall key signposts in her narrative (see above at [61]–[68]) are pertinent. Viewing the evidence as a whole, it would be unsafe to convict on A2. I acquit CAX on this charge.

*The charges from 2018 and 2019*

94 Charges A3–A13 reflect a narrative from 2018, first beginning with CAX penetrating C's mouth with his penis; then penetrating her anus with his penis and her vagina with a vibrator; and culminating in statutory rape.

95 In such cases where multiple instances of sexual abuse are alleged over a number of years, it would be impossible for a complainant to recall every minute detail of each charge. I therefore deal with these offences with reference to key pieces of evidence and events that would ordinarily be focal points of a victim's recall. The first involves C's introduction to the use of vibrators. The second concerns instances of ejaculation which, as a practical matter, should be difficult for a young victim to forget.

*A12: Vaginal penetration with a vibrator*

96 C's evidence was that A12 occurred at the Family Home on 11 September 2019, at night.<sup>207</sup> She had been sleeping with her brother on the upper bunk of the double bunk bed in her shared bedroom that night, as her

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<sup>207</sup> NE 9 November 2022 at p 8 lines 5–10.

brother could not fall asleep. CAX then entered their bedroom and carried C down to the lower bunk. CAX and C then lay down on the bottom bunk and CAX touched C's breasts while telling her brother to go to sleep. CAX rubbed his hand up and down C's chest and rubbed her thighs. After C's brother fell asleep, CAX left the bedroom and returned with the Pink Vibrator.<sup>208</sup> C testified that she did not recall seeing the Pink Vibrator before that night.<sup>209</sup> CAX then switched on the vibrator and used it on her. C felt that CAX was trying to insert the vibrator into her vagina while it was switched on, but was unsure as to whether it was inserted.<sup>210</sup> C testified that she was not looking at what CAX was doing to her at that time, but could recall feeling a strong vibrating sensation. Thereafter, CAX suddenly stopped and walked off while telling C to clean herself.<sup>211</sup> C then went to the common toilet to wash up. After washing up, C stood outside of the master bedroom and looked in, as the door was partially open.<sup>212</sup> She allegedly saw CAX walk towards the wardrobe and open a lower drawer, where she thought he kept the Pink Vibrator.<sup>213</sup> This was why she was able to tell the police where to find the Pink Vibrator when they searched the Family Home.

97 The accused testified that he ordered the Pink Vibrator online and received it on 20 August 2019.<sup>214</sup> The order came together with a grey vibrator

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<sup>208</sup> NE 9 November 2022 at p 8 lines 5–23.

<sup>209</sup> NE 9 November 2022 at p 11 lines 22–23; p 13 lines 4–5.

<sup>210</sup> NE 9 November 2022 at p 12 lines 8–11.

<sup>211</sup> NE 9 November 2022 at p 12 lines 1–3.

<sup>212</sup> NE 16 November 2022 at p 39 lines 9–27.

<sup>213</sup> NE 9 November 2022 at p 14 lines 12–15.

<sup>214</sup> NE 31 October 2023 at p 41 lines 27–30.

(“the Grey Vibrator”) as a free gift.<sup>215</sup> CAX had ordered the vibrator on 13 August as he wanted to surprise his wife on their anniversary, which was on 15 August.<sup>216</sup> However, despite opting for the vibrators to be delivered on the same day,<sup>217</sup> they only arrived on 20 August 2019.<sup>218</sup> He averred that he had not used any vibrator on C.<sup>219</sup> CAX explained that his DNA was found on the Pink Vibrator because he had touched it while inserting batteries into it. He also testified that he had turned it on once because he was curious.<sup>220</sup>

98 On the evening of 5 September 2019, while CAX was searching the house for sharp objects, he purportedly found the Pink Vibrator on C’s bed.<sup>221</sup> CAX had been conducting such a search as he had just been informed by C’s school counsellor and form teacher earlier that day that C was engaging in self-harm.<sup>222</sup> He questioned C about the Pink Vibrator and told her to put it back where she had taken it from<sup>223</sup> and to speak to her mother about it.<sup>224</sup> CAX did not speak to his wife about the incident.<sup>225</sup>

99 CAX’s testimony was rather strange. He had ordered the Pink Vibrator, just two days before his anniversary, as an anniversary gift. At the same time,

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<sup>215</sup> NE 31 October 2023 at p 41 lines 16–32.

<sup>216</sup> NE 2 November 2023 at p 34 lines 15–20.

<sup>217</sup> NE 2 November 2023 at p 34 lines 27–28.

<sup>218</sup> NE 2 November 2023 at p 14 lines 3–6.

<sup>219</sup> NE 31 October 2023 at p 43 lines 11–12.

<sup>220</sup> NE 31 October 2023 at p 43 lines 11–21.

<sup>221</sup> NE 31 October 2023 at p 52 lines 11–16.

<sup>222</sup> NE 31 October 2023 at p 44 lines 1–15; p 42 lines 25–28.

<sup>223</sup> NE 31 October 2023 at p 42 line 17 to p 43 line 21.

<sup>224</sup> NE 2 November 2023 at p 48 lines 16–24.

<sup>225</sup> NE 31 October 2023 at p 52 lines 14–16.

he admitted that his wife did not enjoy using vibrators<sup>226</sup> and that he had not ensured its arrival before the anniversary date.<sup>227</sup> He also did not use it with his wife subsequently.<sup>228</sup> His sanguinity upon finding the Pink Vibrator on C's bed is plausibly explained by his view that it was too soon after the parent-teacher meeting at C's school, where they had discussed C's self-harm.<sup>229</sup> However, CAX's apparent neglect to follow up with his wife after instructing C to talk to her mother is surprising.<sup>230</sup> Notwithstanding these difficulties, C's own evidence gives rise to reservation on two counts: (a) she gave conflicting accounts as to when she saw the Pink Vibrator for the first time; and (b) she gave conflicting accounts as to when vibrators were first used on her.

*When did C first see the Pink Vibrator?*

100 C initially testified in her examination-in-chief that she had not seen the Pink Vibrator before the night of 11 September 2019:<sup>231</sup>

Q: Did --- at that time, did you know where he got the pink vibrator?

A: No, I have --- I've never seen it before.

...

Q: Before that night, have you seen this vibrator?

A: Not that I recall.

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<sup>226</sup> NE 2 November 2023 at p 43 lines 17–19.

<sup>227</sup> NE 2 November 2023 at p 38 lines 6–23.

<sup>228</sup> NE 2 November 2023 at p 39 lines 7–10.

<sup>229</sup> NE 2 November 2023 at p 46 lines 9–15.

<sup>230</sup> NE 2 November 2023 at p 48 line 29 to p 49 line 11.

<sup>231</sup> NE 9 November 2022 at p 11 line 22 to p 13 line 5.

101 However, this contradicts her 1 September Letter, where she claimed that there was a sex toy on the shelf in her room, and that CAX had used it on her on a few occasions:<sup>232</sup>

...

You can take a look at the shelf in my room, behind my bed that there is a thing you call 'sex toy'. Daddy used it on me a few times already.

...

102 C stated that this was a reference to the Pink Vibrator.<sup>233</sup> When confronted with this discrepancy, C clarified that she had possession of the Pink Vibrator as of 1 September 2019, and had placed it in her bedroom.<sup>234</sup> C explained that the Pink and Grey vibrators had been used on her a few times prior to writing the 1 September Letter.<sup>235</sup> On cross-examination, C admitted that she was mistaken when she initially gave her evidence during her examination-in-chief:<sup>236</sup>

Q: Okay. Now initially in your evidence-in-chief, sorry, initially last week when you were giving evidence, you said that this was – you only saw this thing, vibrator, that day. You can't remember seeing it before, correct?

A: Yes. I did say that but *I may have made a mistake because I do recall that I was mentioning it in the letter that I wrote in earlier September.*

Q: Right. So you see, up to the point when you were shown the letter that you had written, your recollection was that this was the first time you saw the pink vibrator, correct, 11 September?

A: Yes.

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<sup>232</sup> Bundle E, Tab 5.

<sup>233</sup> NE 10 November 2022 at p 6 lines 4–7.

<sup>234</sup> NE 10 November 2022 at p 7 lines 11–29.

