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

[2022] SGHC 303

Criminal Case 56 of 2022

Between

Public Prosecutor

… *Prosecution*

And

CJH

… *Defendant*

JUDGMENT

[Criminal Law — Offences — Rape]
[Criminal Procedure and Sentencing — Sentencing]
[Criminal Procedure and Sentencing — Mitigation]

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Public Prosecutor
v
CJH

[2022] SGHC 303

General Division of the High Court — Criminal Case 56 of 2022
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2 December 2022

Mavis Chionh Sze Chyi J:

Introduction

1 The accused in this case raped and sexually assaulted his younger sister – his biological sister – on numerous occasions over the course of three years. He was caught when his sister eventually confided in a friend about having been raped by him and made a police report to that effect.

2 On 2 December 2022, the accused pleaded guilty to three charges involving the sexual penetration of a minor. I convicted the accused of the three charges. I now set out my decision on the sentencing of this accused.

List of Charges

3 The Prosecution has proceeded on three charges, with six other charges to be taken into consideration ("TIC" charges) for the purposes of sentencing.[1]

4 The three proceeded charges are set out in the table below:

S/N	Charge	Offence	Description of the Offence
1	TRC 900498-2021 **("1st Charge)**	s 376A(1)(*a*) p/u s 376A(3) of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code")	Sometime between after 21 March 2017 and around mid-2017, at [Y], Singapore, did penetrate with your penis, the anus of one [X], born on [Z], a female aged 9 years old, without her consent.
2	TRC 900500-2021 **("2nd Charge)**	s 376A(1)(*a*) p/u s 376A(3) of the Penal Code	Sometime between 1 January 2018 and before 21 March 2018 at [Y], Singapore, did penetrate with your penis, the vagina of one [X], born on [Z], a female aged 9 years old, without her consent.

[1] Schedule of Offences.

3	TRC 900502-2021 **("3rd Charge)**	s 376A(1)(*a*) p/u s 376A(3) of the Penal Code	Sometime between April and May 2019, at [Y], Singapore, did penetrate with your penis, the mouth of one [X], born on [Z], a female aged 11 years old, without her consent.

5 The six TIC charges are set out in the table below:

S/N	Charge	Offence	Description of the Offence
1	TRC-900655-2020 (1st TIC Charge)	S 375(1)(*b*) p/u s 375(3)(*b*) of the Penal Code 1871 (2020 Rev Ed) ("Penal Code 1871")	Sometime around October 2020, in the common bedroom at [Y], Singapore, did penetrate the vagina of one [X], born on [Z], a female aged 12 years old, with your penis, without her consent.
2	TRC-900499-2021 (2nd TIC Charge)	s 376A(1)(*a*) p/u s 376A(3) of the Penal Code	Sometime between 1 January 2017 and 9 August 2017, [Y], Singapore, did penetrate with your penis, the anus of one [X] born on [Z], a female aged 9 years old, without her consent.

3	TRC-900501-2021 (3rd TIC Charge)	s 376A(1)(*a*) p/u s 376A(3) of the Penal Code	Sometime after 21 March 2018 to 31 December 2018, at [Y], Singapore, did penetrate with your penis, the vagina of one [X], born on [Z], a female aged 10 years old, without her consent.
4	TRC-900503-2021 (4th TIC Charge)	s 375(1)(*b*) p/u s 375(3)(*b*) of the Penal Code 1871	Sometime in October 2020, in the master bedroom at [Y], Singapore, did penetrate with your penis, the vagina of one [X], born on [Z], a female aged 12 years old, without her consent.
5	TRC-900504-2021 (5th TIC Charge)	s 375(1A)(*b*) p/u s 375(3)(*b*) of the Penal Code 1871	Sometime in October 2020, in the master bedroom at [Y], Singapore, did penetrate with your penis, the anus of one [X], born on [Z], a female aged 12 years old, without her consent.
6	TRC-900505-2021	S 30(1) of the Films Act (Cap 107, 1998 Rev Ed).	On 11 November 2020, in Singapore, did have in your possession 121 obscene films in your Huawei Y9S handphone.

	(6th TIC Charge)		

6 All three proceeded charges were for offences committed before the legislative amendments to the Penal Code in 2019 ("the 2019 amendments") came into effect. Out of the six TIC charges, the 2nd and 3rd TIC Charges were for offences committed before the 2019 amendments came into effect. The 1st, 4th and 5th TIC Charges were for offences committed after the 2019 amendments. As a result of the 2019 amendments, s 376A(1A) of the Penal Code 1871 now states that s 376A does not apply to an act of penetration mentioned in s 376A(1) which would constitute an offence under s 375(1)(*b*) read with s 375(3), or s 375(1A)(*b*) read with s 375(3) of the Penal Code 1871.[2]

Facts

7 The accused is [CJH], a 20-year-old male Singapore citizen. His date of birth is 8 March 2002.[3] The victim is [X], the accused's biological sister. At the time of the offences charged, the victim was studying in primary school.[4]

8 The victim was 9 to 12 years old at the time of the offences. She was close to the accused when she was younger but described the relationship as having "turned sour" when the accused started to commit sexual offences against her.[5]

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2 Prosecution Skeletal Submissions dated 11 November 2022 at para 5.

