Public Prosecutor
v
BLV

[2017] SGHC 154

High Court — Criminal Case No 58 of 2016
Aedit Abdullah JC
15-18, 23 November 2016, 23 January 2017; 15 February, 20 March 2017

Criminal law — Offences — Sexual assault by penetration

Criminal law — Offences — Outrage of modesty of person under 14

Criminal law — Statutory offences — Children and Young Persons Act

Criminal procedure and sentencing — Sentencing — Sexual offences

4 July 2017

Aedit Abdullah JC:

Introduction

1 The Prosecution brought ten charges against the accused ("the Accused") for a series of sexual offences committed against his biological daughter ("the Victim") between 2011 and 2014 at various locations in their family residence. At the time of the offences, the Victim was between 11 and 13 years old. The Prosecution relied heavily on the Victim's testimony, which

it argued was consistent with the evidence of her mother (who is the ex-wife of the Accused, hereinafter "the Mother") and of the medical experts.

2 The Accused wholly denied the occurrence of these incidents. Counsel for the Accused submitted that the Victim's and the Mother's testimonies were inconsistent in several material aspects, and their purported evasiveness on the stand suggested the possibility of fabrication. Further, at the material time of the offences, the Accused suffered from a penile deformity as a result of botched penile enlargement procedures, which made sexual intercourse painful and difficult for him. The Prosecution's case was thus said to be inherently improbable.

3 Having considered the evidence, I found the Victim's testimony to be unusually convincing and largely unshaken in court. I also preferred the evidence of the Victim and the Mother in relation to the appearance and condition of the Accused's sexual organ during the material period. Accordingly, the Accused was convicted on all ten charges and sentenced to a global term of 23 years and 6 months' imprisonment, and 24 strokes of the cane. The Accused has appealed.

Background

4 The Accused is a 43-year-old male who has been engaged in various odd jobs since 2002. He married his ex-wife (*ie*, the Mother) in September 1999. At the time of the offences, he was residing with the Mother, their three children, and a domestic helper in a flat located at Choa Chu Kang. The Victim is their eldest daughter, and is 16 years old as at the date of these grounds (date of birth: 24 November 2000). She was between 11 and 13 years of age at the time of the offences between the end of 2011 and April 2014.

5 The Accused claimed trial to all ten charges brought against him for a series of alleged sexual offences committed against the Victim:

First Charge	… sometime at the end of 2011, at [address], did commit an indecent act with [the Victim], a child who was then about 11 years old, to wit, by taking her hand and swiping her hand across your penis, and you have thereby committed an offence punishable under section 7(a) of the Children and Young Persons Act (Cap. 38, 2001 Rev. Ed.).
Second Charge	… sometime between the end of 2011 and the end of 2012, at [address], did use criminal force on [the Victim], a person then under 14 years of age, intending to outrage her modesty, to wit, by rubbing your penis against her face, and you have thereby committed an offence punishable under section 354(2) of the Penal Code (Cap. 224, 2008 Rev. Ed.).
Third Charge	… sometime at the start of 2012, at [address], did sexually penetrate your penis into the mouth of [the Victim], a person then under 14 years of age, without her consent, and you have thereby committed an offence under section 376(1)(a), punishable under section 376(4)(b) of the Penal Code (Cap. 224, 2008 Rev. Ed.).
Fourth Charge	… sometime at the end of 2012, at [address], did sexually penetrate your penis into the mouth of [the Victim], a person then under 14 years of age, without her consent, and you have thereby committed au [*sic*] offence under section 376(1)(a), punishable under section 376(4)(b) of the Penal Code (Cap. 224, 2008 Rev. Ed.).
Fifth Charge	… sometime between 2012 and 14 April 2014, at [address], did sexually penetrate your finger into the anus of [the Victim], a person then under 14 years of age, without her consent, and you have

thereby committed an offence under section 376(2)(a), punishable under section 376(4)(b) of the Penal Code (Cap. 224, 2008 Rev. Ed.).

Sixth Charge … sometime between 2012 and 14 April 2014, at [address], did sexually penetrate your penis into the anus of [the Victim], a person then under 14 years of age, without her consent, and you have thereby committed an offence under section 376(1)(a), punishable under section 376(4)(b) of the Penal Code (Cap. 224, 2008 Rev. Ed.).

Seventh Charge … sometime between 2012 and 14 April 2014, at [address], did use criminal force on [the Victim], a person then under 14 years of age, intending to outrage her modesty, to wit, by licking the vagina of the [said Victim], and you have thereby committed an offence punishable under section 354(2) of the Penal Code (Cap. 224, 2008 Rev. Ed.).

Eighth Charge … sometime between 2012 and 14 April 2014, at [address], did use criminal force on [the Victim], a person then under 14 years of age, intending to outrage her modesty, to wit, by squeezing and licking the breasts of the [said Victim], and you have thereby committed an offence punishable under section 354(2) of the Penal Code (Cap. 224, 2008 Rev. Ed.).

Ninth Charge … sometime between 2012 and 14 April 2014, at [address], did use criminal force on [the Victim], a person then under 14 years of age, intending to outrage her modesty, to wit, by touching and rubbing the outside of her vagina with your finger, and attempting to penetrate your finger into the vagina of the [said Victim], and you have thereby committed an offence punishable under section 354(2) of the Penal Code (Cap. 224, 2008 Rev. Ed.).

Tenth Charge … on the 15th of April 2014, at [address], did use criminal force on [the Victim], a person then

> under 14 years of age, intending to outrage her modesty, to wit, by rubbing your penis against the vagina, and thereafter against the anus of the [said Victim], and you have thereby committed an offence punishable under section 354(2) of the Penal Code (Cap. 224, 2008 Rev. Ed.).

6 At the outset of the trial, the Prosecution applied under s 133 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") for the Accused to be tried on all the charges together, on the basis that they were part of a series of offences of similar character. The Prosecution also applied for a gag order under s 8(3) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) in relation to the Victim's identity, and for the Victim's evidence to be given *in camera* under ss 153(1) and/or (3) of the Women's Charter (Cap 353, 2009 Rev Ed). The Defence did not object and, accordingly, I granted all three applications.[1]

The Prosecution's case

7 The Prosecution's case was that the sexual abuse of the Victim by the Accused started at the end of 2011, when she was around 11 years old, and lasted until 15 April 2014, one day before she decided to disclose the series of abuse to her Mother.

The Victim's account of events

8 The Victim's account of events will be briefly stated here for context; a more detailed account will be evaluated below (at [28] – [37]).

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1 NE dated 15 November 2016 at pp 4-5.

The first charge

9 The first incident occurred when the Victim was in late Primary 5 or the start of Primary 6, during lunch time, in her younger brother's room in the family residence. While the Victim was massaging the Accused's upper thigh region on his request, he grabbed hold of her hand and swiped it across his penis.

The second charge

10 The next incident occurred in the master bedroom. While the Victim was seated on the floor in a "butterfly position" (*ie*, with the soles of her feet facing each other and her knees bent), the Accused lifted his sarong and pulled it over her head. The Victim was shrouded in darkness, and she thereafter felt the Accused rubbing his penis against her forehead area.[2] The rubbing went on for about a few minutes.[3]

The third and fourth charges

11 The third and fourth charges were framed around the Accused's penetration of the Victim's mouth with his penis in 2012, when the Victim was in Primary 6.[4] According to the Victim, the Accused would beckon her over to the toilet of the master bedroom, ask her to kneel, and then insert his penis into her mouth. This occurred about ten times in that year, with the first incident happening when she was in early Primary 6, and the last of them a year later before she started Secondary school. For most of these incidents, the Accused did not ejaculate into the Victim's mouth. The Victim would, however, observe

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2 AB at p 18; NE dated 15 November 2016 at p 58.

3 NE dated 15 November 2016 at p 58.

4 AB at p 19.

a white colour liquid, which she believed was his sperm, coming out from his penis after the oral penetration.[5]

The fifth and sixth charges

12 Sometime between 2012 and April 2014, the Accused was said to have engaged in digital-anal and penile-anal penetration with the Victim. The first incident occurred while the Accused and the Victim were alone in the master bedroom. The Victim also testified as to a second incident occurring in her own bedroom at the family residence.

The seventh charge

13 The seventh charge was framed based on instances between 2012 and 14 April 2014 in which the Accused would pull down the Victim's shirt or pants and lick her body or vagina. These incidents occurred either in the Victim's room or the master bedroom.

The eighth charge

14 The events constituting the eighth charge occurred between 2012 and April 2014. The Accused would stand behind the Victim and hug her from behind, while she used the computer in the master bedroom. He would then massage her shoulders, and in that process slip his hands under her shirt and undergarment to touch and squeeze her breast.

The ninth charge

15 Between 2012 and 14 April 2014, the Accused would ask the Victim to lie down on the bed facing upwards and crossing her legs. Thereupon, he would

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5 NE dated 15 November 2016 at pp 61-62.

push the Victim's crossed legs up towards her chest and use his finger to touch and rub the area outside her vagina.

The tenth charge

16 On the night of 15 April 2014, while the Victim was using the computer in the master bedroom, she refused the Accused's request to lie on the bed. The Accused responded by pulling her down to the bed, making her lie face up, removing her pants and underwear, and rubbing his penis against her vagina while positioned on top of her. Attempting to avoid the contact, the Victim turned around on the bed,[6] but the Accused then rubbed his penis against her anus.

Disclosure of abuse

17 On 16 April 2014, a day after the incident constituting the tenth charge, the Victim sent a long WhatsApp message to her Mother, disclosing the Accused's series of inappropriate behaviour towards her starting from the time she was in Primary 5 or 6. The Mother asked the Victim not to make it obvious that the Victim had told the Mother what the Accused had done.[7] On the Mother's instructions, the Victim moved to her aunt's place on 17 or 18 April 2014. She returned the following Sunday, by which time the Accused had moved out of the family residence.[8] On 6 May 2014, the Mother reported the Accused to the police.

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6 NE dated 15 November 2016 at pp 52-53.

7 AB at p 16.

8 AB at pp 16-17.

The Defence's case

18 At the close of the Prosecution's case, the Defence made a submission of no case to answer primarily on the basis that the Prosecution's evidence *vis-à-vis* the state of the Accused's penis at the time of the offences was inherently incredible. Based on the approach laid out in *Haw Tua Tau and others v PP* [1981-1982] SLR(R) 133, I found that the Prosecution had established a *prima facie* case and accordingly called on the Accused to enter his defence.

19 The Defence's primary case was that of a denial of any sexual assault committed against the Victim. Instead, the Defence contended that the entire series of abuse had been a fabrication by the Victim. To this end, it relied on five purported inconsistencies in her evidence:[9]

(a) despite having gone through such an extended period of trauma, the Victim did not find it necessary to disclose her fear and anguish to the doctors that she met with on referral by the police, Dr Parvathy Pathy ("Dr Pathy") and Dr Padma Krishnamoorthy ("Dr Krishnamoorthy").

(b) the assessors' notes and medical reports recorded the calm appearance of the Victim, who did not cry or show any apparent signs of distress during the assessments;

(c) the Victim claimed to have suffered suicidal thoughts as a result of the Accused's abuse, but the medical reports showed that she had harboured such thoughts even before the instances of alleged abuse;

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9 See Defence's Closing Submissions at pp 10-19.

(d) Dr Krishnamoorthy's report did not contain certain material particulars of the Accused's alleged conduct constituting the charges; and

(e) the Accused's large penile girth made it highly improbable for non-consensual penile intercourse to have occurred with the Victim as described.

20 Further, the Defence raised questions concerning (i) the plausibility of the series of abuse occurring undetected in the family residence despite the presence of other family members and the domestic helper, and (ii) the Mother's reaction to the Victim's disclosure of the abuse, which was said to have been suspiciously delayed and unconcerned. The Defence posited that the entire account had been a fabrication by the Mother and the Victim, motivated by the Mother's desire to get a divorce from the Accused and/or because the Accused had harshly scolded the Victim and the Mother prior to the disclosure.[10] There were various other inconsistencies in the Victim's testimony which warranted the Court disbelieving her evidence.

The decision

21 Having scrutinised her evidence, I found the Victim's evidence detailed, coherent, and largely consistent both internally and externally. She was not shaken on the stand and was able to give an account that was cogent in respect of the main particulars of the charges. There may have been inconsistencies between her testimony and the medical reports, but taken in context those were not material and were explicable on grounds not related to her credibility.