<sup>235</sup> NE 16 November 2022 at p 46 lines 1–16.

<sup>236</sup> NE 16 November 2022 at p 37 lines 9–20.

Q: Then when you saw the letter and then you realised that it couldn't have been the first time, correct?

A: Yes.

Q: And then you changed your evidence to say that you had seen it before, correct?

A: Yes.

[emphasis added]

103 I find her answer unusual in referencing her writing the letter, rather than referencing a specific incident involving a vibrator. On its part, the Prosecution submits that C was simply mistaken in her evidence-in-chief, and that her memory of the issue was refreshed after she saw the 1 September Letter at a later stage of her examination-in-chief.<sup>237</sup> In my view, this explanation is not entirely satisfactory because C had admitted in cross-examination that she had previously reviewed the 1 September Letter before coming to court:<sup>238</sup>

Q: This letter that you had written, you had thrown it away in 2019, correct?

A: Yes.

Q: And you had actually forgotten what was written in it, correct?

A: Yes.

Q: Until you saw the letter in Court again, right?

A: Until it was mentioned that I wrote the letter, then I remembered that – I remembered roughly what I had written in the note.

Q: And that was in Court last week?

A: No, I recall that I have reviewed it before –

Q: Okay, don't tell us. It's okay, alright. Now before you came to Court?

A: Yes.

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<sup>237</sup> PWS at p 55 at para 77.

<sup>238</sup> NE 16 November 2022 at p 37 line 25 to p 38 line 6.

Q: Okay. But when you came to Court and started giving evidence, you have forgotten what was in the letter, correct? Otherwise, you wouldn't have made the mistake you made, right?

A: Yes.

*When was the Pink Vibrator first used on C?*

104 The use of a vibrator would have made an impact on a young child. However, C had no clear recall as to when CAX first started using vibrators on her. C's testimony on cross-examination was that she did not remember when CAX started using vibrators on her. She conceded that it could have begun in 2018, when she was in Primary five, but was unsure.<sup>239</sup> However, this is inconsistent with two other accounts, which themselves also do not align one with the other:

(a) According to Dr Yeo's medical report, C had told her during the medical examination on 13 September 2019 that CAX had first started using a vibrator on her from June 2019.<sup>240</sup>

(b) C's school counsellor testified that C had told her, on 13 September 2019, that CAX had used "sex toys" on her private parts between Primary four and five.<sup>241</sup> C would have been in Primary four and five in 2017 and 2018 respectively. According to C's school counsellor, C knew it was a sex toy as it was "vibrating, and she [had] seen it around in the house".<sup>242</sup>

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<sup>239</sup> NE 16 November 2022 at p 61 lines 17–31.

<sup>240</sup> AB at p 243.

<sup>241</sup> NE 24 October 2023 at p 9 lines 13–16.

<sup>242</sup> NE 24 October 2023 at p 9 lines 15–16.

105 Even if C did not recall when CAX had first started using vibrators on her during her cross-examination, there is little reason for her to have provided wholly different starting dates to Dr Yeo and her school counsellor when she was questioned by them on the *same day*. Further and rather fundamentally, the Prosecution's evidence was that the Grey and Pink vibrators were only delivered to CAX on 20 August 2019,<sup>243</sup> which is well after *either* of the alleged starting dates provided to C's school counsellor or Dr Yeo. The Prosecution did not adduce any evidence to suggest that CAX owned or used other vibrators aside from the Grey and Pink vibrators.

#### *Summation on A12*

106 In my view, the Pink Vibrator is the focal point of the offence in A12. The issue of whether it had been used on C before the events of A12 is an inconsistency that is significant to her account of the offence. Even if I am to accept that C was simply mistaken at trial, the inaccuracy regarding the prior use of the vibrators calls into question the reliability of C's memory. The introduction and use of the Grey and Pink vibrators is also an important aspect of the Prosecution's case of increasing assault that culminated in rape and vaginal penetration with the Pink Vibrator. Accordingly, I do not think that C's evidence on A12 is unusually convincing. I therefore acquit CAX of this charge.

#### ***A3–A11: Incidents of fellatio and anal penetration***

107 Charges A3–A11 concern various instances of fellatio and anal-penile penetration. Notably, C's account of A3–A11 is affected by a common inconsistency regarding whether or not CAX ejaculated on each occasion. C's

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<sup>243</sup> NE 24 October 2023 at p 45 lines 13–15.



testimony was that CAX had ejaculated on all these occasions. In particular, she averred that:

- (a) Regarding A3, CAX had ejaculated in her mouth. C then cleaned herself up in the common toilet of the Family Home.<sup>244</sup>
- (b) Regarding A4, CAX had ejaculated in her mouth, and she cleaned herself up at the common toilet or the kitchen sink in the Family Home.<sup>245</sup>
- (c) Regarding A5, CAX had ejaculated into her mouth and she had spit out his ejaculate into some spare wet wipes,<sup>246</sup> which she threw away while on her way home.<sup>247</sup>
- (d) Regarding A6, CAX had ejaculated and she cleaned herself up at the common toilet in the kitchen of the Grandparents' Home.<sup>248</sup>
- (e) Regarding A7, CAX had ejaculated into her mouth and she cleaned herself up in the basement toilet of the Grandparents' Home.<sup>249</sup>
- (f) Regarding A8, CAX had ejaculated in her anus and she cleaned herself up at the common toilet of the Family Home.<sup>250</sup> C knew that CAX had ejaculated because she could feel a sensation in

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<sup>244</sup> NE 8 November 2022 at p 45 lines 14–17.

<sup>245</sup> NE 8 November 2022 at p 35 lines 4–11.

<sup>246</sup> NE 8 November 2022 at p 24 line 15 to p 25 line 17.

<sup>247</sup> NE 8 November 2022 at p 27 lines 27–30.

<sup>248</sup> NE 8 November 2022 at p 55 lines 11–21.

<sup>249</sup> NE 8 November 2022 at p 48 line 23 to p 49 line 8.

<sup>250</sup> NE 8 November 2022 at p 59 lines 7–8.

her anus and, while cleaning herself later, she felt: (a) like passing motion; and (b) a warm liquid coming out of her anus.<sup>251</sup>

(g) Regarding A9, CAX had ejaculated and C went to the toilet at the Office to get tissues to clean herself up.<sup>252</sup>

(h) Regarding A10, CAX had ejaculated *inside her anus* and she had washed up in the toilet of the master bedroom at the Family Home.<sup>253</sup> However, at a later instance during C's examination-in-chief, she was unable to recall *where* exactly CAX had ejaculated.<sup>254</sup> This was also C's position during her cross-examination and re-examination. The Prosecution submits that this discrepancy is understandable as the issue of *where* CAX had ejaculated is a peripheral detail which a child could have become unsure of.<sup>255</sup>

(i) Regarding A11, CAX had ejaculated into her mouth and she cleaned her mouth at the kitchen sink at the Family Home.<sup>256</sup>

108 However, C's account that CAX had ejaculated during the events of A3–A11 is inconsistent with two prior accounts that were given by her:

(a) Dr Yeo's medical report states that when C was questioned about the issue of ejaculation during her medical examination on 13

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<sup>251</sup> NE 8 November 2022 at p 63 lines 1–4.

<sup>252</sup> NE 8 November 2022 at p 67 line 10 to p 68 line 2.

<sup>253</sup> NE 8 November 2022 at p 64 lines 10–11.

<sup>254</sup> NE 8 November 2022 at p 67 lines 7–9.

<sup>255</sup> PWS at p 53 at para 74.

<sup>256</sup> NE 8 November 2022 at p 28 line 5 to p 29 line 13.

September 2019, C “did not recall ejaculation occurring during any of the [sexual] assaults”.<sup>257</sup>

- (b) C’s 2 November 2021 statement to the police in respect of the same charges did not mention any ejaculation or any cleaning up after ejaculation.<sup>258</sup>

109 When C was cross-examined, she conceded that there would have been no reason for her to tell Dr Yeo that she did not recall ejaculation during any of the assaults:<sup>259</sup>

Q: Yes. And you have explained and said in court that there were many occasions when he did ejaculate, correct?

A: Yes.

Q: And you’ve described how you would clean the ejaculate, correct?

A: Yes.