3 Statement of Facts ("SOF") at para 1.

4 SOF at para 2.

5 SOF at para 3.

9 The accused and the victim both resided with their parents in a three-room flat at [Y] Singapore (the "Flat"). The Flat had two bedrooms. The accused, the victim and their parents all slept in the master bedroom, on single beds placed side by side. The common bedroom was rented out to tenants, until around October 2020.[6]

10 At the time of the offences, the accused's and the victim's parents were not at home as their father worked on weekdays from 6am to 6pm and their mother's working hours were from 8am to the evening from Monday to Saturday. The tenants were also not at home as they worked during the day.[7]

11 The accused's offences only came to light when the victim confided in her friend about the accused having raped her. A police report was made at Jurong East Neighbourhood Police Centre on 11 November 2020.[8] The accused was arrested thereafter.

Facts relating to the 1st Charge (TRC 900498-2021)

12 The facts relating to the 1st Charge (TRC 900498-2021) were as follows. Sometime in the period after 21 March 2017 up to mid-2017, the accused and the victim were at home alone, after school. Their parents and the tenants who were staying at the Flat were at work. At the time, the victim was 9 years old, and the accused was 15 years old.[9]

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6 SOF at para 4.

7 SOF at para 5.

8 SOF at para 28.

9 SOF at para 6.

13 The victim was resting on her bed in the master bedroom when the accused walked into the master bedroom after showering, wearing only his underwear. The accused told the victim to wash her buttocks and vagina. The victim complied and washed her buttocks and vagina in the toilet located at the kitchen. The victim then returned to the master bedroom fully clothed.[10]

14 The accused told the victim to remove her pants and her panties. The victim complied. At the same time, the accused removed his boxers and revealed his penis to the victim.[11]

15 The accused instructed the victim to sit on one of the beds in the master bedrooms and to turn around to have her back facing him. The accused then pushed the victim's shoulders to make her lean forward.[12]

16 The accused rubbed his penis against the victim's buttocks until his penis became erect. The accused then inserted his penis into the victim's anus. The victim felt severe pain upon being penetrated. The victim tried to push the accused away because she was in pain, but she was unable to do so because the accused was stronger than her. The accused told the victim to keep quiet and continued to push his penis in and out of the victim's anus.[13]

17 After a while, the accused stopped, left the master bedroom, and went to the kitchen toilet. The victim felt great pain at her anus and cried because of the pain. The victim then went to wash up, dressed herself, and lay on her bed to rest. The accused returned to the master bedroom and told the victim not to tell

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10 SOF at para 7.

11 SOF at para 8.

12 SOF at para 9.

13 SOF at para 10.

anyone about the incident. The accused did not wear a condom throughout the whole incident.[14]

18 This was the first time the accused committed a penetrative sexual act against the victim. His act of penetrating the then 9-year-old victim's anus with his penis, without her consent, constituted an offence under s 376A(1)(*a*) punishable under s 376A(3) of the Penal Code.[15]

Facts relating to the 2nd Charge (TRC 900500-2021)

19 The facts relating to the 2nd Charge (TRC 900500-2021) were as follows. Sometime between 1 January 2018 and before 21 March 2018, the victim was at home alone after school. She was resting on her bed in the master bedroom. At the time, the victim was 9 years old, and the accused was 15 years old.[16]

20 The accused returned to the Flat after school and took a shower in the toilet located at the kitchen. Thereafter, the accused came into the master bedroom and told the victim to wash her buttocks and vagina. The victim complied and returned to the master bedroom fully clothed. The accused instructed the victim to remove her pants and panties, and to lie down on their father's bed on her back. The victim did so, and the accused removed his boxers.[17]

21 The accused approached the victim and as he was standing, lifted her legs up onto his shoulders. The accused inserted his erect penis into the victim's

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14 SOF at para 11.

15 SOF at para 12.

16 SOF at para 13.

17 SOF at para 14.

vagina. When he did so, the victim felt pain at her vagina and tried to push the accused away by pushing on his chest but was overpowered by him. The victim started crying from the pain. The accused told the victim to relax, and he removed his penis from the victim's vagina.[18]

22 The accused then inserted his penis into the victim's vagina a second time and the victim felt intense pain at her vagina. She pushed the accused away harder on the chest this time and the accused removed his penis from her vagina.[19]

23 The accused then rubbed his penis against the outside of the victim's vagina for a while before he stopped and left the room to go to the toilet at the kitchen. Throughout the whole incident, the accused did not wear a condom.[20]

24 The victim waited for the accused to finish using the toilet and went to wash herself in the toilet. The victim saw that her vagina was bleeding after being penetrated by the accused. At the time, she had not started menstruating.[21]

25 The accused stood outside the toilet and asked the victim whether she was bleeding, and the victim replied that she was.[22]

26 This was the first time that the accused penetrated the victim's vagina with his penis. The accused's act of penetrating the then 9-year-old victim's

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18 SOF at para 15.