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[10] NE dated 17 November 2016 at p 70.

22 In particular, I preferred the Victim's evidence, as corroborated by the Mother, as to the state of the Accused's penis during the material period. Sufficient opportunities existed for the offences to have been committed in the family residence, and to have remained undetected, during the material period. I was also not persuaded that the Mother and the Victim had been in cahoots to frame the Accused because of their deteriorating marital relationship or because he had scolded them harshly. The Mother's reaction to the Victim's disclosure and her delay in reporting the abuse to the authorities were explicable on grounds that did not detract from the Victim's credibility. Accordingly, I found the Victim's evidence to be unusually convincing, and the Accused was convicted on all ten charges at the conclusion of the trial.

23 As for sentencing, the Accused was sentenced to a global term of 23 years and 6 months' imprisonment with 24 strokes of the cane. This consisted of three sentences consecutively run: the fourth and sixth charges under s 376(4)(*b*) of the Penal Code (Cap 224, 2008 Rev Ed) ("PC") (on sexual assault by penetration of a minor under the age of 14) for 10 years' imprisonment and 12 strokes each (these would have been 15 years' and 12 strokes but for the totality principles), and the tenth charge under s 354(2) of the PC (on outrage of modesty of a minor under the age of 14) for 3 years' and 6 months' imprisonment with 6 strokes. Caning was capped at the maximum of 24 strokes.

The commission of the offences

The legal standard

24 There was no objective evidence available in the present case; all turned on the Victim's testimony as against that of the Accused, taken in the context of the surrounding circumstances, including what was disclosed by the Victim to the Mother eventually, and the circumstances of the household. In these

circumstances, I should not convict unless I find on a close scrutiny that the complainant's evidence is unusually convincing (see *AOF v PP* [2012] 3 SLR 34 ("*AOF*") at [111]). Relevant considerations include (i) the complainant's demeanour in court, (ii) the internal consistency of his or her evidence, and (iii) its external consistency when assessed against extrinsic evidence such as the evidence of other witnesses or documentary evidence or exhibits (see *AOF* at [115]; *Farida Begam d/o Mohd Arthan v PP* [2001] 3 SLR(R) 592 at [9]), although the modern judicial tendency appears to lean in favour of relying more heavily on the last two inquiries.

25 If the complainant's evidence is not unusually convincing, a conviction would be unsafe unless there is adequate corroboration of the complainant's story (see *AOF* at [173]). Subsequent statements by the complainant herself constitute corroboration so long as that statement implicating the accused was made at the first reasonable opportunity after the commission of the offence (see *PP v Mardai* [1950] MLJ 33 at 33; *AOF* at [173]).

Application to the facts

26 In the present case, the Victim was generally able to give details of the various incidents, indicating what had allegedly been done by the Accused. Although there was a lack of clear particulars about the date and time of the incidents, this is commonplace where the alleged offences span a period of time, which is, unfortunately, the norm in many instances where similar allegations of sexual abuse are made in the familial context. Further, despite her young age, the Victim could give age-inappropriate descriptions of an entire range of sexual acts, and could further testify as to the Accused's habitual use of olive oil as a

lubricant in his various sexual acts.[11] In addition, the Victim was also able to address various areas of concern raised by the Accused's counsel. These will be discussed in detail below. In the circumstances, none of the inconsistencies and omissions raised detracted from the evidence of the Victim establishing the commission of the various offences.

27 Accordingly, in the analysis, the Victim's account of the events will first be set out before the following areas of concern are dealt with in sequence:[12]

(a) inconsistencies and omissions in the medical reports;

(b) the opportunity for undetected abuse in the family residence;

(c) the state of the Accused's penis during the material period of the offences;

(d) the Victim's behaviour and emotional state after the abuse was disclosed;

(e) the Mother's reaction after the abuse was disclosed; and

(f) the possibility of fabrication by the Victim and the Mother.

The Victim's account

(1) The first charge

28 This incident occurred when the Victim was in late Primary 5 or the start of Primary 6, during lunch time, in her younger brother's room in the family residence. Other persons may have been present in the flat.[13] The Accused asked

11 NE dated 23 November 2016 at p 37.

12 See Defence's Closing Submissions at pp 10-19.

13 AB at p 17.

the Victim to massage his legs and the region of his calves and thighs. When the Victim's hand reached the Accused's upper thigh region, the Accused grabbed hold of her hand and swiped it across his penis. The Victim was shocked, but did not tell anyone for fear of being scolded or disbelieved.[14] She also thought that it could have been accidental.[15]

(2) The second charge

29 The next incident occurred in the master bedroom between the end of 2011 and the end of 2012. The Accused asked the Victim to sit on the floor in a "butterfly position" (*ie*, with her knees bent and the soles of her feet facing each other). The Victim thought that the Accused was going to help her train to become more flexible. Instead, the Accused, while facing the Victim, lifted his sarong and pulled it over her head. The Victim was shrouded in darkness, and she thereafter felt the Accused rubbing his penis against her forehead area.[16] The rubbing went on for about a few minutes. The Victim did not say anything because she was scared that she might get scolded.[17]

(3) The third and fourth charges

30 This involved the Accused's penile-oral penetration of the Victim in 2012, when the Victim was in Primary 6.[18] The Victim estimated that such penetration occurred about ten times that year, with the first of the series starting when she was in early Primary 6, and the last of them occurring about a year

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14 NE dated 15 November 2016 at p 55.

15 NE dated 15 November 2016 at p 55.

16 AB at p 18; NE dated 15 November 2016 at p 58.

17 NE dated 15 November 2016 at p 58.

18 AB at p 19.

later before she started Secondary school. Most of the incidents occurred in or near the toilet of the master bedroom,[19] while the Accused and Victim were alone in the family residence.[20] The Accused would initiate by beckoning the Victim to come to the toilet; if the Victim ignored him, he would on occasion simply come over to pull her towards the toilet.[21] The penetrations lasted a few minutes each, during which the Accused would move his penis in an in-and-out motion in the Victim's mouth.[22] For most of these incidents, the Accused would not ejaculate into the Victim's mouth, even though the Victim would observe white colour liquid coming out from the Accused's penis upon his withdrawal, which she believed was his sperm.[23]

(4) The fifth and sixth charges

31 Sometime between 2012 and April 2014, two separate incidents occurred where the Accused penetrated the Victim anally, each time first with his finger and then with his penis with the aid of a lubricant.[24]

32 The first incident occurred while the Accused and the Victim were alone in the master bedroom. Once the Accused ensured that the room door was locked, he asked the Victim to lie face down on the bed. The upper half of her body was on the bed and her legs dangled off it.[25] The Accused then removed

19 Exhibit P13.

20 NE dated 15 November 2016 at p 59.

21 AB at p 19.

22 NE dated 15 November 2016 at p 61.

23 NE dated 15 November 2016 at p 61.

24 NE dated 15 November 2016 at pp 67-69.

25 AB at pp 19-20.

all the Victim's clothes and undergarments,[26] took a bottle of olive oil from a nearby shelf which was intended to be used for massaging, and placed some olive oil on his finger and on the Victim's anus. The Victim then felt the Accused pushing his finger into her anus. Soon thereafter, the Accused removed his finger and penetrated the Victim's anus with his penis. According to the Victim, "a little bit" of the Accused's penis entered her anus[27] and she felt pain.[28] Such penetration lasted a few minutes, during which the Victim felt movement of the penis inside her.[29] The Victim could not recall what had happened after the Accused withdrew his penis.[30]

33 The Victim also testified as to a second incident in her own bedroom, in which the Accused similarly penetrated her anus first with his finger and then with his penis, with each penetration aided by some hair gel as a lubricant.

(5) The seventh charge

34 The seventh charge related to instances between 2012 and 14 April 2014 in which the Accused would pull down the Victim's shirt or pants and lick her body or vagina. These occurred either in the Victim's room or the master bedroom. Usually, the Accused would be behind the Victim and would pull her backwards such that she ended up with her whole body on the bed. Thereafter, the Accused would position himself on top of or beside the Victim. He would then pull down her pants and underwear. Thereafter, the Accused would lick her

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26 NE dated 15 November 2016 at p 65.

27 NE dated 15 November 2016 at p 66.

28 NE dated 15 November 2016 at p 66.

29 NE dated 15 November 2016 at p 66.

30 NE dated 15 November 2016 at p 67.

vagina. These incidents usually lasted a few minutes.[31] The Victim would sometimes try to close her legs to avoid the Accused's contact, but he would respond by pressing his hands against her thighs to keep them open.[32]

(6) The eighth charge

35 The events constituting the eighth charge occurred between 2012 and April 2014. While massaging the Victim's shoulders as she worked in the master bedroom, the Accused slipped his hands under her undergarment and touched and squeezed her breast.[33] The Victim further testified that the Accused had licked her breasts, but she could not remember precisely how he moved over to do so.[34] The incident lasted a few minutes.[35]

(7) The ninth charge

36 The Victim recounted that, on occasions between 2012 and 14 April 2014, the Accused had asked to check on her vagina. He would ask her to lie on the bed facing upwards and cross her legs. The Accused would then push the Victim's crossed legs up towards her chest[36] and use his finger to touch and rub the area outside her vagina. The Victim made hissing noises to indicate that she was in pain.[37]

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31 NE dated 15 November 2016 at p 71.

32 AB at pp 20-21.

33 AB at p 19.

34 AB at p 19.

35 NE dated 15 November 2016 at p 64.

36 NE dated 15 November 2016 at p 69.

37 AB at p 20; NE dated 15 November 2016 at pp 69-70.

(8) The tenth charge

37 On the night of 15 April 2014, the Victim was in the master bedroom, working on a computer. The Accused requested that she massage him. The Mother left the master bedroom, leaving the Accused and the Victim alone in the master bedroom. The bedroom door was then locked. The Victim refused when the Accused asked her to lie down on the bed. The Accused responded by pulling her down and making her lie on the bed facing up.[38] The Accused thereafter pulled down her pants and underwear, positioned himself on top of her, and rubbed his penis against her vagina. Attempting to avoid contact, she turned around on the bed.[39] The Accused then rubbed his penis against her anus. The Victim, feeling very uneasy, turned around again and managed to eventually get out of the room.[40]

Inconsistencies and omissions in the medical reports

38 After the police report was lodged, the police referred the Victim to two medical practitioners and obtained reports on her physical and psychological state. The Defence took issue with several aspects of these reports. Having considered them, I found that the omissions and discrepancies in the reports were not so material or inexplicable as to detract from the Victim's credibility.

39 The first report, dated 24 June 2014, was prepared by Dr Krishnamoorthy of KK Women's and Children's Hospital Department of Obstetrics and Gynaecology. By the time of the trial, Dr Krishnamoorthy was no longer with the hospital and her report was thus admitted through Dr Kazila

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38 AB at p 21.

39 NE dated 15 November 2016 at pp 52-53.

40 NE dated 15 November 2016 at p 53; AB at p 21.

Bhutia ("Dr Bhutia"), who was a registrar with the same hospital. The Defence pointed out that this report:

> (a) did not contain critical information about the Accused licking or touching the Victim's vagina, touching her anus, or licking and squeezing her breasts;[41]
>
> (b) mentioned sexual assault occurring only three times between 2012 and 2014;
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> (c) mentioned that the Victim had "denied any finger penetration or other forms of sex"; and
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> (d) included the allegation that the Accused had penetrated her anus with his penis on 15 April 2014 when that had not been included in the Victim's WhatsApp messages to her Mother on 16 April 2014.[42]

40 The second report, dated 21 July 2014, was prepared by Dr Pathy, a senior consultant with the Child Guidance Clinic. She was requested by the police to provide a psychiatric and psychological assessment of the Victim. The report stated, *inter alia*, that the Victim had reported that the Accused began to abuse her when she was in Primary 5 or 6 with the last episode being in April 2014.[43] The Defence questioned Dr Pathy's report on the ground that it referenced only the Victim's nightmares of the Accused asking her to perform fellatio on him, and not any nightmare of her physically fighting back against the Accused, to which the Victim had testified in court.[44]

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41 NE dated 15 November 2016 at pp 126-127.