Q: So there would be no reason for you to tell the doctor that you do not recall ejaculation during any of the assaults. Because you do, correct?

A: Yes.

110 In my view, if CAX had indeed ejaculated, that would be something quite hard for a young victim to forget. For A3–7 and A11 in particular, the ejaculation would have been in her mouth. Further, for A8, C could vividly recall during her examination-in-chief that CAX had ejaculated since she *felt a warm liquid coming out of her anus* while cleaning up. Not only did she fail to

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<sup>257</sup> AB at p 243.

<sup>258</sup> Exhibit D13.

<sup>259</sup> NE 16 November 2022 at p 63 lines 4–11.

mention any of these instances to any person prior to trial; on 13 September 2019, she answered Dr Yeo’s query in the negative. Dr Yeo also testified that she would usually ensure that younger patients understood the meaning of ejaculation by asking them whether any fluids came out of the other party’s penis.<sup>260</sup> While Dr Yeo could not recall whether C said that *no ejaculation* had occurred or had simply said that she was *unsure* whether ejaculation had occurred,<sup>261</sup> either possibility would impinge on the reliability of C’s memory. The disparity in C’s answers is not merely about *where* CAX had ejaculated, which might be regarded as a more peripheral detail; C had been inconsistent as to whether CAX had ejaculated *at all*. There was no explanation from C on this issue when she was cross-examined. This inconsistency affects her accounts of A3–A11. It is in this context that I analyse the relevant charges.

*A3–A7 and A11: Incidents of fellatio*

111 Within the umbrella of charges that I have dealt with above, charges A3–A7 and A11 concern various incidents of fellatio.

- (1) A4 and A5: Fellatio at the storeroom of the Family Home and at the Carpark

112 A4 and A5 resulted from subsequent disclosure by C in the course of investigations in August 2020. The Defence argues that any assessment of C’s credibility should be affected by the fact that A4 and A5 were only raised to IO Chai on 18 August 2020, almost one year after investigations had begun.<sup>262</sup>

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<sup>260</sup> NE 18 November 2022 at p 9 lines 4–7.

<sup>261</sup> NE 18 November 2022 at p 9 lines 4–10.

<sup>262</sup> Defence’s Closing Submissions (2 January 2024) (“DWS”) at pp 27 and 29; NE 25 October 2023 at p 24 lines 3–10; p 22 lines 20–27.

113 The effect of a delay in reporting is to be assessed on the facts of each case: *Mohd Ariffan* ([87] *supra*) at [67]. The Prosecution submits that various psychological and emotional barriers prevented C from disclosing the assaults in a timely manner, such as: (a) the shame of having been sexually assaulted by her father; and (b) CAX's conditioning that C would get into trouble if she did report the incidents.<sup>263</sup> While these reasons could explain why C's general disclosure of the various offences was delayed up until September 2019, they do not explain her failure to disclose A4 and A5 as of September 2019. IO Chai testified that she had conducted a scene visit with C to the Family Home on 13 September 2019.<sup>264</sup> During this visit, IO Chai asked C to recount the instances of sexual abuse as they walked through the Family Home.<sup>265</sup> Consequently, on 13 September 2019, C disclosed various sexual assaults that had occurred in the Family Home.<sup>266</sup> These included A10, A13 and A3, which occurred in the master bedroom; A11, which occurred in the kitchen and service yard; and A8 and A12, which occurred in the childrens' bedroom. Photographs were then taken of the kitchen, service yard, childrens' bedroom and master bedroom of the Family Home on 13 September 2019.<sup>267</sup> At the same time, IO Chai had testified that C was asked about the relevant venues on 13 September 2019. C disclosed then that she had been sexually assaulted at the Former Family Home, Family Home, and the Grandparents' Home.<sup>268</sup>

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<sup>263</sup> PWS at p 116 at para 154.

<sup>264</sup> NE 24 October 2023 at p 38 lines 3–18.

<sup>265</sup> NE 24 October 2023 at p 38 lines 1–18.

<sup>266</sup> NE 25 October 2023 at p 21 line 28 to p 23 line 14.

<sup>267</sup> Exhibits P2-8 to P2-20; Exhibits P2-32 to P2-36.

<sup>268</sup> NE 25 October 2023 at p 22 lines 1–7.

114 In context, the delayed disclosure beyond 13 September 2019 could be a function of C’s delayed recall when grappling with recollecting multiple incidents. However, the reliability of her recall is still a factor to be considered in determining if she is unusually convincing.

115 C’s account of A4 was as follows. One evening when she was in Primary five or six, when the entire family was in the master bedroom of the Family Home, CAX asked C to help him to clear or pack the storeroom of the Family Home.<sup>269</sup> As C went to assist him at the storeroom, CAX asked C, “can you help me”. From past incidents, C understood this as a request for her to suck his penis. CAX then pulled down his pants or shorts and C started to lick and suck his penis until he ejaculated in her mouth. C then cleaned herself up in either the common toilet or the kitchen sink. During the incident, CAX was holding his phone and wearing his earpiece.<sup>270</sup>

116 C’s evidence in court was somewhat inconsistent with the charge regarding *where* the events of A4 occurred. C testified that this incident occurred outside the storeroom, with the open door blocking the view to the hallway.<sup>271</sup> On the other hand, the charge in A4 asserts that the act took place “at the storeroom”, which is consistent with C’s 2 November 2021 police statement, which states that she “followed [CAX] to the storeroom” and that “[w]hen [they] were at the storeroom, [CAX] asked [her] to suck his penis and [she] did as [she] was told”.<sup>272</sup>

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<sup>269</sup> NE 8 November 2022 at p 35 lines 2–3 and 5–11.

<sup>270</sup> NE 8 November 2022 at p 38 line 1.

<sup>271</sup> NE 8 November 2022 at p 37 lines 4–8.

<sup>272</sup> Exhibit D13 at pp 2–3 at para 7.

117 C's account of the fifth charge was that it occurred while she was in Primary five or six.<sup>273</sup> The incident occurred in the evening. CAX was driving both C and her brother home, although C could not recall where they were returning home from.<sup>274</sup> C and her brother were initially seated in the back seat of the car, and her brother was asleep. CAX then parked his car at the Carpark and left the car to smoke. At this point, C was half-asleep. CAX then returned to the car and told C to wake up. He told her to sit in the front passenger seat, and C complied.<sup>275</sup> He then asked C if she could help him. C testified that she already knew that the phrase "can you help me" was CAX's way of asking her to lick his penis.<sup>276</sup> CAX then either unzipped his pants or pulled it down, took out his penis, and pushed C's head towards his penis.<sup>277</sup> C began to suck and lick CAX's penis while he held onto his phone. According to C, CAX was wearing an earpiece and she could hear a girl moaning through the earpiece.<sup>278</sup> There was no other music playing in the car.<sup>279</sup> Halfway through this incident, a passer-by walked past the family's car. CAX reacted by pushing C's head down and telling her to stop.<sup>280</sup> When the passer-by walked away from the car, CAX told C to continue. Eventually, CAX ejaculated into C's mouth.<sup>281</sup> C spat out his ejaculate into some spare wet wipes and threw it away on the way home.<sup>282</sup>

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<sup>273</sup> NE 8 November 2022 at p 24 line 14.

<sup>274</sup> NE 8 November 2022 at p 24 lines 17–21.

<sup>275</sup> NE 8 November 2022 at p 24 lines 17–26.

<sup>276</sup> NE 8 November 2022 at p 25 lines 12–17.

<sup>277</sup> NE 8 November 2022 at p 24 lines 26–28.

<sup>278</sup> NE 8 November 2022 at p 26 line 27 to p 27 line 6.

<sup>279</sup> NE 8 November 2022 at p 27 lines 11–13.

<sup>280</sup> NE 8 November 2022 at p 24 line 28 to p 25 line 2.

<sup>281</sup> NE 8 November 2022 at p 25 line 3.

<sup>282</sup> NE 8 November 2022 at p 27 lines 17–30.