19 SOF at para 16.

20 SOF at para 17.

21 SOF at para 18.

22 SOF at para 19.

vagina, with his penis without her consent, constituted an offence under s 376A(1)(*a*) punishable under s 376A(3) of the Penal Code.[23]

Facts relating to the 3rd Charge (TRC 900502-2021)

27 The facts relating to the 3rd Charge (TRC 900502-2021) were as follows. Sometime between April and May 2019, the victim returned home from school to find the accused already home and clothed in only his boxers. At the time, the victim was 11 years old, and the accused was 17 years old.[24]

28 The victim went into the master bedroom to rest. The accused, who was in the living room, called out to the victim and told her to follow him to the toilet at the kitchen. The victim complied. She felt that it was pointless to resist the accused as he was stronger than her and there was no one else at home.[25]

29 The victim went into the toilet with the accused, who closed the toilet door behind them. As they stood facing each other, the accused pulled down his boxers and revealed his erect penis to the victim. The accused told the victim to "suck it" (meaning, to suck his penis). The victim declined. The accused then said "suck it" again, in a louder voice. The victim was scared and complied.[26]

30 The victim bent forward and placed her mouth to the tip of his penis while standing. The accused held onto the back of the victim's head and pushed her head towards his penis, causing his penis to penetrate the victim's mouth.

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23 SOF at para 20.

24 SOF at para 21.

25 SOF at para 22.

26 SOF at para 23.

The accused continued to guide the victim's head back and forth, such that his penis was moving in and out of her mouth, for around ten minutes.[27]

31 The accused then removed his penis from the victim's mouth, masturbated in front of her with his hands, and ejaculated into the drain in the toilet. Throughout the whole incident, the accused did not wear a condom.[28] The victim then rinsed her mouth in the sink in the toilet and they both left the toilet.[29]

32 The accused's act of penetrating the then 11-year-old victim's mouth with his penis, without her consent, constituted an offence under s 376A(1)(*a*) punishable under s 376A(3) of the Penal Code.[30]

The events leading up to the accused's plea of guilt

33 This case was originally fixed for hearing before me in September. However, before the accused's guilty plea could be taken, the Prosecution applied for an adjournment in view of the recently released judgment in *ABC v PP* [2022] SGHC 244 ("*ABC*") where Chief Justice Sundaresh Menon ("Menon CJ") touched on (*inter alia*) the applicable sentencing framework in respect of s 376A offences.

34 In *ABC*, the accused had pleaded guilty to the offence of sexual assault by penetration of a minor below the age of 14 pursuant to s 376(2)(*a*) and punishable under s 376(3) of the Penal Code. The accused had also consented to six other charges to be taken into consideration for the purposes of sentencing.

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27 SOF at para 24.

28 SOF at para 25.

29 SOF at para 26.

30 SOF at para 27.

These charges included one charge of sexual penetration of the victim when she was 14 years old (s 376(1)(*b*) of the Penal Code), three charges of committing an obscene act (s 7(*a*) CYPA), one charge of production of child abuse material (s 377BG(1)(*a*) Penal Code) and one charge of meeting the victim during the Circuit Breaker period (Regulation 6 of the COVID-19 (Temporary Measures) (Control Order) Regulations 2020).

35 The District Judge sentenced the accused to six years' imprisonment and three strokes of the cane. In doing so, the District Judge applied the sentencing framework set out in *Pram Nair v PP* [2017] 2 SLR 1015 ("*Pram Nair*"). The accused appealed against his sentence. He contended that because of the legislative amendments in 2019, sentencing precedents which preceded those amendments (including *Pram Nair*) could not be applied without a careful consideration of how the 2019 amendments had affected the law in this area. He took the position that even in the case of a minor, where there was consent to the penetration, *Pram Nair* did not apply – and this was not displaced by the 2019 legislative amendments.

36 While *ABC* was a case dealing with digital penetration, and thus not entirely on all fours with the present case, the following observations of Menon CJ are pertinent to the present case (*ABC* at [43] – [46]):

> 43 *Pram Nair* was decided prior to the 2019 amendments. The offender there was convicted of one charge of rape under s 375(1)(a) and one charge for sexual assault by penetration under s 376(2)(a) for having penetrated the adult victim's vagina with his finger. The Court of Appeal considered the benchmark sentences for rape that had been established in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") and concluded that the benchmark sentences for rape and sexual assault by digital penetration should not be equated. The court reasoned that rape involves penile penetration which carries with it the risk of unwanted pregnancy and perhaps a greater risk of sexually transmitted disease, and is also a more grievous

violation of the victim than is digital penetration: see *Pram Nair* at [150]. Indeed, rape is generally regarded as the gravest of all the sexual offences: see *Pram Nair* at [151]. The Court of Appeal therefore modified and adapted the *Terence Ng* framework to make it appropriate for the offence of digital-vaginal penetration, while recognising that many of the offence-specific aggravating factors for rape might also be present and pertinent in offences involving digital penetration: see *Pram Nair* at [158]–[160]. The sentencing bands were, however, lowered to reflect the lesser gravity of digital penetration in comparison to rape. **I leave open the question whether *Pram Nair* applies to other offences relating to penile-vaginal penetration, though my provisional view is that it would not apply to penile-vaginal penetration which could be prosecuted under s 376A(1)(*a*) instead of rape; such offences should for sentencing purposes be dealt with by applying *Terence Ng*.**