42 NE dated 15 November 2016 at pp 132-134.

43 AB at pp 33–36.

44 NE dated 15 November 2016 at p 113.

41 I accepted that there were some inconsistencies between the Victim's evidence and the contents of the two reports. In particular, unlike the discrepancy highlighted *vis-à-vis* Dr Pathy's report, the omissions and inaccuracies in Dr Krishnamoorthy's report could not be said to be immaterial as they related to the constituting facts of several charges. For ease of reference, Dr Pathy and Dr Krishnamoorthy are hereinafter referred to as "the assessors".

42 However, these reports must be taken in their proper context. First, the primary purposes of the reports had been to determine the Victim's physical and mental states and her fitness to give testimony, rather than to obtain a full and complete set of facts surrounding each of the offences. This would naturally render the focus and content of their reports different from that of the Victim's statements and testimony. Secondly, I accepted the Victim's explanation that she had predominantly been responding to the assessors' questions and prompts. Some discrepancies between the reports must thus be anticipated given that different assessors may ask questions of different issues and with different nuances; they may also choose to reflect in their reports different aspects of the information obtained and focus on different facts. Thirdly, I found persuasive the Victim's explanation that she had not considered it necessary to recount the factual particulars of the abuse in exacting detail to the assessors, given that she had already given several statements about the same to the police.[45]

43 Further, the Victim was able to provide specific explanations addressing some of the discrepancies in Dr Krishnamoorthy's fairly concise report. For instance, in relation to the reference to penile-anal penetration on 15 April 2015 in Dr Krishnamoorthy's report which was not captured elsewhere, the Victim responded that this was likely a miscommunication. She had intended to convey

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[45] NE dated 15 November 2016 at pp 93, 136.

that the Accused had *attempted* penile-anal penetration *on that particular day*; any impression that the Accused had *in fact* effected such penetration was inadvertent.[46] As for Dr Krishnamoorthy's statement in the report that the Victim "denied any finger penetration or other forms of sex", the Victim explained that this was likely to have been based on her response to Dr Krishnamoorthy's question which was not generally framed, but rather, focussed specifically on the events that occurred on 15 April 2014.[47]

44 It was unfortunate that Dr Krishnamoorthy was not present to explain the circumstances surrounding her interview and report. Nevertheless, based on the evidence that was before me, I did not consider that the discrepancies and omissions in either medical report were so inexplicable or significant as to detract from the Victim's credibility. Indeed, the context in which these discrepancies and omissions arose must be considered: these were reports prepared based on responses given by a 13-year-old to questions concerning a protracted series of abusive conduct that were put to her by stranger-assessors approaching the matter with different perspectives. When viewed against this backdrop, it was clear that the discrepancies between the reports and the Victim's own evidence were better explicated on grounds other than the Victim's deliberate fabrication or lack of credibility.

Opportunity for undetected abuse

45 The Victim gave evidence that there was opportunity for the offences to have been committed in the family residence undetected over the material period. In this, she was largely supported and corroborated by the Mother. The

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46 NE dated 15 November 2016 at pp 133-134.

47 NE dated 15 November 2016 at p 138.

Defence submitted that certain areas of suspicion rendered it highly unlikely that the incidents could have occurred as described:

(a) the presence of the family members and the domestic helper in the family residence rendered it implausible that the offences could have occurred undetected over an extended period; and

(b) the Accused's presence in the master bedroom alone with the Victim behind locked doors would have been suspicious.

46 On the evidence, I found that sufficient opportunities existed for the offences to have been committed in the family residence and to have remained undetected during the material period.

(1) Non-detection despite presence of persons

47 A significant question was how the offences could have been committed given the size of the flat and the number of persons that would have been expected to be around.

48 I did not find any concern in this regard. I accepted the Mother's and the Victim's testimony that there would have been occasions in which the Accused was alone with the Victim in the residence.[48] As the Victim and the Mother testified, the Mother would often not be around at home. This was so even between October 2011 and March 2013 when the Mother did not have full-time employment, as she was running an online business and had to be out to make deliveries.[49] The Accused did not present a materially different account and no other family member was called.

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48 See Prosecution's Closing Submissions at para 102.

49 NE dated 16 November 2016 at pp 28-29.

49 In any case, the Prosecution's primary case was not that these acts of abuse had been committed whilst the Accused was alone at home with the Victim, but rather that most of these occurred even whilst the family members were around. In this regard, the Victim and the Mother had given sufficient evidence of the family's habits and practices, and these were such that the Victim and the Accused would ordinarily be left alone if they were in the master bedroom or any other room of the residence and the door was closed. As the Victim testified, although the Victim's maternal grandparents would be around on weekends, they were rarely around on weekdays[50] and were respectful of the personal space of other members of the family.[51] The Victim's siblings and the domestic helper would also refrain from entering into the master bedroom if the Accused and she were in there.[52] Further, although the live-in domestic helper was usually at home, she stayed in the kitchen most of the time.[53]

50 Indeed, the Victim,[54] the Mother,[55] and the Accused[56] all gave evidence that was consistent in the suggestion that no family member would have questioned the Accused's being alone with the Victim in any room of the family residence.[57] This was in part because it was an accepted and long-running familial practice that the Accused would request for someone to massage him

50 NE dated 16 November 2016 at pp 30-31.

51 NE dated 16 November 2016 at p 32.

52 NE dated 16 November 2016 at p 64.

53 NE dated 16 November 2016 at p 22.

54 NE dated 16 November 2016 at pp 32-33.

55 NE dated 16 November 2016 at p 82.

56 NE dated 18 November 2016 at pp 37-39.

57 NE dated 16 November 2016 at pp 79-84.

in one of the rooms,[58] and also because the only working computer in the household which the Victim needed for her school work was located in the master bedroom.[59]

(2) Suspicion from being alone behind locked doors

51 The above analysis is sufficient to dispose of the submission that it was implausible for the family not to have been suspicious of the Accused being alone with the Victim in a room. The remaining concern is then with the specific issue of locked doors.

52 In this regard, the Victim testified that it was normal that the room door was closed and locked – by the Accused himself or by the Victim on request of the Accused – and the Victim did not question the Accused. The Victim recounted only one incident during which the Mother had attempted to go into the locked master bedroom while it was locked. When the door was later unlocked, the Mother asked the Victim by whom and why the door was locked. The Victim replied that she did and was not further questioned.[60]

53 The Mother testified that on about three to four occasions, she tried to enter the master bedroom only to find it locked. She thought that the Victim was trying to complete her school work and thus did not pursue the matter.[61] Further, she did not question the Victim or the Accused about the reasons for locking the door as she did not suspect that anything untoward was going on.[62]

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58 See *eg* NE dated 17 November 2016 at pp 69-70; NE dated 16 November 2016 at pp 32-33.

59 See *eg* NE dated 16 November 2016 at pp 32, 42, 81.

60 NE dated 16 November 2016 at p 25, 36.

61 NE dated 16 November 2016 at p 81.

62 NE dated 16 November 2016 at p 82.

54 I noted that there was a discrepancy between the Victim's and the Mother's evidence as to how many times the Mother had tried to enter the locked master bedroom, but that was not a fact which either the Victim or Mother could reasonably have been expected to remember with precision. In any case, I accepted the Mother's explanations that she had not thought it necessary to pursue the issue with either the Victim or the Accused as there was not, based on what was known and familiar to her at that time, a degree of suspicion about the circumstances that necessitated a confrontation or called for an immediate explanation. It would also not have been in the place of other family members, or the domestic helper, to voice concerns about the same. Therefore, taking the established familial culture into consideration, it was not in any sense incredible for the family not to have suspected anything untoward based on the fact that the Victim and the Accused were alone in a locked room.

State of the Accused's penis

55 The Defence, relying on photographs of the Accused's penis taken in October 2016, described the state of the Accused's penis as "deformed" and relied on it for two reasons. First, it sought to argue that the large penile circumference measuring around 25cm at the maximum rendered it highly improbable for the Accused to have had penile intercourse with the Victim.[63] Second, because the Victim's drawing of the Accused's penis based on her recollection differed from photographs of the Accused's penis taken in October 2016, the Victim's credibility was challenged.[64]

56 The Prosecution's case was that the photographs in October 2016 did not represent the state of the Accused's penis at the time of the offences. The

63 Defence's Closing Submissions at para 42.

64 Defence's Closing Submissions at para 43.

Accused's penile deformity had arisen between 4 September 2015 (when the Accused's ten cautioned statements were taken) and 15 April 2016 (when the Case for the Defence was served), which was subsequent to the commission of the offences.[65] Instead, they urged the Court to accept the Victim's evidence as to the state of the Accused's penis, which was credible and corroborated by the evidence of the Mother.

57 On the evidence, I preferred the Victim's account of the state and condition of the Accused's penis during the material period. This was corroborated by the Mother's evidence. Further, an adverse inference was to be drawn against the Accused for his belated disclosure of this exculpatory fact.

(1) The Victim's evidence

58 The Victim testified that she knew the difference between an erect and flaccid penis,[66] and had not seen any other adult male sexual organ other than that of the Accused.[67] Based on her recollection, the proximal end of the Accused's penis was bigger and thicker than the tip of the penis.[68] This bigger part was said to constitute around one-quarter of the length of the entire penis.[69] She believed that that bigger part was the Accused's "balls".[70] At various points in her testimony, the Victim was also asked to draw several pictures of the Accused's penis:

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65 See Prosecution's Closing Submissions at paras 114 and 118.

66 NE dated 16 November 2016 at p 49.

67 NE dated 16 November 2016 at p 63.

68 NE dated 16 November 2016 at pp 53-54; see Exhibit P27.

69 NE dated 16 November 2016 at p 61.

70 NE dated 16 November 2016 at p 52.

(a) The first drawing was of the Accused's penis in an erect state without any reminders as to scale.[71]

(b) The second was drawn of the Accused's penis in an erect state with a particular reminder to mirror as accurately as possible the actual size of the Accused's penis.[72]

(c) The third drawing was a side profile of the Accused's penis relative to the Accused's body, not drawn to scale.[73]

59 Counsel for the Accused compared these drawings against the actual photographs of the Accused's penis taken in October 2016. The Victim agreed that the photographs differed from her recollection of the condition of the Accused's penis.[74] She accepted that, based on the photographs which showed a bulbous growth on the proximal end of the Accused's penis, it was not possible for 2.5 inches (or 4.4cm) of his penis to have penetrated her mouth as she claimed in relation to the third and fourth charges.[75] She explained that she was seeing the photographed penis for the first time in court.[76]

(2) The Mother's evidence

60 As for the Mother, she stated that she did not have any problems in her sexual relationship with the Accused. Based on her recollection, they had sex

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71 See Exhibit D1; NE dated 15 November 2016 at 140.

72 See Exhibit D2; NE dated 15 November 2016 at p 141.

73 See Exhibit P27; NE dated 16 November 2016 at pp 51-52.

74 NE dated 15 November 2016 at pp 150-151.

75 NE dated 15 November 2016 at pp 142-143.

76 NE dated 16 November 2016 at p 64.

about two to three times every one to two weeks. Olive oil would usually be used as a lubricant during sex.[77] In particular, the Accused had confided in her that anal intercourse was more pleasurable for him than vaginal intercourse. He would request for anal intercourse most of the time they had intercourse, and on occasion, she would be awakened from her sleep by him trying to put his penis into her anus.[78]

61 In relation to the penile enlargement procedures, the Mother testified that in 2004, she noticed that the Accused's penis had become longer and thicker. The Accused told her that it was because he had gone for an enlargement procedure. The Mother did not know why he had done so.[79] Before the enlargement operation in 2004, the circumference of the Accused's erect penis was around 14cm at about the middle of its shaft,[80] whereas after the operation it was around 19cm at the thickest point of the penis.[81]

62 After 2004, the Accused and the Mother continued to be able to engage in regular sexual intercourse, with the aid of olive oil as a lubricant.[82] During vaginal and anal intercourse, the whole of the Accused's penis, including the swollen part on the proximal end of the penis, would penetrate her vagina or anus; for fellatio, only the non-swollen part of the penis would penetrate her

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77 AB at p 26.