## (2) A6: Fellatio at the dining area of the Grandparents' Home

118 The sixth charge allegedly occurred at the Grandparents' Home after April 2019, when C was in Primary six.<sup>283</sup> The incident took place in the dining area of the Grandparents' Home in the late afternoon or evening. C was doing her homework at the dining area of the house. Her grandmother was on the second storey of the house while her grandfather and brother were swimming. C explained that she did not join them that day as she might have been on her period. Although CAX had initially been working while seated on a brown sofa in the living room, he took his laptop and sat next to C at the dining area. CAX then asked C if she could "help" him. C bent over from her seat as CAX unzipped his pants and she began sucking and licking his penis until he ejaculated.<sup>284</sup> C then washed up in the common toilet at the kitchen.<sup>285</sup>

119 This version of events differs from the version in her police statement dated 2 November 2021, where she stated that she was asked to, and did, perform fellatio while underneath the dining table.<sup>286</sup> When questioned about this inconsistency during cross-examination, C clarified that she had made a mistake in her police statement.<sup>287</sup> However, no explanation was proffered as to why the version nearer to the time of the event was incorrect, and C was not questioned about this mistake during her re-examination. In my view, the position from which she performed fellatio is a material component of the incident and the difference in the two positions is material.

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<sup>283</sup> NE 8 November 2022 at p 55 lines 13–21.

<sup>284</sup> NE 8 November 2022 at p 55 lines 13–21.

<sup>285</sup> NE 8 November 2022 at p 55 lines 19–20.

<sup>286</sup> Exhibit D13 at p 3 at para 9.

<sup>287</sup> NE 17 November 2022 at p 28 lines 4–30.



(3) A7: Fellatio at the basement staircase of the Grandparents' Home

120 The seventh charge occurred at the Grandparents' Home when C was either in Primary five or six, in the afternoon or late afternoon.<sup>288</sup> The family was at the Grandparents' Home, but C's mother was asleep at the material time. CAX asked C for help with washing his car. C agreed, and CAX led her down the stairs to the basement. CAX then stood at the bottom of the flight of stairs and faced C. At this point, CAX asked C if she could "help" him. C eventually realised what CAX meant and knelt down and licked and sucked his penis until he ejaculated into her mouth. They then cleaned themselves up at the basement toilet and proceeded to wash the car.

121 The Defence contends that C was internally inconsistent on her account of A7.<sup>289</sup> This is because C initially testified on cross-examination that it was not possible to see out of the Grandparents' Home and into the neighbour's house from the bottom of the staircase.<sup>290</sup> However, when she was shown a photograph demonstrating otherwise,<sup>291</sup> C explained that CAX had intentionally closed the curtains to obstruct this view during the incident.<sup>292</sup> In particular, C explained that she saw CAX close the curtains after he came down to the basement, while C was walking down the stairs. CAX then returned to the bottom of the stairs,<sup>293</sup> where he asked C to fellate him. C conceded on cross-

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<sup>288</sup> NE 8 November 2022 at p 48 line 24 to p 49 line 14.

<sup>289</sup> DWS at p 33 at para 59(d).

<sup>290</sup> NE 16 November 2022 at p 6 lines 11–13.

<sup>291</sup> Exhibit D12.

<sup>292</sup> NE 16 November 2022 at p 7 lines 5–10.

<sup>293</sup> NE 16 November 2022 at p 7 lines 12–16.

examination that she had not mentioned this detail or the existence of the curtains earlier.<sup>294</sup>

122 In my view, C’s explanation differs from her earlier account of the incident during her examination-in-chief, where she recounted that CAX “was just standing at the bottom of the stairs”:

A: ... Then, my father was going to wash the car. So, like, he asked me to help him to wash the car. So I---I agreed and he brought me downstairs but he was just standing at the bottom of the stairs facing---facing me. And then, like, I was---I was very confused. ...<sup>295</sup>

...

Q: So you have told the Court that your father asked you to help him wash the car. And what did you do after he asked you?

A: I followed him down the stairs to basement---to the basement where the car was.<sup>296</sup>

...

A: On the left, it shows the stairs which leads to the basement. And if you go down the stairs, you will see the carpet that is shown in P7-19.

Q: Okay. Yes. So, P7-19. So what happened there?

A: My father was standing around where the carpet was and he faced towards the stairs which means he would have the---like he would be able to see the view of P7-20. And I came down the stairs, then he kind was like whispered like if I could help him.

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<sup>294</sup> NE 16 November 2022 at p 6 line 11 to p 7 line 22.

<sup>295</sup> NE 8 November 2022 at p 48 lines 26–30.

<sup>296</sup> NE 8 November 2022 at p 53 lines 23–25.

And he was still standing around the carpet area facing the stairs and I was kneeling down facing opposite.<sup>297</sup>

(4) A11: Fellatio at the kitchen of the Family Home

123 C's evidence was that A11 occurred on 4 September 2019, during the late evening. At that time, the whole family was in the master bedroom, although C could not recall what they were doing.<sup>298</sup> C told everyone that she was going to bake cookies for her teachers. CAX then insisted on baking cookies with her. Halfway through baking the cookies, C's brother was told to get ready to go to bed as it was getting late. While C and CAX were baking cookies, CAX brought C to the service yard and asked her if she could help him. C knew what he meant and felt annoyed and reluctant to do so, but did not dare refuse.<sup>299</sup> CAX then sat down on the floor of the service yard, in front of the washing machine, and pulled his shorts down. C sat down on the floor in front of CAX, bent over, and started licking his penis.<sup>300</sup>

124 While she was doing this, CAX was looking at his phone with his earpiece on.<sup>301</sup> C thought that CAX was looking at the live feed of the Closed-Circuit Television ("CCTV") (installed in the living room of the Family Home, facing the hallway) or watching pornography. C claimed that the CCTV would be able to capture anyone who exited the master bedroom, common toilet, and kitchen.<sup>302</sup> The pair then heard a door open in the Family Home. CAX immediately got up and went to check who had opened the door and told C to

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<sup>297</sup> NE 8 November 2022 at p 54 lines 1–8.

<sup>298</sup> NE 8 November 2022 at p 28 line 5 to p 29 line 16.

<sup>299</sup> NE 8 November 2022 at p 32 lines 14–18.

<sup>300</sup> NE 8 November 2022 at p 28 lines 8–29.

<sup>301</sup> NE 8 November 2022 at p 32 lines 19–25.

<sup>302</sup> NE 8 November 2022 at p 32 line 23 to p 33 line 8.

wait at the service yard.<sup>303</sup> When CAX returned, he told C that it was her brother. CAX explained that her brother had gone to the common toilet,<sup>304</sup> before coming over to check on C's cookies.<sup>305</sup> However, CAX had rushed C's brother back to bed. CAX then told C to continue fellating him.

125 The pair were now in the kitchen, with CAX standing in a corner, between the sink and the stove.<sup>306</sup> CAX was facing the living room and hallway. C then knelt down and began to suck and lick CAX's penis. He told her to lick faster and not to use her teeth, and pushed her head so that she would suck his penis deeper or faster.<sup>307</sup> CAX eventually ejaculated in her mouth. C cleaned her mouth at the kitchen sink, and the pair continued baking cookies.<sup>308</sup> During the incident, C's mother was in the master bedroom.<sup>309</sup>

126 The Prosecution relies on extracts from CAX's iPhone to corroborate C's account of the 11th charge, in that it corroborates her account that the pair had baked cookies that night.<sup>310</sup> Firstly, CAX's iPhone search history showed multiple searches for "how to make chocolate chip cookies" on 4 September 2019, from 9.58pm to 10.00pm.<sup>311</sup> Secondly, CAX had also sent a text message to his wife to complain that C wanted to bake cookies that evening. In particular,

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<sup>303</sup> NE 8 November 2022 at p 29 lines 1–7.

<sup>304</sup> NE 8 November 2022 at p 31 lines 29–30.

<sup>305</sup> NE 8 November 2022 at p 29 lines 5–7.

<sup>306</sup> NE 8 November 2022 at p 29 lines 5–13.

<sup>307</sup> NE 8 November 2022 at p 34 lines 19–24.

<sup>308</sup> NE 8 November 2022 at p 29 lines 11–13.

<sup>309</sup> NE 8 November 2022 at p 28 line 29 to p 29 line 16.

<sup>310</sup> PWS at p 98 at para 127.

<sup>311</sup> Bundle F, Tab 3, S/Ns 70–76.