44 Significantly, the Court of Appeal observed (at [161]–[162]) of Pram Nair that the new sentencing bands could be relevant to s 376A because of the commonality and overlap between s 376 and s 376A. The Court of Appeal noted that in *Public Prosecutor v BAB* [2017] 1 SLR 292 ("*BAB*"), it was held that the starting point for cases under s 376A(3), where there is an element of abuse of trust, should be between ten and 12 years' imprisonment. This would apply in the context of victims under the age of 14 who consented to the act but in respect of whom, there had been some abuse of trust on the part of the offender. It should be noted that if such a victim is the subject of an exploitative relationship with the offender, then the offence would now have to be prosecuted under s 376(2) read with s 376(4) which would be subject to the mandatory minimum sentence prescribed for Category 2 cases. This is by reason of s 376A(1A). It was also observed (see *Pram Nair* at [164]) that the starting point in general for cases sentenced under s 376A(3), meaning cases where a victim under the age of 14 consented to SAP, might have to be reviewed in light of the newly set out framework in *Pram Nair*. The court, however, left the issue open for an appropriate case in the future.

45 Subsequently in *Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749 ("*Yue Roger*"), the High Court observed (at [116]) that the sentencing bands for s 376 set out in *Pram Nair* should generally apply to offences under s 376A(3). However, the court thought that the framework developed in Pram Nair would need to be modified to take into account the fact that there is no minimum imprisonment term and no mandatory caning prescribed in s 376A(3), unlike in s 376(4). The court thus observed (at [117]) that Band 2 of *Pram Nair*, which starts at ten years' imprisonment, may be lowered to eight or nine years when applied to a s 376A(3) offence. On appeal, however, the Court of

> Appeal left the issue of the appropriate sentencing approach for an offence of sexual penetration of a minor under the age of 14 years of age punishable under s 376A(3) open: see *Yue Roger Jr v Public Prosecutor* [2019] 1 SLR 829 at [9].
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> 46 While I do not disagree with some of the broad observations made by the High Court in *Yue Roger*, in my respectful view, the court there did not direct itself or consider the nuances of the provisions in question, as I have sought to do at [26]–[41] above. **Having carefully considered the relevant provisions and the 2019 amendments in detail, in my judgment, the *Pram Nair* framework should apply to all offences that are to be sentenced under s 376(3) and also to those under s 376A(3), subject to the possible reservation that I have noted at the end of [43] above.**
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> [emphasis in bold]

37 Given that the accused in the present case had been charged under s 376A(1)(*a*) of the Penal Code, the above remarks by Menon CJ were of direct relevance in determining the appropriate sentence to be meted out. I granted the adjournment sought so as to allow parties to consider the impact of the judgment in *ABC* on their respective positions. Timelines were also given for the filing of further submissions.

38 In the paragraphs that follow, I briefly summarise parties' sentencing submissions.

Prosecution's arguments

39 The Prosecution sought a global sentence of 16 – 20 years' imprisonment with 11 strokes of the cane.[31] They also objected to the calling of a pre-sentencing suitability report for reformative training on the basis that the strong need for deterrence and retribution in this case far outweighed the principle of

[31] Prosecution Skeletal Submissions dated 11 November 2022 at para 2.

rehabilitation, and that imprisonment – rather than reformative training – was the appropriate sentence.[32]

Imprisonment, and not reformative training, is the most appropriate sentencing option

40 The Prosecution pointed to the analytical framework set out in *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*") at [77] – [78],[33] in support of their argument that imprisonment was the most appropriate sentencing option.[34] Under the *Al-Ansari* framework, the court must first:

(a) Determine whether rehabilitation can remain a dominant sentencing consideration.

(b) If so, then what is the best way to give effect to rehabilitation *qua* sentencing consideration?

41 In the present case, the Prosecution submitted that rehabilitation had been displaced by the sentencing considerations of deterrence and retribution given the nature of the offences and the harm caused.[35] The offence in this case was particularly aggravated given that the accused had, over the course of three and a half years, abused his position of trust vis-à-vis his younger sister and raped her.[36] The Prosecution also pointed to the fact that the victim was vulnerable given her young age, and that penetrative sexual activity – which was the crux

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32 Prosecution Skeletal Submissions dated 11 November 2022 at para 2.