78 AB at p 26.

79 NE dated 16 November 2016 at pp 82-84.

80 NE dated 16 November 2016 at pp 87-88; see Exhibit P34.

81 NE dated 16 November 2016 at p 90; see Exhibit P35.

82 NE dated 16 November 2016 at pp 93-94.

mouth. The Accused also wanted sex more frequently after the enlargement procedures.[83]

63 No further material changes were observed to the shape or size of the Accused's penis after 2004.[84] When shown the photographs of the Accused's penis as of October 2016,[85] the Mother explained that the Accused's penis was in her recollection much longer and the bulbous part was not as big.[86]

64 The Mother also made several drawings of the Accused's organ:

(a) before the 2004 enlargement operation, in both flaccid and erect states, to scale, from the top-down perspective,[87]

(b) after the 2004 enlargement operation, in both flaccid and erect states, to scale, from the top-down perspective,[88] and

(c) a side profile of the penis in the erect state after the 2004 enlargement operation[89]

(3) The Accused's evidence

65 The Accused testified that he underwent penile enlargement procedures in Johore, Malaysia, three times in 2005, 2007 and 2009 respectively. He did so

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83 NE dated 16 November 2016 at p 93.

84 NE dated 16 November 2016 at pp 82-84.

85 See Exhibits E3, E4.

86 NE dated 16 November 2016 at p 91.

87 Exhibit P31.

88 Exhibit P32.

89 Exhibit P33.

at the behest of the Mother, who had told him the bigger the better as regards his penis size; he had himself no interest in enlarging his penis as the procedures caused him pain.[90] The Accused had no medical records or photographs of the state of his penile after the first and second procedures.[91] The venue at which he stated the procedures were performed could not be traced.[92]

66 Based on the Accused's recollection, he paid 600 ringgit for the first collagen-based enlargement.[93] The effect of this procedure dissipated by 2007, and so he did the second procedure.[94] His penile size then shrunk again and he underwent the third procedure in 2009. He made before[95] and after[96] drawings of his penile shaft in their erect and flaccid states. Thereafter, for the 7-year-period from 2009 to the date of the trial,[97] the Accused's penis remained substantially the same in size.[98]

67 In particular, the Accused explained that he did the third procedure in 2009 because, after the birth of their second child, the Mother was dissatisfied with their sexual intercourse.[99] However, based on his testimony in court, soon after the third procedure in 2009, sexual intercourse between him and the

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90 NE dated 18 November 2016 at p 73.

91 NE dated 18 November 2016 at pp 76, 80.

92 NE dated 23 November 2016 at p 3.

93 See Exhibit P38; NE dated 18 November 2016 at pp 77-78.

94 See Exhibit P40; NE dated 18 November 2016 at p 80.

95 See Exhibit P41; NE dated 18 November 2016 at pp 81-82.

96 See Exhibit P42; NE dated 18 November 2016 at p 82.

97 NE dated 18 November 2016 at p 84.

98 See Exhibits E3, E4; NE dated 18 November 2016 at pp 49-50.

99 NE dated 18 November 2016 at p 51.

Mother decreased in frequency.[100] By 2013, the Accused and the Mother had sexual intercourse about once every one or two months. Usually, these consisted of penile-vaginal penetration with the aid of olive oil as a lubricant. Not the entire length of the penile shaft would be able to effect penetration as that mere act had become painful for the Mother and him.[101] However, he had no difficulties achieving an erect state or ejaculating.[102]

68 This decrease in sexual intimacy was one source of stress in their marriage.[103] However, despite his penile deformity persisting for around seven years from 2009 to 2016, the Accused did not seek medical help to reduce the size of his penis or to treat it as he was embarrassed and afraid that it would be even more painful. According to him, embarrassment "overshadow[ed]" everything else.[104]

69 In support of his claim, the Accused called as witness Dr Lee Fang Jann ("Dr Lee"), who was a medical doctor with the Singapore General Hospital of 15 to 16 years' experience. He focused on men's health issues and specialised in andrology and kidney transplantation. In his report dated 17 October 2016, Dr Lee explained that he saw the Accused in his clinic on 6 October 2016. Dr Lee appended photographs of the Accused's genitalia[105] and observed:

(a) the Accused's penis was circumcised and exposed a "normal looking glans penis";

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100 NE dated 18 November 2016 at p 52.

101 NE dated 18 November 2016 at pp 52-53.

102 NE dated 18 November 2016 at p 72.

103 NE dated 23 November 2016 at p 6.

104 NE dated 23 November 2016 at pp 7, 85.

105 Exhibits E3 and E4.

(b) there was an "uneven bulbous expansion" concentrated around the proximal penile shaft from the underlying fillers;

(c) there were no external skin lesions around the genitalia but there was some thinning of the penile skin on the right lateral aspect of the proximal penile shaft overlying the fillers;

(d) the stretched penile length in the flaccid state measured 9.5cm and the maximum "penile girth" at the proximal penile shaft measured 25cm; and

(e) the erect penis length measured 9.5cm and the maximum penile girth in the erect state was also at the proximal penile shaft measuring 25cm.

70 Dr Lee concluded in his report that, in his medical opinion, the large penile girth made it unlikely for the Accused to perform penile-vaginal, penile-anal, and penile-oral intercourse with an 11-year-old girl.

(4) Assessment of the evidence

71 Having considered the evidence, I preferred the account of the Victim and the Mother in relation to the appearance and condition of the Accused's penis during the material period. In contrast, the Accused's evidence on this issue was inconsistent, unreliable, and incapable of belief.

72 The Victim's and the Mother's accounts were largely consistent with each other. Both of them, when shown the photographs of the Accused's penis as of October 2016,[106] testified that the photographed organ did not resemble

[106] See Exhibits E3, E4.

that based on their recollection. Instead, their drawings of the Accused's penis during the material period, when taken in the context of their oral testimonies, bore substantial similarities.[107] Indeed, the Accused himself observed that the lengths of his penis as depicted by the Victim and the Mother were "more or less the same".[108]

73 The difference in the depictions was that the Mother's drawing reflected a bulbous growth at the proximal end of the penis whereas the Victim's did not. In this regard, I observed that the Victim testified that the proximal end of the Accused's penis was bigger and thicker than its distal end.[109] This bigger part was said to constitute around one-quarter of the length of the entire penis.[110] The Victim also produced a side profile drawing showing that the bigger part of the penis enveloped the whole circumference of the base of the penis.[111] Taking into consideration her description and drawing of the bigger part, her version of the Accused's penis was brought closely in line with the Mother's. The Victim testified that she believed that the bigger part was the Accused's "balls".[112] The Prosecution submitted that this explained why the Victim had excluded it from her initial drawings;[113] the Defence argued that this showed the Victim's lack of credibility.[114] I preferred the Prosecution's submissions. The Victim's side profile drawing of the Accused's penis, in which the bigger part of the penis

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107 See Exhibits D2 and P32.

108 NE dated 23 November 2016 at p 27.

109 NE dated 16 November 2016 at pp 53-54; see Exhibit P27.

110 NE dated 16 November 2016 at p 61.

111 See Exhibit P27.

112 NE dated 16 November 2016 at p 52.

113 Prosecution's Closing Submissions at para 109.

114 Defence's Closing Submissions at paras 46-47.

enveloped the whole circumference of the base of the penis, suggested that she had misused the colloquial term "balls".[115] I would not hold the Victim's misdescription of the male anatomy against her given her young age and the fact that she had never seen any other adult male's sexual organ.[116] Indeed, when questioned on this misdescription, the Accused's own response was: "She didn't know that it was my shaft. She did not know."[117]

74 The Defence pointed to the fact that certain drawings of the Accused's penis were done by the Victim in her re-examination, which was after she had seen the October 2016 photographs of the Accused's deformed penis during cross-examination.[118] I did not find that this sequence meant that her evidence should be rejected or given less weight; her testimony was consistent throughout. Indeed, there remained substantial differences between the Victim's drawings and the Accused's photographs in relation to the critical issues of the penile length and the relative size of the bulbous growth. If the Victim had intended to tailor her evidence, her drawings would not have assisted her fabrication. It should also be noted that the Victim's drawings were produced after questions had been asked of her on whether she had seen the Accused's penis in an erect state;[119] the other questions focussing on the all-round bulbous growth were put to the Victim only after she had produced the drawings.

75 Turning next to the Accused's evidence, it should be noted at the outset that, save for the October 2016 photographs, the Accused could not provide

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115 See Exhibit P27.

116 NE dated 15 February 2017 at p 42.

117 NE dated 23 November 2016 at p 28.

118 Defence's Closing Submissions at para 45.

119 NE dated 16 November 2016 pp 49-52.

medical records or documentary evidence as to the state of his penis or of his penile enlargement procedures. That left his testimony, which I found to be inconsistent, unreliable, and incapable of belief.

76 First, the Accused's account of his ability to have sex after the enlargement procedures was wholly different at trial as compared to his initial statements. At trial, the Accused testified that after the third penile enlargement procedure in 2009, sexual intercourse between him and the Mother decreased in frequency as his penis had become extremely large and started swelling and collecting pus. During this time, the penis also became "deformed" and out of shape, and the penile skin started peeling off.[120] This was completely different from the healthy picture of his sex life with the Mother painted by the Accused in his further statement dated 25 November 2014 (six months after he was told of the Victim's allegations and his first statement was taken):

> I have normal sex life with [the Mother] and we have sexual intercourse regularly for about twice or thrice per week. When [the Mother] gave birth to our third child… [the Mother] was reluctant to have sex with me. When I asked her why, she told me that she did not enjoy sex with me. We discussed and I even went to Johore to enlarge my penis. After the treatment, [the Mother] told me that she enjoyed the sexual session with me. She ever told me that before the treatment she did not feel anything. I did the penis enlargement for 3 times where collagen was injected on my penis.

77 Secondly, the Accused could not provide a satisfactory explanation as to why he had not sought corrective procedures or medical attention after his penile deformity arose in 2008 or 2009. According to him, his organ was oozing pus and swollen for more than seven years,[121] causing pain to him and the

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120 NE dated 18 November 2016 at pp 82-83.

121 NE dated 23 November 2016 at p 25.

Mother during penile intercourse and decreasing the sexual intimacy between them.[122] Despite this, he left his penis in its deformed state for more than seven years and allowed his marital and sexual problems to fester.[123] This flies in the face of the Accused account that he enlarged his penis solely to please and placate the Mother, who had requested for the procedure to be done.[124] The Accused tried to explain that he did not seek medical treatment because he was embarrassed and afraid that it would be even more painful.[125] There should have been no embarrassment at least with respect to the person in Johore who had performed the procedure for him in the first place and whom he had consulted several times.

78 Thirdly, the Accused's testimony regarding the injectable used in his three penile enlargement procedures contradicted the evidence of his own medical expert. The Accused's consistent evidence in his statements and in court had been that his three penile enlargement procedures were collagen-based.[126] These collagen-based procedures could not have given rise to permanent results due to the natural reabsorption of the injectable; they thus deflated time and again after the first and second procedures. However, the Accused claimed that his third procedure enlarged the circumference of the proximal penile shaft to 25cm and resulted in a lasting deformity of at least seven years. This was contradictory to his own experience and Dr Lee's testimony that a collagen insertion in 2009 could not possibly have caused the

122 NE dated 23 November 2016 at p 6.

123 NE dated 23 November 2016 at p 8.

124 NE dated 18 November 2016 at p 73.

125 NE dated 23 November 2016 at p 7.

126 NE dated 23 November 2016 at p 12.

Accused's penis to swell to a circumference of 25cm without resolution, and was unlikely to have resulted in the state of his penis as photographed in October 2016.[127]

79 For the above reasons, I preferred the evidence of the Victim and the Mother in relation to the state of the Accused's penis during the material period of the offences. I noted Dr Lee's testimony that a doctor could attempt to deliberately create a bulbous lump anywhere along the length of the penis, save for the glans penis, by concentrating the injectable in specific areas of the penile shaft.[128] The evidence before the Court, however, did not allow a finding as to how and why the Accused's penis came to be the state it was photographed in October 2016. That was, in the end, immaterial to the establishment of the charges brought.

(5) Adverse inference

80 The findings above as to the state of the Accused's penis during the material period was buttressed by an adverse inference drawn against the Accused for the belated disclosure of his penile deformity. Section 261(1) of the CPC permits adverse inferences to be drawn from the accused's silence:

> **Inferences from accused's silence**
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> 261.—(1) Where in any criminal proceeding evidence is given that the accused on being charged with an offence, or informed by a police officer or any other person charged with the duty of investigating offences that he may be prosecuted for an offence, failed to mention any fact which he subsequently relies on in his defence, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, the court may in determining —

127 NE dated 23 January 2017 at p 25.

128 NE dated 23 January 2017 at p 16.

> (*a*) whether to commit the accused for trial;
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> (*b*) whether there is a case to answer; and
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> (*c*) whether the accused is guilty of the offence charged,
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> draw such inferences from the failure as appear proper; and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.