CAX had sent the following message to his wife at 8.24pm and 8.25pm that day shortly before leaving the Office:<sup>312</sup>

that [C's name] still wanna bake cookie later

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127 In my view, both pieces of evidence are equivocal as to whether CAX baked with C on the evening of 4 September 2019. First, it is plausible that, after having sent the text message to his wife at 8.24pm, CAX did bake cookies with C on the evening of 4 September 2019. However, it is also equally plausible that he subsequently changed his mind and did not do so.

128 CAX said that he did not help C to bake cookies that evening because he was working on an assignment that he had received from a client on 3 September, which was due either that night or on the morning of 5 September.<sup>313</sup> On 4 September, the client sent CAX several text messages confirming the scope of the work assignment.<sup>314</sup> CAX replied on the same day, and said that he would work on the assignment and would “update [her] by tonight, latest tomorrow”.<sup>315</sup> CAX’s evidence was that he slept just past midnight, in the early morning of 5 September, once he was “done with the important things”.<sup>316</sup> It is not disputed that the client texted him again on the morning of 5 September with a reminder,<sup>317</sup> and that CAX only sent the work

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<sup>312</sup> Exhibit D24, S/Ns 2552–2553.

<sup>313</sup> NE 31 October 2023 at p 35 lines 4–8.

<sup>314</sup> Exhibit D23 at S/Ns 185–190.

<sup>315</sup> Exhibit D23 at S/N 191.

<sup>316</sup> NE 31 October 2023 at p 32 lines 10–16.

<sup>317</sup> Exhibit D23 S/N 194.

assignment on 5 September at 5.19pm.<sup>318</sup> CAX replied to his client’s text message on 5 September with “[*paiseh*] will update you later about 1600-1700. Got urgent PTC today”.<sup>319</sup> CAX clarified that “PTC” referred to a parent-teacher conference,<sup>320</sup> and that he and his wife attended a parent-teacher conference at C’s school on 5 September, where they discussed the issue of C’s self-harm.<sup>321</sup> It is not disputed that he was only informed of this meeting on 4 September.<sup>322</sup> On this point, the Prosecution argues that, because CAX did not send the assignment to his client until 5.19pm the following day, there was “clearly a window of opportunity” for CAX to bake cookies with C, and to commit the offence.<sup>323</sup> In my view, this is inconclusive as to whether he had baked cookies with C on 4 September 2019; a window of opportunity does not amount to proof.

129 Second, while there were searches on CAX’s iPhone for chocolate chip cookie recipes, there were also searches for cat and rose cartoons. Notably, C conceded on cross-examination that she had possibly conducted those searches on CAX’s iPhone.<sup>324</sup> She further conceded that she had used her parents’ devices without their knowledge to circumvent the device-usage time limit on her own phone.<sup>325</sup> In these circumstances, I am of the view that CAX’s search history does not carry much confirmatory value.

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<sup>318</sup> Exhibit D23 S/N 199.

<sup>319</sup> Exhibit D24 S/N 196.

<sup>320</sup> NE 31 October 2023 at p 33 lines 6–9.

<sup>321</sup> NE 31 October 2023 at p 48 lines 11–14.

<sup>322</sup> NE 31 October 2023 at p 48 lines 18–19.

<sup>323</sup> PWS at pp 129–130 at para 168(b).

<sup>324</sup> NE 20 November 2023 at p 10 line 30 to p 11 line 30.

<sup>325</sup> NE 20 November 2023 at p 10 line 30 to p 11 line 8.

130 In any event, these issues are not determinative of whether C and CAX had baked together on the evening of 4 September. C could have searched for the recipes on CAX's phone, and CAX could have assisted her despite his pressing deadline. It is not disputed that he did not submit his work until the evening of 5 September.

131 The fundamental issue is whether I accept that CAX and C baked together on 4 September, and whether the events unfolded as C recounted. On this aspect, C's concession on cross-examination, when she was recalled for this purpose on 20 November 2023, was that she *could* have conducted the searches on CAX's phone. This does not give me confidence in her testimony. It was neither a positive response with an explanation, nor a negative response. She simply *could not recall* if she had conducted the searches. This is troubling, especially when viewed together with the ejaculation inconsistency (see above at [110]), which also affects C's account of A11. While I am of the view that the evidence adduced by both the Prosecution and Defence are equivocal as to whether CAX had indeed baked with C that night, the totality of C's evidence makes it such that a conviction is unsafe in the circumstances. Accordingly, I acquit CAX of A11.

(5) A3: Fellatio under the study table at the Family Home

132 I recount C's testimony of the third charge here as it is pertinent to the argument raised by the Defence in the paragraph below (see [133]). C stated that this incident occurred when she was in Primary five or six, at the Family Home, at night.<sup>326</sup> C and her brother were asleep in their shared bedroom when CAX woke C. CAX then asked C if she could help him. C understood this to

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<sup>326</sup> NE 8 November 2022 at p 39 line 3 to p 45 line 17.

mean that CAX was asking her to suck and lick his penis. After CAX whispered this to C, she got out of bed and followed him to the master bedroom. While sitting on a foldable chair by the study table in the master bedroom, CAX gestured for C to go under the study table. C proceeded as instructed. At that point, she noticed that CAX's iPad and laptop were on the table. CAX's iPad was displaying a show. The only sound in the room came from CAX's iPad, which sounded loud as the whole room was otherwise quiet. The only source of light came from CAX's iPad and laptop screen. C's mother was asleep on the bed. C then proceeded to lick and suck CAX's penis while she was under the study table. While she was doing so, C's mother shifted in her sleep, and CAX stopped C's head from moving.<sup>327</sup> CAX eventually ejaculated in C's mouth.<sup>328</sup> After CAX ejaculated, C cleaned herself up in the common toilet while CAX cleaned himself up in the master bedroom toilet.<sup>329</sup> C recalled that the door to the master bedroom was closed, the lights were switched off, and the air conditioning was turned on during the incident.<sup>330</sup>

#### *Conclusion on A3–A7 and A11*

133 The Defence submits that the circumstances of C's account are incredible. It contends that it would be incredible for CAX to ask to be felled in the bedroom where his wife was sleeping,<sup>331</sup> outside the storeroom where others could chance upon them,<sup>332</sup> in an open carpark with C's brother asleep in

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<sup>327</sup> NE 8 November 2022 at p 45 line 22–24.

<sup>328</sup> NE 8 November 2022 at p 45 lines 15–17.

<sup>329</sup> NE 8 November 2022 at p 39–46.

<sup>330</sup> NE 8 November 2022 at p 45 line 28 to p 46 line 13.

<sup>331</sup> DWS at p 26 at para 48(c).

<sup>332</sup> DWS at p 27 at para 50(b).



the back seat of the family car,<sup>333</sup> at the Grandparents' Home with others present,<sup>334</sup> and in a service area and kitchen where others could possibly see the duo.<sup>335</sup> I do not think that the narratives, in themselves, are inherently incredible; nor are the risks purportedly assumed by CAX inconceivable. It would be equally logical to argue that if a complainant were to set out to create a false narrative, she would detail narratives easier to believe. After all, father and daughter had many opportunities to be alone.

134 Nonetheless, I have explained that these charges, save for A3 and A5, are affected by specific inconsistencies relating to C's testimony. More fundamentally, a central aspect of her testimony on these six charges is CAX's ejaculation in her mouth. I have a reasonable doubt in respect of this, and as this central aspect of her testimony has been called into question, the entirety of C's credibility has to be assessed in that light: *Public Prosecutor v Wee Teong Boo and other appeal and another matter* [2020] 2 SLR 533 (at [63]). When viewed holistically, the facts surrounding each individual charge creates a reasonable doubt that they had in fact occurred. I am therefore of the view that C's evidence is not unusually convincing on these six charges and acquit CAX of the same.

*A8–A10: Incidents of anal penetration*

135 I deal with the three charges involving anal penetration together.

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<sup>333</sup> DWS at pp 28–29 at para 52(a).

<sup>334</sup> DWS at p 32 at para 57; p 33 at para 59.

<sup>335</sup> DWS at p 17 at para 33.