33 PBOA at Tab 17.

34 Prosecution Skeletal Submissions dated 11 November 2022 at para 7.

35 Prosecution Skeletal Submissions dated 11 November 2022 at para 8.

36 Prosecution Skeletal Submissions dated 11 November 2022 at para 9.

of the offences – had the highest potential for physical and emotional damage.[37] General deterrence therefore had to feature prominently in the sentencing equation so as to ensure the protection of children from all forms of sexual exploitation (including that committed in the sanctity of their homes), and so as to quell the deep public disquiet invariably generated by such offences.[38]

42 Further, the Prosecution submitted that given the severe harm that serious sexual offences inevitably cause to the victim, the principle of retribution demanded that the punishment be commensurate with the degree of harm caused to the victim and the culpability of the offender.[39]

Sentencing position under s 376A(3) Penal Code

43 The Prosecution took the position that the framework set out in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") should apply in respect of the 2nd Charge (TRC-900500-2021) which involved penile-vaginal penetration, and that the *Pram Nair* framework should apply in respect of the 1st and 3rd Charges (which involved penile-anal and penile-oral penetration respectively).[40] However, although Menon CJ had expressly stated in *ABC* that his view on the applicability of the *Terence Ng* framework to "penile-vaginal penetration which could be prosecuted under s 376A(1)(*a*) instead of rape" was a "provisional" one, the Prosecution did not elaborate in their further written submissions on the reasons why they believed the *Terence Ng* framework should be applied in respect of such offences. At the hearing today, when I asked the Prosecution to elaborate on the reasons for its position on the application of the

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37 Prosecution Skeletal Submissions dated 11 November 2022 at para 9(b).

38 Prosecution Skeletal Submissions dated 11 November 2022 at para 10.

39 Prosecution Skeletal Submissions dated 11 November 2022 at para 11.

40 Prosecution Skeletal Submissions dated 11 November 2022 at paras 18 – 20.

Terence Ng framework, the DPP explained that this was because there is caselaw authority (*eg*, *BPH v PP* [2019] 2 SLR 764 ("*BPH*")) for the proposition that non-consensual penile-vaginal penetration is the most serious of sexual offences; and prior to the 2019 amendments, such acts could be charged under s 376A(1) read with s 376A(3) which provided for the same maximum punishment as s 375.

44 Applying the *Terence Ng* framework, the Prosecution submitted that the appropriate sentence in respect of the 2nd Charge was 9 – 11 years' imprisonment and five strokes of the cane.[41] At the first step of the *Terence Ng* framework, the court is to take into account the offence-specific factors in determining which band the offence falls within, to derive an indicative starting point for the sentence. Here, the Prosecution submitted that the following offence-specific factors were relevant. First, the victim's young age, and extreme vulnerability. Second, the fact that she did not consent to the penetration, and legally did not have the capacity to do so. Third, the severe breach of trust in the familial context. Fourth, the long period of offending. Fifth, the risk of sexually-transmitted diseases that the victim was exposed to due to the accused's failure to wear a condom.[42] According to the Prosecution, the case fell within the middle to upper range of Band 2 of the *Terence Ng* framework. The Prosecution argued for an indicative starting sentence of 14 to 16 years' imprisonment with 7 – 9 strokes of the cane for the 2nd Charge.[43]

45 At the second stage of the *Terence Ng* framework, the court – having regard to the aggravating and mitigating factors which are personal to the

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41 Prosecution Skeletal Submissions dated 11 November 2022 at para 29.

42 Prosecution Skeletal Submissions dated 11 November 2022 at para 24.

43 Prosecution Skeletal Submissions dated 11 November 2022 at para 23.

offender – calibrates the sentence from the initial starting point derived at the first stage. On the one hand, the fact that the accused had elected to plead guilty, thus sparing the victim the ordeal of testifying in court, was a mitigating factor.[44] The Prosecution also acknowledged that while rehabilitation was not the predominant sentencing consideration such that reformative training could be considered, it was still significant in deciding the overall term of imprisonment. After all, the retributive element in cases involving young offenders is lower. The offender's capacity for rehabilitation would also be a relevant consideration.[45]

46 On the other hand, there was the aggravating factor of the six other charges of a similar nature which were to be taken into consideration for sentencing: this would ordinarily have the effect of enhancing the sentence to be imposed.[46] The Prosecution contended that the accused should not be treated as a first-time offender given the long period of his offending; and that the absence of antecedents should be a neutral factor.[47]

47 According to the Prosecution, on balance, the accused's plea of guilt and young age justified calibrating the starting sentence for the 2nd Charge downwards to a term of 9 – 11 years' imprisonment and 5 strokes of the cane.[48]

48 As for the 1st and 3rd charges, the Prosecution submitted that the *Pram Nair* framework was the applicable sentencing framework, as it not only applied

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44 Prosecution Skeletal Submissions dated 11 November 2022 at para 25.