81 Based on the statutory language, three conditions must exist in order for s 261(1) of the CPC to empower the Court to draw an adverse inference against the accused: (i) the accused fails to mention any fact on which he subsequently relies as his defence, (ii) such omission occurs on his being charged with an offence, or being informed by a police officer or any investigating officer that he may be prosecuted for an offence, and (iii) he could reasonably have been expected to mention that omitted fact in the circumstances existing at the time when he was questioned, charged or informed.

82 In the present case, the Accused gave his first statement to the police on 15 May 2014, a further statement on 25 November 2014, and ten cautioned statements under s 23 of the CPC on 4 September 2015. His penile deformity, and the implausibility and difficulty of penile intercourse as a result thereof, were raised in none of these statements. Rather, the first instance of the Accused raising the issue of his penile deformity was on 15 April 2016, some two years after his first statement was taken, when his Case for the Defence was filed.[129]

83 Given the severity of the allegations made against him, the centrality of the Accused's penile deformity to his claim of innocence, and the obviously exculpatory nature of this fact even to a layperson, the Accused's belated disclosure was questionable. This was particularly so given that the cautioned

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[129] NE dated 23 November 2016 at p 15; see Exhibit P7.

statements under s 23 of the CPC had been taken in September 2015, which was a year and a half after his first statement was taken on 15 May 2014. The Accused had, since that very first statement, been explicitly informed of the Victim's serious allegations of sexual assault against him, which he described as "a big slap" to him.[130] The intervening period thus gave him ample time to reflect on the facts and defences that should be raised to the investigation officers, and whether he had inadvertently missed any salient issues in his earlier interviews. Given the time interval between the statements, no claim could also be made that the Accused had not been in a physical or mental state to consider his defence (see *Lim Lye Huat Benny v Public Prosecutor* [1995] 3 SLR(R) 689 at [25]; Jeffrey Pinsler SC, *Evidence and the Litigation Process* (LexisNexis, 5th Ed, 2015) ("*Pinsler on Evidence*") at para 5.059).

84 The Accused gave two explanations for this critical omission, neither of which I accepted.

85 First, the Accused explained that he did not inform the police of his deformity as he was embarrassed by it and the fact that he could not engage in proper sexual intercourse with the Mother.[131] I was not persuaded. The Accused had given several statements detailing sensitive and personal aspects of his life. For instance, in the further statement dated 25 November 2014, the Accused unabashedly elaborated on the Mother's varying willingness to have sexual intercourse with him at different periods, and explicitly referred to his going to Johore three times for penile enlargement procedures in order to boost their sexual experience. Further, the Accused knew that the allegations were serious. His penile deformity was clearly relevant and would have undermined those

130 AB at pp 60-61.

131 NE dated 23 November 2016 at p 11.

serious allegations. Taking into account these considerations, I could not accept the Accused's explanation that the mere fear of embarrassment had caused him to delay mention of his penile deformity.

86 The Accused's second explanation was that he thought his initial disclosure of his penile enlargement procedures to an investigating officer sometime in May 2014 meant that the police would know it was improbable for him to effect penile penetration of the Victim.[132] I did not accept this. Even accepting his account of this initial disclosure, it did not follow that anyone would have been able to anticipate the fact of his penile deformity, or his submission on the implausibility of ordinary intercourse. Indeed, if he had genuinely believed that the police already knew of his penile deformity, it would be more than curious that his later statements, including the ten cautioned statements, made no mention at all of this deformity.

87 For these reasons, I did not accept the Accused's explanations for his belated disclosure of the exculpatory fact of his penile deformity. Accordingly, an adverse inference was drawn against him, and his account as to the state of his penis during the material period of the offences was disbelieved. In this regard, the Court of Appeal's decision in *Kwek Seow Hock v Public Prosecutor* [2011] 3 SLR 157, which was decided in the context of s 123(1) of the former CPC (Cap 68, 1985 Rev Ed), remains applicable to the new s 261(1) of the CPC (at [19]):

> If… the fact or circumstance that is withheld will exculpate the accused from an offence, a court may justifiably infer that it is an afterthought and untrue, unless the court is persuaded that there are good reasons for the omission to mention that exculpatory fact or circumstance. This accords with common sense – if an accused believes he is not guilty of an offence that

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132 NE dated 23 November 2016 at p 10.

> he might be charged with, he would be expected to disclose why he has such a belief.

88 A final clarification must be made. As a matter of law, there appear to remain some debate as to whether an adverse inference under s 261(1) of the CPC could be drawn from omissions in statements recorded under s 22 of the CPC that were not preceded by any caution or notice under s 23 of the CPC (see *Pinsler on Evidence* at para 5.058). As this issue does not arise squarely on our facts, and was not argued by the parties, it should be dealt with in a more appropriate case. For the avoidance of doubt, in this present case, the adverse inference was drawn from the omission of reference to the penile deformity in the ten cautioned statements taken under s 23 of the CPC on 4 September 2015, and not the prior long and further statements taken under s 22 of the CPC. The content and context of these prior s 22 statements, however, remained relevant to the extent that they influenced the persuasiveness of the Accused's explanations for his omissions in the s 23 cautioned statements.

(6) Other arguments

89 The Defence argued that it was a gap in the Prosecution's case that the state of the Accused's penis had not been ascertained as at the time of his arrest.[133] I did not accept this. It would perhaps have made it easier for the Prosecution if they had done such an assessment and obtained incontrovertible evidence regarding the state of the Accused's penis at that time, but the Prosecution was not under an obligation to do so, and no inference can be drawn against the Prosecution for not pursuing every potential defensive argument however fanciful or inconceivable they may be. It was the Accused who belatedly put the state of his penis in issue. The Defence's own evidence of the

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133 NE dated 15 February 2017 at p 25.

Accused's penile deformity was a set of photographs taken in October 2016, more than two years after the Accused had given his first statement in relation to the case. At the end of the day, both the Prosecution and the Defence had to take the evidence as it stood at trial and make their best possible case, even if that was made more difficult by the lack of contemporaneous evidence as to the state of the Accused's penis.

90 Finally, the Defence pointed out that the Victim had testified in court that around 2.5 inches of the Accused's penis had penetrated her mouth. This, it was submitted, suggested that the Victim had been coached because (i) the Victim was a student at a local school and should have been more familiar with the metric system,[134] and (ii) the ruler that she had used did not measure in inches but rather in "tenths" and centimetres.[135] I was not persuaded. For the avoidance of doubt, the ruler used by the Victim was a standard-issue commonly used in the High Court and the ruler's reference to "tenths" was, in fact, a reference to one-tenth of an inch. In that context, it was not at all surprising that one may confuse the units of "tenths" and "inches" as represented on that ruler. Further, if one closely examined the trial transcript, it would be clear that the response of "inches" did not come entirely from the Victim.[136] In any case, I did not agree with the Defence's premise that a 14-year-old student studying in a local Secondary school would not be able to recognise the measurement of inches.

91 For these reasons, I found that the Accused's penis during the material period of the offences was of the condition and appearance described by the

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134 NE dated 15 February 2017 at pp 4-7.

135 NE dated 15 November 2016 at pp 139-141.

136 NE dated 15 November 2016 at p 60.

Victim and corroborated by the Mother at trial, rather than the "deformed" state as photographed in October 2016. No case of implausibility or difficulty would thus arise in respect of the acts complained of in the charges. Indeed, even on the Accused's own account of his deformed penis, Dr Bhutia's and Dr Lee's consistent evidence was that it remained possible for the lower distal portion of the Accused's penis to penetrate the Victim's anus, and that such penetration would be made even easier if a lubricant such as olive oil had been used.[137] The Accused's reliance on the condition of his penis thus did not create a reasonable doubt that the offences had indeed been committed.

Victim's behaviour and emotional state after disclosure

92 The Defence questioned whether the Victim's behaviour and emotional statement were consistent with that of a victim who had been sexually assaulted by her father. In this regard, he pointed to:

(a) the medical reports of the assessors, which did not mention that the Victim displayed signs of emotional trauma, and which recorded inconsistent accounts regarding the Victim's suicidal thoughts; and

(b) the Victim's good performance at school and in other aspects, which were purportedly not consistent with the conception of one who had recently been traumatized.

93 In my judgement, neither of these submissions detracted from the Victim's credibility.

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137 NE dated 23 January 2017 at pp 19-20.

(1) Absence of reference to trauma in the medical reports

94 The Defence questioned the absence of any reference in the medical reports to the emotional trauma felt by the Victim as a result of the abuse, and the inconsistencies between the reports and the Victim's testimony in respect of her purported suicidal thoughts.[138] It was submitted that these discrepancies suggested that the Victim had fabricated her account of the abuse.

95 I did not agree. In respect of the Victim's emotion state *as at the time of the offences*, I did not consider that there had been any omission in the medical reports at all. In particular, Dr Pathy's report included fairly detailed references to the Victim's emotional state during and immediately after the period of the offences. The report noted that the Victim felt confused because she thought the Accused was religious and that it might have been normal for families to engage in similar conduct. She was also afraid that, if she had disclosed the events, she would be disbelieved and her family would break up.[139] The Defence suggested that there had been a troubling lack of elaboration, latching onto Dr Pathy's testimony that she had engaged the Victim in a free flowing and spontaneous conversation – the Victim should thus have felt free to share about her emotional state.[140] However, even if we assumed that more could have been elaborated on, it would go too far to infer fabrication or lack of credibility from the absence of elaboration. Dr Pathy's primary role had been to determine whether the Victim was fit to give evidence in court.[141] In that context, she had dutifully performed her role by concluding that the Victim was fit to give evidence and was not

138 NE dated 15 November 2016 at pp 110, 112-113.

139 AB at p 33-36.

140 Defence's Closing Submissions at p 13.

141 NE dated 17 November 2016 at p 14.

depressed or psychotic. Further elaboration on the Victim's emotional state was simply not called for.

96 As for the Victim's emotional state *as at the time of the interviews by the assessors*, I did not consider the fact that she had not cried or appeared outwardly distressed during these assessments relevant to her credibility. Indeed, her composure could equally have stood testament to her tenacity, rather than as evidence that she had been lying. There is no default archetype of how a genuine victim of sexual abuse should react when recounting the abuse, however traumatic it may have been. As Dr Pathy explained in court, there may be several reasons why the Victim could remain calm during the assessments, including that a rapport had been built between the Victim and the assessor, or that it was the Victim's defence mechanism to detach her emotions from the content of a painful memory in her recount of that memory.[142] Indeed, Dr Pathy testified that based on her experience, such composed reactions were not out of the ordinary when victims of sexual abuse are interviewed.[143]

97 In the present case, I also found persuasive the Victim's explanations that she did not break down during the assessments because, as a result of traumatic incidents she witnessed when she was younger, she held the belief that crying was weak.[144] She had been willing to tell the Mother that she was crying by WhatsApp on 16 April 2014 only because that was not a conversation in person: her Mother thus could not have seen her in that state.[145] Further, her paramount concern at that time was to convince her Mother to believe her. In

142 NE dated 17 November 2016 at p 9.

143 NE dated 17 November 2016 at p 9.

144 NE dated 15 November 2016 at pp 103-104.

145 NE dated 15 November 2016 at p 106.

contrast, during the assessment, the Victim was mentally prepared and more guarded about her thoughts and emotions.[146]

98 As for the references in the medical reports to the Victim's suicidal thoughts, the Defence submitted that the Victim's testimony was unreliable because (i) her alleged suicidal thoughts were not captured in Dr Krishnamoorthy's report, and (ii) her claim that those thoughts arose as a result of the Accused's abuse contradicted Dr Pathy's evidence that the Victim had told her that those thoughts dated back to a time prior to the abuse.[147]

99 This could not take the Defence very far. The fact that the Victim may have suffered from suicidal thoughts prior to the alleged abuse did not mean that the Victim was not truthful about the incident. The Victim gave a sufficient explanation that she had harboured suicidal thoughts since young, but the Accused's conduct triggered thoughts during and after the offences.[148] Further, in the absence of evidence from Dr Krishnamoorthy herself, little weight could be placed on the fact that no reference had been made as to the Victim's suicidal thoughts in Dr Krishnamoorthy's report (see above at [42]-[44]).