## (1) A8: Anal penetration on the upper bunk of the Family Home

136 C's account of A8 was that it occurred when she was in Primary five or six.<sup>336</sup> On cross-examination, she conceded that this incident occurred when she was in Primary five.<sup>337</sup> The incident occurred at night, in the bedroom she shared with her brother at the Family Home. During this time, C's mother was asleep in the master bedroom while her brother was asleep in the bottom bunk of the double bunk bed in the shared bedroom. CAX entered the shared bedroom and climbed onto the top bunk, where C was. He then pulled down C's panties, while she was facing the ceiling. CAX then flipped C into a "dog position" and placed his phone on C's pillow. C testified that the phone showed a view of a CCTV system,<sup>338</sup> which displayed a view of the master bedroom door from the hallway.<sup>339</sup> CAX then inserted his penis into C's anus. CAX began to move his penis in and out of C's anus until he ejaculated in her anus. C testified that she knew CAX had ejaculated into her anus because she felt a sensation in her anus and felt like passing motion when cleaning herself after the act.<sup>340</sup> Further, while she was cleaning herself, C felt a warm liquid come out of her anus.<sup>341</sup>

137 The Defence contends that C's account is externally inconsistent with documentary evidence which showed that CAX did not have access to the CCTV system on his devices until 25 April 2019. CAX had sent a text message to his wife on 25 April 2019 asking her how he could log into the CCTV

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<sup>336</sup> NE 8 November 2023 at p 59 lines 1–17.

<sup>337</sup> NE 16 November 2022 at p 12 lines 12–23; NE 17 November 2022 at p 38 lines 4–16.

<sup>338</sup> NE 16 November 2022 at p 12 lines 24–26.

<sup>339</sup> NE 8 November 2022 at p 59 lines 5–7.

<sup>340</sup> NE 8 November 2022 at p 63 lines 1–2.

<sup>341</sup> NE 8 November 2022 at p 63 line 4.

system.<sup>342</sup> His wife replied with the login details for the CCTV system.<sup>343</sup> CAX also testified during his examination-in-chief that he did not have the login details to the CCTV system prior to sending the text message to his wife on 25 April 2019, and that only his wife had access to the system before that date.<sup>344</sup> CAX testified that he could not access the CCTV system from his own electronic devices prior to 25 April 2019 as he would not have the necessary login details.<sup>345</sup> Pertinently, the Prosecution did not cross-examine CAX on this or allege that he otherwise had earlier access to the CCTV system.

138 In my view, this detail, and the Prosecution's omission to counter it, is material as C had mentioned, at several instances during her examination-in-chief, that CAX had told her to watch the CCTV footage during the events of A8.<sup>346</sup> To that end, she was able to recall the view from the CCTV system on CAX's phone during that incident.<sup>347</sup> Further, she conceded on cross-examination that A8 occurred when she was in Primary five, *ie*, in 2018.<sup>348</sup> This would have been well before CAX purportedly gained access to the CCTV system on 25 April 2019. Further, C confirmed on cross-examination that CAX had placed *his phone* (and not someone else's phone) on her pillow during the incident.<sup>349</sup> This ruled out the possibility that CAX had simply used his wife's phone to view the CCTV system. Notably, CAX was not cross-examined on the

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<sup>342</sup> Exhibit D26 at S/N 1559.

<sup>343</sup> Exhibit D26 at S/N 1561.

<sup>344</sup> NE 31 October 2023 at p 65 lines 3–12.

<sup>345</sup> NE 31 October 2023 at p 65 lines 10–12.

<sup>346</sup> NE 8 November 2022 at p 33 lines 10–14; p 58 line 19 to p 59 line 14.

<sup>347</sup> NE 8 November 2022 at p 59 lines 6–7.

<sup>348</sup> NE 16 November 2022 at p 12 lines 22–23.

<sup>349</sup> NE 16 November 2022 at p 12 line 27 to p 13 line 1.

issue of when he was first able to access the CCTV system, nor did the Prosecution adduce evidence to rebut his claim.

(2) A9: Anal penetration at the Office

139 C's account of the ninth charge is that it occurred at the Office when C was in Primary six.<sup>350</sup> This incident allegedly occurred in the evening, and the lights in the Office were slowly being switched off. Only C and CAX were in the Office, and C was not sure where her mother and brother were.<sup>351</sup> CAX had switched off the lights in the Office and the only light being emitted came from CAX's iMac, which was playing an unmuted movie.<sup>352</sup> During this incident, C was lying down on a table and was facing the ceiling. CAX then pulled down her panties and started to lick her vaginal area. He did so for a while before stopping and remarking that "it was too smelly". After this, CAX held onto C's hip and repeatedly tried to force his penis into her vagina. C complained that it was very painful, to which CAX repeatedly told her to relax and that she would feel good once he had inserted his penis. CAX was unsuccessful in his attempt at vaginal penetration, and penetrated C's anus instead. CAX used his saliva as a lubricant and sodomised C until he ejaculated. C then went to the toilet to get tissues to clean herself up.<sup>353</sup>

140 CAX's defence is that he had never been to the Office alone with C.<sup>354</sup> The Prosecution asserts this is a lie on the premise of his WhatsApp messages with his wife. These show that on 30 July 2019, his wife had fallen sick and had

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<sup>350</sup> NE 8 November 2022 at p 69 lines 18–21.

<sup>351</sup> NE 8 November 2022 at p 67 lines 17–19.

<sup>352</sup> NE 8 November 2022 at p 69 lines 7–11 and 22.

<sup>353</sup> NE 8 November 2022 at p 67 line 13 to p 68 line 4.

<sup>354</sup> NE 31 October 2023 at p 71 lines 11–22; NE 3 November 2023 at p 10 lines 1–5.

seen a doctor in the afternoon.<sup>355</sup> Thereafter, CAX picked her up from the clinic sometime between 4.08pm and 5.15pm and they went their separate ways.<sup>356</sup> From 5.15pm, CAX was in the Office as he was helping his wife settle her work-related issues, while his wife and son were resting at home.<sup>357</sup> From 7.34pm to 8.54pm, CAX continued to help his wife with her work issues in the Office.<sup>358</sup> It is evident that C was with CAX in the Office at this time, as CAX had messaged his wife at 8.55pm: “[C] finished her home work already”, and “coming back now”.<sup>359</sup> The context of these messages is clear, in that CAX was telling his wife that he had finished assisting C with her work and was about to go home with C.

141 At trial, the Defence argued that there was a missing question mark in the message, “[C] finished her home work already”.<sup>360</sup> I reject this contention. Although CAX claimed that the statement was intended as a question, his wife did not respond to it and he did not seek further clarification. Instead, his wife replied, “So fast finish printing?”.<sup>361</sup> CAX also failed to satisfactorily explain the absence of a question mark in his message.

142 Notwithstanding, there remain several issues with the case presented by the Prosecution. Firstly, the Defence adduced evidence that another colleague was present in the office on 30 July 2019.<sup>362</sup> This means that, contrary to the

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<sup>355</sup> Bundle F, Tab 2, S/Ns 1755–1766.

<sup>356</sup> Bundle F, Tab 2, S/Ns 1767–1774.

<sup>357</sup> Bundle F, Tab 2, S/Ns 1775–1810.

<sup>358</sup> Bundle F, Tab 2, S/Ns 1830–1857.

<sup>359</sup> Bundle F, Tab 2, S/Ns 1858–1859.

<sup>360</sup> NE 3 November 2023 at p 18 lines 14–15.

<sup>361</sup> Bundle F, Tab 2, S/N 1860.

<sup>362</sup> NE 3 November 2023 at p 55 line 29 to p 59 line 8; Exhibit D34.

Prosecution's assertion, CAX and C had not been alone in the Office on 30 July 2019. CAX's assertion that he had never been alone with C in the Office is therefore plausible. Further, in the event that 30 July 2019 is the relevant date for the charge, this would contradict C's account that she had been alone with CAX in the Office during the incident. The Prosecution did not question this evidence, but simply stated during closing submissions that 30 July 2019 was *but one instance* of CAX being alone at the Office with C, and was not necessarily the occasion that A9 occurred.<sup>363</sup> In my view, the Prosecution still bears the burden of proving that the facts of A9 occurred, and this burden is not met by a response that it need not have happened on 30 July 2019.