45 Prosecution Skeletal Submissions dated 11 November 2022 at para 26.

46 Prosecution Skeletal Submissions dated 11 November 2022 at para 27.

47 Prosecution Skeletal Submissions dated 11 November 2022 at para 28.

48 Prosecution Skeletal Submissions dated 11 November 2022 at para 29.

to offences involving digital penetration, but also to all forms of non-consensual penetration under s 376 of the Penal Code (*BPH* at [55]).

49 Similar to the *Terence Ng* framework, the court applying the *Pram Nair* framework considers, at the first stage, the offence-specific factors in order to derive the starting indicative sentence. The Prosecution submitted that the offence-specific factors outlined above (at [44]) applied as well, such that this case fell within the middle to upper range of Band 2 of the *Pram Nair* framework. The Prosecution argued for an indicative starting sentence of 12 – 14 years' imprisonment and 5 – 7 strokes of the cane for both the 1st and 3rd Charges.[49] The Prosecution also submitted that the same offender-specific factors outlined above (at [45] – [47]) were equally applicable in respect of the 1st and 3rd Charges, and that these justified calibrating the starting sentence downwards to 7 – 9 years' imprisonment and 3 strokes of the cane for each charge.[50]

50 By virtue of s 307(1) of the Criminal Procedure Code 2010, two of the sentences must be ordered to run consecutively. The Prosecution submitted that the sentences for the 1st and 2nd Charges should run consecutively.[51] This would yield the proposed global sentence of 16 – 20 years' imprisonment and 11 strokes of the cane. The Prosecution argued that this global sentence did not violate the totality principle set out in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shoufee*"),[52] and that it was in line with precedent.[53]

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49 Prosecution Skeletal Submissions dated 11 November 2022 at para 33.

50 Prosecution Skeletal Submissions dated 11 November 2022 at para 34.

51 Prosecution Skeletal Submissions dated 11 November 2022 at para 40.

52 Prosecution Skeletal Submissions dated 11 November 2022 at paras 41 – 44.

53 Prosecution Skeletal Submissions dated 11 November 2022 at para 45 – 52.

Defence's arguments

51 As for the Defence, they appeared to make four broad points in their written submissions. First, they argued that it was the *Pram Nair* framework that should be applied in respect of all three proceeded charges in the present case.[54] In particular, the Defence argued that because Menon CJ had only expressed a provisional view in *ABC* as to the applicability of the *Terence Ng* framework to penile-vaginal penetration which could be prosecuted under s 376A(1)(*a*) instead of rape, there were circumstances in which this provisional view might not apply. The Defence submitted that *Terence Ng* should not be applied to the 2nd Charge herein as "the present case involved minor children whereby the offences were committed owing to the lack of parental care and vigilance".[55] The Defence did not elaborate in its written submissions on the reasoning leading to such a conclusion. In oral submissions before me today, counsel placed emphasis on the fact that Menon CJ's judgment in *ABC* had been released on the morning of 29 September 2022, when the hearing for the plea-of-guilt (PG) mention of this accused was originally due to take place. Counsel suggested that accordingly it would not be fair to apply Menon CJ's provisional view on the application of the *Terence Ng* framework to the accused in this case. However, this is really neither here nor there. It was precisely because of the release of Menon CJ's judgment on the morning of 29 September 2022 that the accused's PG mention on that day was not proceeded with; and instead, an adjournment was granted to parties to allow each side to consider the impact of the judgment on its position and to make further submissions. The Prosecution's sentencing position and its views on the judgment in *ABC* were made known to the Defence some time prior to the mention today. There was certainly no requirement or compulsion for the

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54 Defence Submissions dated 11 November 2022 at para 8.

55 Defence Submissions dated 11 November 2022 at para 12.

accused to proceed to plead guilty today: the decision to plead guilty today was solely the accused's to make, with the advice of his counsel; and counsel has confirmed that the accused elected to plead guilty and to admit the offences without qualification. Counsel has also clarified that the Defence is not alleging any compulsion in this respect. I do not see, therefore, any basis for saying that it will be "unfair" to apply the *Terence Ng* framework to the 2nd Charge simply because the judgment in *ABC* was released on the morning of the date originally fixed for the mention.

52 Second, the Defence took the position that all three charges fell under Band 1 of the *Pram Nair* framework. However, they made no submissions as to the appropriate global sentence, nor did they flesh out the reasons as to why all three charges fell under Band 1 of *Pram Nair*.

53 Third, notwithstanding their submissions on the application of the *Pram Nair* framework, the Defence argued – apparently as their preferred position – that reformative training was appropriate, and that a pre-sentencing report should be called to assess the offender's suitability for reformative training. The Defence urged me to consider the following factors which they said justified reformative training in this case. First, the accused had been in remand for about two years; and this had allowed him to reflect on the offences he had committed against his sister. Second, there was no mandatory minimum imprisonment term and no mandatory caning provided for in s 376A(3) of the Penal Code, which would otherwise have prevented me from ordering reformative training as opposed to a term of imprisonment. Third, the Defence contended that reformative training would satisfy the sentencing considerations of rehabilitation and deterrence in the present case, and that calling for a pre-sentencing report to assess the offender's suitability for reformative training in the present case would

not affect the public interest in any way.[56] I should add, though, that the Defence did not mount any substantive argument, nor did they cite any precedents, in support of the above position.