100 In the circumstances, I did not consider any of the omissions and discrepancies in the reports as to the Victim's emotional state or suicidal thoughts probative in evaluating her credibility; they were explicable on other grounds. In any event, these discrepancies were also neither significant nor material to the issues in dispute.

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146 NE dated 15 November 2016 at p 97.

147 Defence's Closing Submissions at p 15.

148 NE dated 15 November 2016 at p 107.

(2) Good performance at school and other aspects

101 In the course of cross-examination, counsel for the Accused sought to make the point that the Victim's behaviour after the alleged abuse was inconsistent with the conception of someone who had been traumatically assaulted by her father. To this end, he highlighted that (i) the Victim was able to have an ordinary conversation with her Mother on WhatsApp regarding school activities in late-May 2014, (ii) less than a year after the disclosure the Victim performed well for her Primary School Leaving Examination ("PSLE"), and (iii) the Victim appeared to be able to form normal relationships with boys in lower Secondary school.[149] He thus put to the Victim that her description of any trauma suffered as a result of the alleged abuse was a lie.[150] The Prosecution submitted that the WhatsApp exchange between the Victim and her Mother on 16 April 2014 was evidence of a true emotional disclosure.[151]

102 I have discomfort with the notion that there is an archetypal victim of sexual abuse, or that there is any standard as to how a victim of sexual abuse should or should not have aspects of his or her life visibly affected by the abuse. Although there may be instances where the presence of contemporaneous evidence of a victim's distress is relevant, it is difficult to see how the presence or absence of visible impact on the victim in the longer term would affect his or her credibility. In the present case, just as the Victim's failure to excel in school or other aspects of her life would not have added to her credibility, it did not follow that any perception of good performance indicated her lack of credibility as regards the occurrence of the alleged abuse. In any event, the Victim has

149 NE dated 15 November 2016 at pp 83-84.

150 NE dated 15 November 2016 at p 92.

151 NE dated 15 February 2017 at p 48.

provided sufficient explanation for each of the points raised by the Defence,[152] and Dr Pathy has also testified that the Victim had confided in her about her trust issues.[153] As such, whilst I acknowledge the difficulties that counsel for the Accused may have faced in putting forth his client's best case, I did not consider this line of questioning to be of any aid to the Defence. This submission was not seriously pursued in the Defence's closing submissions.

Mother's reaction and delay in reporting

103 The Defence submitted that the Victim's account ought to be disbelieved as the Mother's reaction to the Victim's disclosure of the abuse, and her delay in reporting the abuse to the authorities was suspicious. This was not persuasive.

(1) The WhatsApp conversation

104 The Defence pointed out that in the WhatsApp exchange following from the Victim's disclosure of the abuse on 16 April 2014, the Mother did not ask for more details about what had happened to the Victim. This, the Defence argued, was highly unusual. Further, the Defence suggested that the Mother should have but did not ask if the Victim was hurt and where she was. The Mother also did not go and pick her up from school.[154] All these were said to support the Defence's case that the abuse (and the series of WhatsApp messages) had been a fabrication by the Mother and the Victim in cahoots.[155]

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152 NE dated 15 November 2016 at p 84.

153 NE dated 17 November 2016 at p 5.

154 NE dated 16 November 2016 at pp 129-132.

155 NE dated 16 November 2016 at p 133.

105 For similar reasons as those in relation to the victim (at [102]), the Court should be cautious in dealing with submissions premised on the presumed "normal" reaction of a parent to his or her child's disclosure of sexual abuse by the other parent. It would all depend on the facts. In the present case, the Mother explained that when the abuse was first disclosed to her over WhatsApp, she was together with the Accused at home.[156] Her primary concern then was that the Victim came home safely and immediately.[157] She pointed to her first reply to the Victim, *ie*, "I love u. U hv me always", which she had sent because she loved the Victim and wanted to make sure the Victim was safe and felt protected.[158] She did not immediately press for details because they could – and did – talk in person upon the Victim's return home that evening.[159] She also explained that if the Victim had refused to come home, she would have gone to school to fetch her.[160] There was nothing suspicious in the way she had reacted.

(2) Delay in reporting the abuse

106 In cross-examination, counsel for the Accused appeared to take issue with the fact that subsequent to the Victim's disclosure of the abuse, the Mother had waited for two to three weeks before lodging a police report.

107 I accepted that there was some delay in reporting of the abuse, but this could be explained as resulting from the Mother not knowing how to react in the complex and sensitive situation that had unexpectedly unfolded before her.

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156 AB at p 23.

157 NE dated 17 November 2016 at p 82.

158 NE dated 17 November 2016 at p 81.

159 NE dated 16 November 2016 at pp 124-125.

160 NE dated 17 November 2016 at p 80.

As the Mother explained, she was in a state of shock when she found out about the incidents as she could not believe that a father could do such things to his own daughter.[161] Further, she was unsure because she had not observed any material change in the Victim's behaviour during the material period of the offences.[162] She also had to weigh the consequences of this series of events on the family and her marriage, as she knew that the Accused's side of the family was closely knitted and would surely want the marriage to go on. I accepted that these were not easy decisions that could be speedily made.

108 Further, the Mother testified that, save for the particular incident of abuse on 15 April 2014, she only found out about details of the other incidents after the police report had been made.[163] This was because she had not discussed the matter further with the Victim in the intervening period as she did not want to trigger the Victim's unpleasant memories.[164] She made up her mind to lodge a police report on 6 May 2014 only after discussing the matter with her sister and brother. Immediately thereafter, personal protection orders were sought on 7 May 2014 against the Accused in respect of herself and the Victim,[165] although only one was granted in respect of the Victim.[166] The Mother also filed for divorce on that same day.[167] All of the above indicated that the Mother was trying to determine the best course of action in a difficult situation. Accordingly,

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161 AB at p 25; NE dated 16 November 2016 at p 102.

162 AB at p 25.

163 NE dated 17 November 2016 at p 85.

164 NE dated 17 November 2016 at p 88.

165 AB at p 24.

166 NE dated 16 November 2016 at p 103.

167 NE dated 17 November 2016 at p 67.

I could not conclude that there was any delay by the Mother in reporting the abuse that would cast doubt on her evidence or that of the Victim.

109 I add an observation in this regard. In *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2017] SGHC 81 ("*Ariffan*"), the High Court acquitted the accused of charges in rape and sexual penetration on the basis that the complainant's evidence was neither unusually convincing nor sufficiently corroborated. In particular, the High Court suggested that a delay in reporting the abuse may in some circumstances have adverse implications on the Prosecution's case (at [39]-[42]):

> 39 Strictly speaking, the girl's evidence did not stand alone. There was the evidence of her mother, brother, sister and boyfriend, who she told about the accused's actions. The corroborative effect of such evidence is stated in s 159 of the Evidence Act…
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> …
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> 40 However this provision must be applied with caution as Yong CJ had pointed out *in Khoo Kwan Hain v PP* [1995] 2 SLR(R) 591
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> > 49 … although s 159 has the effect of elevating a recent complaint to corroboration, the court should nevertheless bear in mind the fact that corroboration by virtue of s 159 alone is *not* corroboration by *independent* evidence. It would be dangerous to equate this form of corroboration with corroboration in the normal sense of the word. …
>
> The focus on a complaint made "at or about the time when the fact took place", or a "recent complaint" is apposite. Good sense dictates that a complaint should be made within a reasonable time after the event. Where a person remains silent, and only complains after a long delay, that delay must be scrutinised. In the present case, the girl was not at all prompt in her complaints although she had every opportunity to complain. There were no reasons for her not to confide in members for [*sic*] her family or her boyfriend. She had ample time to recover from any distress or embarrassment that she may had experienced.

> 41 Someone so abused and humiliated would be expected to seek help and redress when she breaks her silence. In her case, however, she was still reluctant to make a police report. Furthermore, when she did speak, what she said was contradictory and inconsistent, with allegation of touching (and no rape) to the mother, and rape (and no digital penetration) to the brother, sister and boyfriend. With the passage of time, the girl should not have difficulty to recount accurately the forms of abuse she was put through.

110 However, the context in which the Court analysed the implications of a delay in reporting must be considered: it was dealing with the law on corroboration. In that regard, the current position is that subsequent statements by the victim must have been made at the *first reasonable opportunity* after the commission of the offence in order to constitute corroboration (see *AOF* at [173]). This is a liberal approach adopted in Singapore as regards the use of the victim's own statements as corroboration. Thus, in *Ariffan*, the victim's delay in her disclosure of the sexual assault was considered relevant in determining whether the requirements of corroboration had been satisfied. I did not read that case to import a general requirement or evidential duty of explanation for every instance of delay of disclosure or reporting even as regards the assessment of credibility and whether the victim's evidence was unusually convincing.

111 Indeed, as a general proposition, in respect of sexual offences, a mere delay in disclosure or reporting of the assault should not ordinarily be held against the victim, or in this case the parent of the victim, as evidence of a lack of credibility in the victim's account. In the nature of things, a multitude of reasons may influence one's decision as to whether and when to make such a report. It may make for a more compelling case theory if reasons were given for the delay, but the court should be slow to adjudge these reasons according to its own notion of how a reasonable victim should have reacted: reasonableness in this particular instance is inevitably personalised and contextual. Exceptionally,

delay in reporting may be material if it causes prejudice to the accused's defence, but that would be a distinct issue which did not arise on our facts.

Possibility of fabrication

112 The Defence submitted that the Victim and Mother had fabricated the allegations (i) in order to help the Mother secure a divorce from the Accused, and/or (ii) because the Accused had harshly scolded the Victim and the Mother earlier for separate matters. To this end, he testified that the Mother had repeatedly requested for a divorce between 2009 and 2014, when marital problems arose between the Mother and him due to financial, sexual, and work-related disputes;[168] their relationship only deteriorated further between mid-2013 and April 2014.[169] The Accused also suggested that the Victim and the Mother framed him because of past incidents where he had harshly scolded the Victim because of a very large handphone bill, and the Mother for lying about the persons with whom she had gone out to lunch.[170]

113 The Accused's suggestions were denied by both the Victim and the Mother. In respect of the averment that the allegations of abuse had been fabricated to obtain a divorce, the Mother admitted that there had been quarrels between the Accused and her, but she had not thought of leaving the Accused at the material time.[171] Further, the plausibility of this theory was suspect, given that (i) the divorce was obtained fairly early in December 2014 and there would have been no need for further cooperation in the prosecution, (ii) the Mother had waited several weeks to consider whether to make a police report after the

168 NE dated 23 November 2016 at p 55; NE dated 18 November 2016 at p 54.

169 NE dated 18 November 2016 at p 55.

170 NE dated 18 November 2016 at pp 65-66.

171 NE dated 16 November 2016 at pp 96-97.

Victim's disclosure of the abuse, and (iii) the Mother had sent various messages to the Victim on 16 April 2014 asking her to confirm if she had been truthful.

114 The Victim was also clear that she did not want a broken family and did not wish to be the cause of the family's break up.[172] The Defence highlighted portions of the Victim's evidence indicating her view that her Mother "deserve[d] a better guy",[173] and Dr Pathy's report which also stated that the Victim believed that her father was a "bad guy" and that it was wrong to let him be with her Mother.[174] I did not find that any of these pointed to fabrication. The statements by the Victim could be simply interpreted as an indication that she did not want the Accused to remain her father and to be in proximity to her or other family members after the incidents in question.

115 As regards the large handphone bill that the Victim incurred, the consistent evidence of both the Victim and the Mother was that the Mother had been the one to raise her voice at the Victim, whereas the Accused was noticeably calmer.[175] To my mind, there was insufficient evidence that could show that either of them would have wanted to frame the Accused for the scolding – it would not be in the general run of events for such serious allegations to be made, with the risk of discovery and disbelief, on such flimsy grounds. Indeed, the Accused himself testified that even when he got angry it would subside.[176] He further stated that punishment of the Victim for handphone

172 NE dated 15 November 2016 at p 125.

173 AB at p 22.

174 AB at p 36.

175 NE dated 16 November 2016 at p 57.

176 NE dated 23 November 2016 at p 63.

related issues had occurred several times previously.[177] In that context, I found it inconceivable that the Victim would remain so vindictive after a single scolding as to frame and pursue such a serious allegation against her father.

116 All things considered, it went against logic and evidence to believe that the Victim and the Mother would go through such a protracted, painstaking, and risky process simply because they got scolded or wanted a divorce.