143 Secondly, if A9 had occurred on 30 July 2019, this would contradict C's account of the sexual offences to Dr Yeo on 13 September 2019. In Dr Yeo's medical report, she stated that C recalled the final penile-anal penetration taking place *before June 2019*.<sup>364</sup> While Dr Yeo was somewhat unsure of whether C had specifically said the penile-anal penetrations stopped in "June 2019" or that it stopped 3 months prior to the interview,<sup>365</sup> the result would have been the same since June 2019 was 3 months prior to the interview.

144 Thirdly, this offence was first raised by C on 7 April 2020, seven months after investigations had commenced.<sup>366</sup> IO Chai testified that on 13 September 2019, C was able to describe (in general terms) that she had been assaulted at the Former Family Home, the Family Home, and the Grandparents' Home.<sup>367</sup> C

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<sup>363</sup> NE 5 February 2024 at p 36 lines 18–30.

<sup>364</sup> AB at p 243.

<sup>365</sup> NE 18 November 2022 at p 8 lines 23–26.

<sup>366</sup> NE 25 October 2023 at p 23 lines 1–3.

<sup>367</sup> NE 25 October 2023 at p 22 lines 1–4.

did not raise the relevance of the Office as a *general location* of interest until about seven months after investigations had started. This was despite C having been to the office “[q]uite a few times” to study, both by herself and with G.<sup>368</sup>

(3) A10: Anal penetration at the master bedroom and adjoining toilet of the Family Home

145 C’s account of A10 was that it had occurred while she was in Primary six.<sup>369</sup> During this incident, CAX had fetched C and her brother back to the Family Home from school. CAX then told his children to shower and that he was going to bring them to the Office thereafter. CAX said that it would be faster if C’s brother were to shower in the common toilet and C showered in the toilet of the master bedroom.<sup>370</sup> C complied and proceeded to shower in the master bedroom toilet. While C was showering, CAX entered the toilet naked. C recalled that she was sodomised in various positions, though she could not remember how the entire ordeal started. The first position involved D sitting on the toilet bowl with the lid closed, with C sitting on him. In the second position, C was against the wall around the shower area of the toilet and CAX was behind her, with his chest against her back. The final position entailed C facing the mirror at the sink. CAX was behind her and while he was sodomising C, the pair made eye-contact through the mirror. The accused observed the complainant’s facial expressions and asked “if it felt good and ... if [she] wanted it faster or deeper”.<sup>371</sup> Finally, the pair ended up on the bed in the master bedroom. The accused tried to insert his penis into the complainant’s vagina

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<sup>368</sup> NE 16 November 2022 at p 24 lines 4–16.

<sup>369</sup> NE 8 November 2022 at p 63 lines 8–22.

<sup>370</sup> NE 8 November 2022 at p 63 lines 26–28.

<sup>371</sup> NE 8 November 2022 at p 64 lines 8–9.

repeatedly but failed. This was his first attempt at doing so.<sup>372</sup> C complained that she was in a lot of pain, but CAX told her to relax and that “it will feel nice after he inserts it in”. CAX gave up after some time, and proceeded to sodomise C until he ejaculated in her anus.<sup>373</sup>

146 After the incident, C and CAX went back to the master bedroom toilet to clean up.<sup>374</sup> CAX then told C that while she was showering, her mother had texted CAX to inquire about why they were taking so long to reach the Office.<sup>375</sup> In response, CAX had told C’s mother that C was having a stomach-ache, which was a story that C was instructed to maintain if she was questioned by her mother. The trio then proceeded to the Office. C also testified that, during the entire episode, her brother was showering, and she thought that he was “playing [with] his iPad or something outside” after he was done showering.<sup>376</sup>

147 In my view, C’s account of A10 is inconsistent both internally and externally. Firstly, C’s account is externally inconsistent with documentary evidence concerning the presence of her brother on that day. A search of CAX’s phone reflected that the only text message in which the accused told his wife about C having a stomach-ache was sent on 22 July 2019. However, the Defence presented documentary evidence that C’s brother was ill and present in the Office to be cared for on 22 July 2019.<sup>377</sup> This was evidenced by a photograph

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<sup>372</sup> NE 8 November 2022 at p 66 lines 23–24.

<sup>373</sup> NE 8 November 2022 at p 66 lines 27–29.

<sup>374</sup> NE 8 November 2022 at p 63 line 11 to p 64 line 11; p 66 lines 23–29.

<sup>375</sup> NE 8 November 2022 at p 64 lines 11–17.

<sup>376</sup> NE 8 November 2022 at p 64 lines 12–21.

<sup>377</sup> NE 31 October 2023 at pp 71–75.



of C's brother, which was taken on the same day at 1.53pm in the Office,<sup>378</sup> and a text message from C's mother stating that she would head out of the Office to buy porridge for C's brother at 5.15pm.<sup>379</sup> This meant that C's brother was not at the Family Home on 22 July 2019.

148 Furthermore, from the evidence, it is clear that 22 July 2019 is the only possible date on which A10 could have taken place. While C alleged that CAX concocted the stomach-ache narrative to explain to his wife why the trio were delayed, the Prosecution failed to tender any other documentary evidence as to another instance where CAX had told his wife that C had experienced a stomach-ache. Furthermore, the Prosecution did not refute the reliability of the forensic software used in extracting text messages from CAX's phone.<sup>380</sup> The Prosecution had provided the software to the Defence.<sup>381</sup> Thus, at closing arguments, the Prosecution accepted that CAX's message to his wife on 22 July 2019 was the only instance of him telling his wife that C had a stomach-ache.<sup>382</sup>

149 Given that 22 July 2019 is the only possible date on which A10 could have occurred, it is clear that C's brother would not have been present in the Family Home when A10 allegedly occurred. This is significant. C's clear recollection that her brother was present and showering in the common toilet of the Family Home provided the basis for her showering in the master bedroom to begin with. Controversion of this fact therefore materially undermines her narrative.

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<sup>378</sup> Exhibit D28.

<sup>379</sup> Exhibit D29 at S/N 1656.

<sup>380</sup> NE 31 October 2023 at p 75 line 21 to p 76 line 4.

<sup>381</sup> NE 5 February 2024 at p 18 lines 19–25.

<sup>382</sup> NE 5 February 2024 at p 17 line 10 to p 19 line 23.

150 Secondly, if it is the case that A10 could only have occurred on 22 July 2019, it would contradict C's account of the sexual offences to Dr Yeo on 13 September 2019. In Dr Yeo's medical report, she stated that C recalled the last penile-anal penetration taking place *before June 2019* (see above at [143]).<sup>383</sup>

151 Thirdly, C's account that A10 was the first time that CAX had tried to penetrate her vagina is inconsistent with her accounts of the sexual offences to F and Dr Lim. F testified that C had told her, during a FaceTime call in mid-June 2019, that CAX had tried to have sexual intercourse with C.<sup>384</sup> F clarified that she understood this to mean penile-vaginal intercourse.<sup>385</sup> In my view, F could well have misunderstood C. Nonetheless, C's account is also inconsistent with her complaint to Dr Lim, whose evidence was that C told him that CAX first attempted to have vaginal sex with her when she was in Primary five. This would have been in 2018.<sup>386</sup>

#### *Conclusion on A8–10*

152 In sum, C's account of events is externally and internally inconsistent. C's account of A8–A10 is also affected by the inconsistency surrounding the ejaculation evidence (see above at [107]–[110]). Accordingly, I am unable to find that her testimony is unusually convincing for these charges. I therefore acquit CAX on A8–A10.

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<sup>383</sup> AB at p 243.

<sup>384</sup> NE 18 November 2022 at p 45 line— to p 46 line 31.

<sup>385</sup> NE 18 November 2022 at p 47 lines 1–4.

<sup>386</sup> NE 25 November 2022 at p 47 lines 18–23.