Other purported inconsistencies

117 The Defence raised three other purported inconsistencies in the Prosecution's evidence by which I was not persuaded:

(a) The Defence alleged that the Victim had a suspicious change in attitude because she had stated in her conditioned statement that she hated the Accused for what he had done to her and wanted him to go to jail, but those emotions were not reflected in her WhatsApp exchange with the Mother.[178] I did not find this suspicious, and in any event accepted the Victim's explanation that the thought of wanting the Accused to go to jail only arose after she knew that her Mother had reported the Accused to the authorities. That was the first time she realised that his imprisonment could be a solution to her problems;[179] prior to that, her preoccupation had been with disclosure and being believed.[180]

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177 NE dated 23 November 2016 at p 34.

178 NE dated 15 November 2016 at p 114-116.

179 NE dated 15 November 2016 at p 123-124.

180 NE dated 15 November 2016 at p 124.

(b) The Defence submitted that the Mother was evasive and not credible as there were significant time lags before certain responses were given to questions in court,[181] and there were also unusual pauses in the WhatsApp exchange between her and the Victim on 16 April 2014.[182] Having regard to the sensitive and emotionally difficult subject matter raised in court and in the WhatsApp conversation, some time was naturally required to consider one's responses. I did not consider the pauses to be suspicious in any regard.

(c) The Defence argued that the medical reports produced by the Prosecution were unhelpful and/or unreliable because they did not include the "usual" references to hymenal tears. This was neither here nor there. First, there was no evidence as to what the contents of a "usual report" would be and whether the present case was a "usual" case.[183] Secondly, Dr Krishnamoorthy's report did indeed state that the Victim's "hymen was intact". Thirdly, as the Prosecution explained, hymenal tests were simply not called for here as there was no allegation of vaginal penetration; the ninth charge concerned digital-vaginal penetration, but that only related to *an attempt* to penetrate rather than actual penetration as such.[184]

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181 NE dated 15 February 2017 at pp 10-11.

182 NE dated 15 February 2017 at pp 13-14.

183 NE dated 15 February 2017 at p 17.

184 NE dated 15 February 2017 at p 54.

Conclusion on commission

118 In the final analysis, I found the Victim's evidence to be unusually convincing. Her account of the offences and material facts were detailed, coherent, and largely consistent both internally and externally. She was not shaken on the stand, and there were no signs of exaggeration, bias, or unreasonableness in her testimony.[185] In particular, although she was a 13-year-old girl in 2014 when the series of sexual abuse was disclosed, and around 15 by the time of the trial, she could give exceedingly lucid descriptions of an entire range of sexual acts. Indeed, she could specifically testify as to the Accused's habitual use of olive oil as a lubricant in his various sexual acts.[186] These, as Dr Pathy observed, were age-inappropriate knowledge that she was unlikely to have obtained by other ordinary means.[187]

119 Apart from the Victim's testimony, I also considered the WhatsApp conversation between her and the Mother, and the medical report by Dr Pathy, to be corroboration of the Victim's account of the series of sexual abuse within the liberal sense of that term.

120 Two points are notable in this regard. First, the requirement of contemporaneity was satisfied in the present case. The WhatsApp messages were dated one day after the last incident in the series of abuse, and Dr Pathy's interview with the Victim was done within two months thereafter. These thus fell within the scope of the phrase "at or about the time when the fact took place" in s 159 of the EA, and could be distinguished from the delays of several months in *Lee Kwang Peng v Public Prosecutor* [1997] 2 SLR(R) 569 (at [80]) and

185 NE dated 15 February 2017 at p 38.

186 NE dated 23 November 2016 at p 37.

187 NE dated 15 February 2017 at p 39.

between three and five years in *AOF* (at [194]) which led to the complaints in those cases being disqualified as corroborative evidence.

121 Second, I observed that the WhatsApp conversation and Dr Pathy's medical report covered some, but not all, of the facts constituting the charges. This was perhaps inevitable due to the nature of the allegations and the extensive amount of particulars to which they relate. On the Court of Appeal's guidance that "[w]hat is important is the substance as well as the relevance of the evidence, and whether it is supportive or confirmative of the weak evidence which it is meant to corroborate" (*Public Prosecutor v Mohammed Liton Syeed Mallik* [2008] 1 SLR(R) 601 at [43]; *AOF* at [173]), I did not consider the lack of entire coincidence *ipso facto* preclusive of the corroborative effect of the conversation and report. In fact, the call to focus on substance and relevance applies *a fortiori* in the present case, since the crux of the Defence's case was an outright denial of *the occurrence of all the acts of abuse*. Therefore, even if the conversation and report corroborated only parts of the Victim's testimony as to the occurrence of the abusive acts, they would be confirmative of the Prosecution's case.

The appropriate sentence

The Prosecution's submissions

122 The Prosecution submitted that the operative sentencing principles in the present case were general and specific deterrence, as well as retributive justice. Further, the Court was urged to calibrate the appropriate sentence taking into consideration the following aggravating factors: (i) the Accused's abuse of his position of trust, (ii) the high degree of planning and premeditation involved, (iii) the Victim's young age, (iv) the degrading acts performed on the Victim in a campaign of abuse, and (v) the harm to the Victim. In this regard, the

Prosecution also adduced an impact statement from the Victim under s 228(2)(*b*) of the CPC for its sentencing submissions.

123 The submissions on sentence were as follows:

(a) The four offences under s 376(4)(*b*) of the PC for sexual assault by penetration of a minor under the age of 14:

(i) The Prosecution urged the Court to impose a sentence of 15 years' imprisonment and 12 strokes of the cane. Citing *Public Prosecutor v AUB* [2015] SGHC 166 ("*PP v AUB*") and *Public Prosecutor v Yap Weng Wah* [2015] 3 SLR 297, the Prosecution drew an analogy with the offence of sexual assault by penetration to rape under s 375 of the PC, and thus sought to rely on the sentencing categories established in *Public Prosecutor v NF* [2006] 4 SLR(R) 849 ("*PP v NF*"). On that premise, the present case fell within Category 2 of the *PP v NF* framework, which deals with offences concerning the exploitation of a particularly vulnerable victim and attracted a benchmark sentence of 15 years' imprisonment and 12 strokes of the cane.

(b) The offence under s 7 of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("CYPA") for sexual exploitation of a child or young person:

(i) The Prosecution cited the case of *AQW v Public Prosecutor* [2015] 4 SLR 150 ("*AQW v PP*") for the benchmark sentence of 6 to 8 months, but urged the Court to give a significant uplift in the present case and impose a sentence of 2 years' imprisonment in light of several aggravating factors.

(c) The five offences under s 354(2) of the PC for outrage of modesty against a minor under the age of 14:

(i) The Prosecution submitted variously for sentences between 2 years' imprisonment with 6 strokes, and 4 years' imprisonment with 9 strokes.[188] Aggravating factors were highlighted. In particular, in respect of the tenth charge, the Prosecution urged a higher sentence on the basis that this was the incident that constituted "the straw that broke the camel's back [and led] to the disclosure of the offences".[189]

124 As for the global sentence, the Prosecution sought a total term of 24 years' imprisonment and 24 strokes of the cane. This involved running two of the s 376(4)(*b*) sentences (each being a lowered sentence of 10 years' imprisonment and 12 strokes of the cane in recognition of the totality principle) and the sentence for the tenth charge under s 354(2) of the PC (being 4 years' imprisonment and 9 strokes of the cane) consecutively. The Prosecution submitted that this was in line with the sentences meted out in other cases concerning sexual abuse by a family member over an extended period (see *Public Prosecutor v BNN* [2014] SGHC 7 ("*PP v BNN*") and *BMD v Public Prosecutor* [2015] SGCA 70).

The Defence's submissions

125 The Defence submitted that that the appropriate global sentence would be 18 years' imprisonment and 24 strokes of the cane. In relation to the s 376(4)(*b*) offences, in recognition of the enhanced framework adopted by

188 Prosecution's Sentencing Submissions at para 54.

189 Prosecution's Sentencing Submissions at para 65.

Parliament in relation to minors, he urged the Court to impose 8 years' imprisonment for each of the charges. As for the five offences under s 354(2) of the PC and the one offence under the s 7 of the CYPA, the Defence broadly agreed with the Prosecution that a sentence of around 2 years' imprisonment would be appropriate. The Defence also agreed with the Prosecution in relation to the sentences that should be run consecutively.

126 However, the Defence disagreed with the Prosecution in several other aspects. First, it disagreed that the tenth charge – which concerned the last incident in the series of abuse – should attract a higher sentence merely because it was the incident that led to the disclosure of the offences. Secondly, it argued that the Accused's claiming trial (which necessitated the Victim being called as a witness) should not be an aggravating factor because no trial over allegations of sexual abuse could be pleasant and it remains a critical aspect of justice to allow an accused person to have his day in court. Thirdly, it disagreed with the Prosecution's submission that the Accused had deliberately deformed his penis to evade justice, and that the sentence should reflect the Accused's malice and cunningness. Fourth, the Defence urged the Court to consider as neutral the factor of victim impact, as the Victim appeared to be living a normal life and continued to excel in school. Further, any alleged impact on her was not borne out by the medical reports.

127 In addition, the Defence submitted that the Court should consider as mitigating the fact that the Accused was untraced, and that he was cooperative throughout the investigations.

The decision on sentence

Sentencing principles

128 In the present case, the primary sentencing considerations were retribution for the heinous conduct of the Accused, as well as the general deterrence of similar acts. As noted by V K Rajah J (as he then was) in *Public Prosecutor v V Murugesan* [2005] SGHC 160:

> 55 Perpetrators are punished not just for the physical harm they inflict but also for the life-long trauma, debilitating emotional distress and anguish they callously and cruelly inflict and sentence their victims to suffer in silence. In the circumstances, draconian sentences which primarily encapsulate the principles of both retribution and deterrence are ineluctably required and will be invariably meted out to all such offenders. …

129 This applies not only to rape cases but also to other analogous situations involving serious sexual assault. In the context of inter-familial sexual abuse, general deterrence is of particular concern because of the difficulty in the detection of the offences and the considerable barriers faced by the victims in reporting them (see *PP v NF* at [40]).

Aggravating and mitigating factors

130 In *AQW v PP*, Sundaresh Menon CJ sitting in the High Court established two key considerations in the sentencing of accused persons convicted of sexual offences against minors: "the twin notions of (a) the vulnerability of the minor and (b) the degree to which the accused has exploited the minor constitute the key considerations in sentencing for these offences" (at [13]). That case dealt with s 376A(1) of the PC and s 7 of the CYPA, but the principles are of general application.

131 In the present case, turning first to the vulnerability of the Victim, there had clearly been an abuse of the position of trust and authority by the Accused of the highest order, because of his position as the Victim's father and because of the familial culture which gave him significant power and moral authority in the family. As observed in *PP v NF*, "abusing a relationship or a position of authority in order to gratify sexual impulse will inevitably be met with the harshest penal consequence" (at [42]). With regard to several charges, in particular the third and fourth charges in relation to penile-oral penetration, some degree of force had also been used by the Accused against the Victim in abuse of their disparity in strength. Further, the Accused leveraged on the Victim's hesitation and confusion over the situation to step up with increasingly intrusive sexual acts. The acts of abuse were also committed in the family home, the very place which should otherwise have been a safe sanctuary for the Victim, and from where the Victim had no other place to seek refuge.

132 Here, the Victim's young age was also an aggravating factor (see *AQW v PP* at [16]). The Defence argued that because the charges themselves dealt with offences against minors and hence carried an enhanced punishment, the youth of the victim should not be factored in as an aggravating factor. I did not agree. The enhanced offences framework took a general position that offences against minors should be dealt with more seriously than those against non-minors, but there was nothing to suggest that this framework was intended to treat equally *all offences* committed against minors. Further, the framework, by creating a broadly-tiered sentencing regime, did not suggest that the sentencing court would hence be precluded from making a specific finding into the extent of the victim's vulnerability. There would be no double counting to the prejudice of the accused person, since the aggravating factor of young age would, in relation to such enhanced offences, only apply if the victim concerned

was materially younger than the stipulated age-ceiling, and even then, in a graduated manner depending on how much younger the victim was.

133 In relation to the harm caused to the Victim, the victim impact statement clearly showed the emotional turmoil and trauma caused by the offences. In her statement, the Victim referenced the paranoia, flashbacks, nightmares, and pent up anger that she had gone through. She also described her constant battle with fear of the Accused and of being disbelieved. This was corroborated by Dr Pathy's report, in which the Victim similarly explained the flashbacks and nightmares that she suffered as a result of the abuse. The Defence argued that the Victim had been able to recover as shown by her good performance in school, but that cannot take away the trauma and lasting damage that would be caused by acts of this nature, particularly given the betrayal by someone in authority. The Victim may very well go on to excel in other aspects of her life in spite of what had happened, as she admirably committed herself to at the end of her impact statement, but that would not be evidence that she suffered no harm; indeed, it may stand as a testament to her tenacity and resilience.

134 As for the Accused's culpability and his degree of exploitation, those were also highly significant factors to be taken into account. The Accused here had committed an entire array of penetrative acts established to be the most egregious forms of sexual contact: "Singapore… legislation… differentiate[s] between various forms of sexual contact, the most egregious being penile penetration of the vagina, anus or mouth, and non-penile penetration of the vagina or anus" (see *AQW v PP* at [19]). The degree of planning and premeditation, as well as the extended duration of time over which the offences were committed, must also be considered.

135 That being said, contrary to the Prosecution's submissions, I agreed with the Defence that even in relation to sexual offences, an accused person's claiming trial does not in itself expose him to any additional uplift or increase in sentence, but rather connotes merely that he does not qualify for a discount for pleading guilty. There may be situations where the conduct of the defence goes beyond the pale, but that was not the case here.

136 In the circumstances, I did not find any significant mitigating factor operating in favour of the Accused.

The sentence

137 Taking the above into consideration, the Victim had clearly suffered great harm at the hands of her father over several years, with all the offences occurring in the family home. The punishment imposed must be commensurate with the damage caused and the threat such acts pose in society.

(1) Section 7 of the Children and Young Persons Act

138 In relation to the first charge under s 7 of the CYPA, the sentencing benchmark was set out by Menon CJ in *AQW v PP* (at [50]) as 6 to 8 months assuming four conditions:

> In my judgment, a sentence of between six and eight months' imprisonment would be appropriate where (a) the sexual act that took place between the offender and the minor involved touching of naked genitalia, regardless of whose genitalia it was, (b) the minor is 14 years old or above, and does not appear to be particularly vulnerable, (c) the offender did not coerce or pressure the minor into participating in the sexual act, and (d) there was no element of abuse of trust.

139 Apart from the first condition, none of the other conditions apply in the present case; rather, this case was significantly more aggravated. Particular

regard should be had to the fact that the Victim was only 11 years old at the time of the offence, that there was an absence of consent by the Victim, and that the Accused had abused his position of authority of the highest order. In the circumstances, a 2-year imprisonment term was warranted.

(2) Section 354(2) of the Penal Code

140 In relation to the five s 354(2) offences, I observed that the sentencing benchmark in relation to outrage of modesty simpliciter under s 354(1) of the PC, where a victim's private parts or sexual organs had been intruded upon, is 9 months' imprisonment with caning (see *Public Prosecutor v Chow Yee Sze* [2011] 1 SLR 481 ("*Chow Yee Sze*") at [9]). A significant uplift was necessary in this case to take into account the fact that the Victim was young and that the charge was brought under s 354(2) of the PC for aggravated outrage of modesty against a minor below the age of 14. In this regard, the enhanced offence of s 354(2) was introduced by way of amendments to the PC in 2008, and was statutorily prescribed with a sentencing ceiling of around 2.5 times the imprisonment term provided under s 354(1) of the PC for outrage of modesty simpliciter. Precedents from the State Courts cited by the Prosecution were not on all fours with the present facts, but indicated that the offences under s 354(2) of the PC attracted sentences in the range of around 2 to 3 years' imprisonment with 4 to 9 strokes of the cane.[190] Accordingly, the difference between this sentencing range and the *Chow Yee Sze* benchmark was congruous with the difference between the statutory ceilings for sentences under ss 354(2) and 354(1) of the PC. In the circumstances, I considered a 2-year imprisonment term with caning the appropriate starting point for offences under s 354(2) of the PC

190 See Prosecution's Sentencing Submissions, Annex A.

for aggravated outrage of modesty against a minor below the age of 14, where the victim's private parts or sexual organs had been intruded upon.

141 Specifically, the following s 354(2) offences warranted a sentence of more than 2 years' imprisonment:

(a) The second charge was framed around the Accused rubbing his penis against the Victim's face, while she was on the floor. The Accused asked the Victim to sit on the master bedroom floor, then lifted his sarong and pulled it over her head before rubbing his penis on her face. There was some degree of coercion involved in this charge, and the Victim testified that the Accused's conduct caused her fear. In the circumstances, a sentence of 3 years' imprisonment with 6 strokes of the cane was appropriate.

(b) The ninth charge was framed around the Accused's touching and rubbing the area outside, and attempting to digitally penetrate, the Victim's vagina. The attempt to effect digital penetration was an intrusive act and caused clear pain and discomfort to the Victim. It thus distinguished the present case from *PP v BNN*, in which a 37-year-old accused was sentenced to 2 years' imprisonment and 6 strokes of the cane for outraging the modesty of his then 13-year-old stepdaughter by groping her breasts and nipples and touching her vulva. A sentence of 3 years' imprisonment with 6 strokes of the cane was appropriate.

(c) The tenth charge was framed around the Accused's rubbing his penis against both the Victim's vagina and her anus. In this regard, the Accused had forcefully pulled the Victim down onto the bed and made her lie face up even though she had refused to do so. Further, despite the Victim's turning her body away to stop and prevent the discomforting

contact between the Accused and herself, the Accused persisted in his conduct with some degree of force. However, I did not accept the Prosecution's submission that this charge warranted a higher sentence merely because it constituted the "straw that broke the camel's back". Insofar as it referred to the tenth charge being the last incident in a series of abuse, the mere fact that an offence was the last in time in a series of incidents would not in itself justify a heavier punishment. If the Prosecution meant that the tenth charge was of such severity as to have persuaded the Victim to disclose the whole chain of abusive conduct, this has been given direct effect to by my analysis above. In the circumstances, a sentence of 3 years and 6 months' imprisonment and 6 strokes of the cane was appropriate.

(3) Section 376(4)(*b*) of the Penal Code

142 As for the four offences under s 376(4)(*b*) of the PC, I agreed with the Prosecution that the benchmarks with respect to Category 2 of the sentencing framework established in *PP v NF* for rape offences ought to apply. Indeed, the analogy between aggravated sexual assault by penetration and aggravated rape had been drawn by both Parliament and the Courts. In the explanatory statement to clause 68 of the *Penal Code (Amendment) Bill* (Bill 38 of 2007), which introduced the current s 376 of the PC, it was stated as follows:

> The new section 376 provides for a new offence of sexual assault by penetration… The section also provides for an enhanced penalty for aggravated forms of sexual assault by penetration which is analogous to aggravated forms of rape. The enhanced penalty is a mandatory term of imprisonment of not less than 8 years and not more than 20 years, and mandatory caning of not less than 12 strokes. The enhanced penalty is the same as the enhanced penalty for aggravated rape.

143 Similarly, Tay Yong Kwang J (as he then was) had in *PP v AUB* held that "[v]ictims of sexual penetration experience the same emotional scars as rape victims. The sentencing considerations that apply to rape should therefore be applied to victims of sexual penetration as well" (at [7]). Accordingly, a sentence of 15 years' imprisonment with 12 strokes of the cane was the starting point, and also the appropriate sentence in the present case, taking into considering the general aggravating factors identified above (at [131]-[134]).

144 After my decisions on conviction and sentence were given, the Court of Appeal handed down its decision in *Ng Kean Meng Terence v Public Prosecutor* [2017] SGCA 37 recalibrating the sentencing framework for rape offences. That would, however, not have changed the outcome in the present case. In my view, under the first step of the new framework, the present case would have fallen in line with the Band 2 offences – attracting 13 to 17 years' imprisonment and 12 strokes of the cane – given the presence of several offence-specific aggravating factors such as the Accused's abuse of position and breach of trust, the presence of some degree of violence, and the young age of the Victim (at [44]). I note that several other cases involving protracted sexual abuse in the familial context, such as *Public Prosecutor v AOM* [2011] 2 SLR 1057 and *Public Prosecutor v AHB* [2010] SGHC 138, were also listed as illustrations in this Band (at [54]). Thereafter, the second step of the framework requires the Court to calibrate the sentence having regard to offender-specific factors (at [62]). In that regard, the Accused's persistence in the assault over a protracted period and despite the Victim's protestations, and his willingness to abuse their disparity in strength and influence, were all factors weighing against the Accused. In the circumstances, even under the new sentencing framework, 15 years' imprisonment and 12 strokes of the cane would have been broadly appropriate.

Conclusion on sentence

145 Taking into consideration all the above, the sentences imposed were as follows:

Charge	Offence	Sentence	Remarks
1	S 7(a) CYPA	2 years	
2	S 354(2) PC	3 years; 6 strokes	
3	S 376(4)(b) PC	10 years; 12 strokes	
4	S 376(4)(b) PC	10 years; 12 strokes	Consecutive
5	S 376(4)(b) PC	10 years; 12 strokes	
6	S 376(4)(b) PC	10 years; 12 strokes	Consecutive
7	S 354(2) PC	2 years; 6 strokes	
8	S 354(2) PC	2 years; 6 strokes	
9	S 354(2) PC	3 years; 6 strokes	
10	S 354(2) PC	3 years 6 months; 6 strokes	Consecutive
Total sentence		23 years and 6 months; 24 strokes	

146 It must be clarified that in relation to each of the offences under s 376(4)(*b*) of the PC, I agreed with the Prosecution that a sentence of 15 years' imprisonment and 12 strokes of the cane would ordinarily have been warranted. The sentence of 10 years' imprisonment and 12 strokes of the cane was imposed only in light of the totality principle, which requires the Court at the final stage of sentencing to consider "what would be a proportionate and adequate aggregate sentence having regard to the totality of the criminal behaviour of the accused person" (see *Mohammed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [59]).

147 Finally, although the total number of strokes came to more than the maximum that could be imposed, in view of the substantial imprisonment term, I declined to impose any additional term of imprisonment in lieu of caning under s 328(2) of the CPC.

Miscellaneous

Marital communications privilege

148 In the course of cross-examination of the Mother, an issue arose as regards s 124 of the EA and its interaction with s 134(5)(*a*) of the EA. The former provision deals with marital communications privilege and provides that no spouse shall be compelled or permitted to disclose any communications made by the other spouse to him during marriage unless that other spouse consents, or in specific situations such as suits between spouses or proceedings where one spouse is prosecuted for a crime against the other spouse. The latter provision precludes the spouse of an accused person from refusing to give evidence in criminal proceedings on the ground that it would tend to prove the commission by the accused of the offence charged. In closing, the Defence tendered written submissions and cited a case commentary by the learned Professor Ho Hock Lai (see "Spousal Testimony on Marital Communication as Incriminating Evidence – *Lim Lye Hock v PP*" [1995] Sing JLS 236), but both parties ultimately agreed that this issue did not arise in the present case. In the circumstances, I agreed that neither s 124 nor s 134(5)(*a*) of the EA was engaged on the facts; the proper interaction of these two provisions was thus left to be resolved in the appropriate case.

Lost in translation

149 Lastly, as I conveyed to the Prosecution during the trial,[191] the Court would be slow to allow questioning on the nuances of certain words and phrasing in a document that captured only the product of an interpretation rather than the original language. It would generally not be enough to call the interpreter to the stand, unless comprehensive contemporaneous records of the original language used had been kept by him. In the absence of evidence, the interpreter would not be expected to remember the actual words used in the original language. There is a great risk otherwise that the interpreted statement would be used to work backwards to what the accused would have been expected to have said, rather than what the accused did actually say.

Conclusion

150 For the foregoing reasons, the Accused was convicted of all ten charges brought against him and sentenced to a global term of 24 years' imprisonment and 24 strokes of the cane.

Aedit Abdullah
Judicial Commissioner

April Phang Suet Fern, Amanda Chong Wei-Zhen and Nicholas Lai Yi Shin (Attorney-General's Chambers) for the Public Prosecutor;
Siaw Kin Yeow, Richard and Peng Yin-Chia, Winna (JusEquity Law Corporation) for the accused.

191 NE dated 23 November 2016 at pp 43-44.