***A13: Statutory rape***

153 I come to the final charge. C’s account of A13 was that it occurred sometime in August 2019 at the Family Home in the afternoon. C was at home with CAX and her brother, but her mother was not present. C’s brother was either in the living room or their shared bedroom, while C and CAX were in the master bedroom.<sup>387</sup> C could not recall how this incident started but testified that she was on the bed in the master bedroom. CAX had placed a towel under her buttocks and proceeded to insert his fingers into her vagina repeatedly. C did not recall CAX using any lubricant.<sup>388</sup> During this time, C was lying on the bed and facing the ceiling, while CAX stood between her legs. CAX then tried to insert his penis into C’s vagina, and C did not recall him using a condom.<sup>389</sup> C was struggling and clenching onto the bedsheets as she tried to pull herself away from CAX, but he kept pulling her towards him. C told CAX that she was in pain and did not like what he was doing, but he repeatedly told her to relax and that “it will break”.<sup>390</sup> The pair then changed positions, such that CAX was lying down on the bed while C was on top of him. CAX kept pushing C’s hips down such that if she had sat down, his penis would have been inserted into her vagina. CAX kept pushing until he finally succeeded in penetrating C’s vagina with his penis. While C was unsure of whether the pair had sexual intercourse in other positions, she recalled that CAX did ejaculate<sup>391</sup> but not in her vagina.<sup>392</sup> This was the first and only time that CAX had penetrated her vagina with his penis.<sup>393</sup>

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<sup>387</sup> NE 9 November 2022 at p 3 lines 7–11.

<sup>388</sup> NE 9 November 2022 at p 5 lines 9–11.

<sup>389</sup> NE 9 November 2022 at p 6 lines 6–7.

<sup>390</sup> NE 9 November 2022 at p 5 lines 19–21.

<sup>391</sup> NE 9 November 2022 at p 6 lines 8–9.

<sup>392</sup> NE 9 November 2022 at p 3 lines 1–23, 27–28.

<sup>393</sup> NE 9 November 2022 at p 6 lines 25–30.

C also recalled that her brother had knocked on the master bedroom door halfway through the incident to ask what the pair were doing. CAX replied that C was showering, but her brother remained at the door because he wanted to ask C something related to his game. CAX then told C's brother to go away.

154 The Defence contends that C's testimony was inconsistent with her police statement that was made on 2 November 2021, which stated that CAX had touched C's breasts during this incident.<sup>394</sup> In contrast, C had not made any mention of such an act having occurred during A13 in her examination-in-chief. I am unable to accept this submission. When viewed in the broader context of the purported rape, it is understandable that C may have overlooked or forgotten such ancillary details.

155 Notwithstanding this, I have several points of concern regarding C's testimony. Firstly, C's account of A13 is inconsistent with what she told Dr Yeo on 13 September 2019. Dr Yeo's medical report states that C had told her that CAX had penetrated her vagina with his penis on *two instances* in August 2019.<sup>395</sup> In contrast, C stated during her examination-in-chief and cross-examination that she could only recall CAX penetrating her vagina with his penis once, which was the incident in A13.<sup>396</sup>

156 Secondly, C's account is inconsistent with her prior complaint to H as to where the incident had occurred. H testified that C had told her, sometime after August or September 2019, that CAX would *frequently* penetrate C's

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<sup>394</sup> DWS at p 19 at para 37(a).

<sup>395</sup> AB at p 243.

<sup>396</sup> NE 9 November 2022 at p 6 lines 25–30; NE 16 November 2022 at p 63 lines 12–15.

vagina and anus with either his penis or a sex toy.<sup>397</sup> These acts were said to have occurred in *C's shared bedroom* in the Family Home, in the early morning or when her mother was not at home.<sup>398</sup> However, this contradicts C's account of A13, where she stated that her father had only penetrated her vagina with his penis *once* and that the act was committed in the *master bedroom* of the Family Home.

157 In this context, I would mention that C's diagnosis of Chlamydia and CAX's absence of the same does not assist the Prosecution's case. No expert evidence was adduced as to the likelihood of transmission of Chlamydia, whether from a female to a male, or from a male to a female, during unprotected sexual intercourse. Such evidence could have been potentially relevant to A13, given that the incident allegedly occurred in August 2019, which was one month before C was tested for Chlamydia, and C did not recall CAX using a condom. Thus, while CAX's negative Chlamydia test does not militate against a sexual connection between the parties, C's positive Chlamydia test also does not suggest a sexual connection between the parties.

### *Conclusion on A13*

158 The aforementioned issues, when coupled with the general inconsistencies relating to C's ability to recall key signposts in her narrative, make it unsafe to convict CAX on A13. I thus acquit him on this charge.

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<sup>397</sup> NE 22 November 2022 at p 45 line 10.

<sup>398</sup> NE 22 November 2022 at p 45 lines 5–20.

### The burden of proof

159 The presumption of innocence mandates that any reasonable doubt must weigh in favour of the Defence. The Prosecution submits that CAX is not a credible witness and pointed out various unsatisfactory aspects of his testimony. Two examples may be seen above (at [97]–[99] and [140]–[141]). Notwithstanding, CAX’s credibility as a witness is not relevant where the Prosecution has not met its burden of proving the offences beyond a reasonable doubt: see *GCK* ([33] *supra*) at [142]. Acquittal is required even where the accused person’s testimony contains discrepancies, so long as there remain significant inconsistencies in the Prosecution’s case that generate a reasonable doubt: *GCK* at [136].

160 The Prosecution also submits that C had no motive to falsely incriminate CAX, arguing therefrom that she was telling the truth.<sup>399</sup> It contends that C would not have risked fracturing her familial bonds and embarrassing herself by fabricating lewd details about the incidents,<sup>400</sup> emphasising that CAX had not suggested any possible motive as to why C would have wanted to frame him.<sup>401</sup> Nonetheless, it is not for the accused to prove that the complainant had some reason to falsely implicate him: *Khoo Kwoon Hain* ([55] *supra*) at [71]. While the presence of a motive to falsely implicate an accused may raise a reasonable doubt as to his guilt, the *absence* of a proved motive is in itself insufficient to render a complainant’s testimony unusually convincing and thereby establish guilt beyond a reasonable doubt: *Public Prosecutor v Yue Roger Jr*

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<sup>399</sup> PWS at p 120 at para 161.

<sup>400</sup> PWS at p 120 at para 161.

<sup>401</sup> PWS at p 117 at para 157.

[2019] 3 SLR 749 at [50]. The function of the trial process is to ascertain whether guilt is proved beyond a reasonable doubt.

161 In *GCK* (at [134]–[135]), the Court of Appeal envisaged that there are two ways in which a reasonable doubt may arise: (a) from within the case mounted by the Prosecution; and (b) on the totality of the evidence. In five charges, A2, A3, A5, A12, and A13, reasonable doubt arises from within the case mounted by the Prosecution. For the remaining eight charges, reasonable doubt arises on the totality of the evidence. The Defence tendered evidence which posed inconsistencies with aspects of C’s evidence, such as C’s previous police statement and the analysis of CAX’s mobile telephone. The Prosecution did not cross-examine CAX on key assertions arising from the mobile telephone analysis, nor was evidence adduced to counter these. CAX’s credibility is not relevant to the findings made in this judgment.

162 The 13 charges allege a history of grooming and abuse over the course of six or seven years that date from 2012–2013. Independent or reliable corroboration is absent. Because of the multiple years, events and charges involved, inconsistencies in C’s evidence are to be expected. In the present case, however, the contradictions concern key foci in the narrative. The evidence surrounding the vibrators in relation to A12 is important. C’s complaints and evidence do not reconcile with the date of purchase of the vibrators. Contradictions on whether the accused ejaculated, in the context of A3–A11, are also concerning. Important signposts in C’s narrative are also not well remembered: as to when and who she first complained to about the sexual abuse; or the circumstances of her retraction with G on 3 July 2019. Whilst C presented as a young witness trying her best to remember, the question of whether a complainant is unusually convincing must be premised upon the reliability of her evidence. It may be that the passage of time, coupled with her youth at the

time of the offences, made clarity and recollection difficult. Human memory can be frail; timely disclosure, effective investigation and prompt trial are pivotal in sexual abuse cases involving young complainants.

### **Conclusion**

163 I acquit CAX on the thirteen charges.

Valerie Thean  
Judge of the High Court

David Khoo Kim Leng, Angela Ang, Tay Jia En and Kelly Ng Wei  
Qi (Attorney-General's Chambers) for the Prosecution;  
Ramesh Chandr Tiwary (Ramesh Tiwary Advocates & Solicitors)  
and Cory Wong Guo Yean (Invictus Law Corporation) for the  
accused.

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