54 Fourth, the Defence contended that the victim had not suffered any "indelible psychological scar", nor had she contracted any sexually-transmitted diseases as a result of the accused's failure to wear a condom. The Defence urged me to take these factors into consideration in distinguishing the present case from earlier cases involving offences under s 376A(1)(*a*) punishable under s 376A(3) of the Penal Code.

55 Finally, the Defence highlighted the parents' plea for the accused to be given a chance to "reform and return to society to lead a normal life".

56 In their further submissions filed on 23 November 2022, the Defence once again reiterated the request that a pre-sentencing report on the suitability for reformative training be called for.[57] The Defence also argued that the accused's parents had a duty to take care of their children, and that it was their failure to do so which resulted in the accused's continued sexual assaults on his sister.[58] Finally, the Defence pointed to the medical reports as proof that the harm inflicted on the victim was minimal and that the case should be placed within the lowest band of both the *Terence Ng* and *Pram Nair* frameworks.[59]

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56 Defence Submissions dated 11 November 2022 at para 15.

57 Defence Submissions dated 23 November 2022 at para 2.

58 Defence Submissions dated 23 November 2022 at para 6.

59 Defence Submissions dated 11 November 2022 at paras 9 and 12.

My Decision

57 In determining the appropriate sentence to be meted out in the present case, the following issues arise for my consideration:

(a) Do the facts of the present case warrant a sentence of reformative training as opposed to a term of imprisonment?

(b) In the event that reformative training is inappropriate, what is the applicable sentencing framework for an offence under s 376A(1)(*a*) of the Penal Code?

(c) Applying the relevant sentencing framework, what is the appropriate sentence in the present case?

58 In the paragraphs that follow, I deal with these issues *seriatim*.

Reformative training or imprisonment

The general principles applicable to the sentencing of young offenders

59 I agree with the Prosecution that the applicable framework in sentencing a young offender is that laid down in *Al-Ansari* and endorsed by the High Court in *PP v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*"). I will refer to this framework as the *Al-Ansari* framework. The operation of the *Al-Ansari* framework was explained in greater detail by the Court of Appeal ("CA") in *PP v ASR* [2019] 1 SLR 941 ("*ASR*"). In that case, the respondent had raped the victim after threatening her with a knife. He had also inserted his finger and a blunt object into her vagina. At the time of the offences, the respondent was 14 years old. Psychiatric reports subsequently revealed that the respondent had an IQ of 61 and a mental age of between 8 and 10. The respondent was charged under the Penal Code with one count of aggravated rape and two counts of sexual

assault by penetration. After he turned 16, he pleaded guilty to these three charges, and consented to having six other charges taken into consideration for the purposes of sentencing. He was sentenced by the High Court to reformative training (see *PP v ASR* [2019] 3 SLR 709). The Prosecution appealed, arguing that the appropriate sentence should have been a term of imprisonment of 15 to 18 years. While the CA dismissed the Prosecution's appeal, it noted that the *Al-Ansari* framework was the appropriate framework to be applied in the sentencing of intellectually disabled young offenders. The CA also made the following observations on the *Al-Ansari* framework (reproduced *in extenso* below):

> 95 That exercise, when serious offences are concerned, may be said to possess two uncommon features. First, in sentencing a young offender for a serious offence, the court often has a relatively wide range of sentencing options at its disposal, and must choose between them. These include probation and reformative training; any punishment which the offence in question provides for, whether it be imprisonment, caning, fine or a combination of them; and also community sentences where appropriate. There is therefore the need in every such case to reason out which of these qualitatively different sentencing options is most appropriate. This is unlike the usual case of sentencing an adult offender, where the task of the sentencing court typically is to impose an appropriate sentence within the statutorily prescribed range of punishments. The second uncommon feature is that rehabilitation is presumed to be the dominant sentencing objective for young offenders unless otherwise shown: see *PP v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 at [21]. This is a reflection of (a) young offenders' generally lower culpability due to their immaturity; (b) their enhanced prospects of rehabilitation; (c) society's interest in rehabilitating them; and (d) the recognition that the prison environment may have a corrupting influence on young offenders, who are more impressionable and susceptible to bad influence than older offenders: see Sundaresh Menon CJ, "Keynote Address at the Sentencing Conference 2017" (26 October 2017) at paras 19–21; see also *A Karthik v PP* [2018] 5 SLR 1289 ("*Karthik*") at [37]–[42].
>
> 96 Naturally, the second feature has an effect on the first feature, in the sense that if rehabilitation is established as the dominant sentencing objective, then the choice of sentencing option has to be guided by that objective. **The *Al-Ansari* framework is fundamentally built on a recognition of this logical relationship. That is why it articulates a two-step**

framework under which the court, at the first step, considers whether rehabilitation ought to be the dominant sentencing objective, and, at the second step, chooses the appropriate sentencing option in the light of the answer at the first step. V K Rajah JA put it in this way in *Al-Ansari* at [77]–[78]:

> 77 Accordingly, in dealing with sentencing young offenders involved in serious offences, I propose the following analytical framework. First, the court must ask itself whether rehabilitation can remain a predominant consideration. If the offence was particularly heinous or the offender has a long history of offending, then reform and rehabilitation may not even be possible or relevant, notwithstanding the youth of the offender. In this case, the statutorily prescribed punishment (in most cases a term of imprisonment) will be appropriate.
>
> 78 However, if the principle of rehabilitation is considered to be relevant as a dominant sentencing consideration, the next question is how to give effect to this. In this respect, with young offenders, the courts may generally choose between probation and reformative training. The courts have to realise that each represents a different fulcrum in the balance between rehabilitation and deterrence. In seeking to achieve the proper balance, the courts could consider the factors I enumerated above [(at [67])], but must, above all, pay heed to the conceptual basis for rehabilitation and deterrence.

97 In *Boaz Koh*, the High Court endorsed this two-stage analysis and, with reference to the first step, discussed the circumstances in which rehabilitation might be displaced as the dominant sentencing consideration. The court observed as follows at [30]:

> … [R]ehabilitation is neither singular nor unyielding. The focus on rehabilitation can be diminished or even eclipsed by such considerations as deterrence or retribution where the circumstances warrant. Broadly speaking, this happens in cases where (a) the offence is serious, (b) the harm caused is severe, (c) the offender is hardened and recalcitrant, or (d) the conditions do not exist to make rehabilitative sentencing options such as probation or reformative training viable.

…..

99 …The question whether it is desirable that an offender be rehabilitated must be conceptually distinguished from the question whether he is suitable for reformative training. It is the former, and not the latter, which determines whether

rehabilitation should be the dominant sentencing consideration in his case. The reason for this is that an offender's suitability for reformative training indicates only whether he is suitable to undergo a specific form of rehabilitation. It does not indicate whether normatively, he should be rehabilitated, in the sense that it would be in society's best interests that rehabilitation be the controlling sentencing objective. **That is the issue at the first step of the Al-Ansari framework. At that stage, the court is not yet concerned with the operational question of how rehabilitation ought to be achieved. The court will certainly have to grapple with that question eventually, but to leap to it directly is to place the cart before the horse.** In short, the existence of practical constraints on achieving rehabilitation which are external to the offender does not entail that he should not be rehabilitated. The existence of such constraints properly influences the process of deciding the appropriate sentencing option, and not the process of deciding whether rehabilitation should be the dominant sentencing objective.

100 The consequences of ignoring the distinction mentioned above are significant. If, for example, rehabilitation is jettisoned as a relevant sentencing consideration at the first step of the analysis on the basis that it would be difficult to implement, then when the court considers the sentencing options at the second stage, some other sentencing consideration, such as deterrence or incapacitation, would assume dominance, and the court would resolve to choose a sentencing option which gives effect to that. **If, however, rehabilitation is normatively established as the dominant sentencing consideration at the first step regardless of the challenges in its implementation, then the court would be driven to choose a sentencing option that gives effect to it notwithstanding those challenges.** In our judgment, this is the right approach where it is desirable that the offender be rehabilitated notwithstanding practical constraints external to him which present difficulties for the rehabilitative process.

.....

102 …(T)he question whether the conditions exist to make a certain rehabilitative option viable is fundamentally an operational question of how rehabilitation might be achieved, which is the question addressed at the second step. In the present case, this means that even if the Prosecution were right to say that reformative training as it is currently designed is not suitable for the respondent by reason of his intellectual disability, this does not mean that rehabilitation has been displaced as the normative sentencing consideration at the first step of the Al-Ansari framework**. To persuade us of that displacement, the Prosecution must instead provide**

positive reasons as to why sentencing considerations other than rehabilitation are dominant.

60 In cases involving the sentencing of young offenders, therefore, the Prosecution bears the burden of showing that sentencing considerations other than rehabilitation are dominant. There are two main factors that go towards the analysis of whether rehabilitation is displaced as the main sentencing consideration: a) the nature of the offence and b) the culpability of the offender. Where the former is concerned, if the "offence is so heinous and the young offender is so devoid of any realistic prospect of being reformed, then deterrence is the dominant consideration, and the statutorily prescribed punishment for the offender would be the obvious choice": *Ahmad Syafiq bin Azmi v PP* [2018] 5 SLR 837 at [23] citing *Al-Ansari* at [61].

61 Where the latter is concerned, the court in *ASR* noted (at [103]) that "[w]hether rehabilitation was displaced as the dominant sentencing consideration in this case turned principally on the respondent's state of mind at the time of his offences". In *ASR*, for example, the CA found it evident that the respondent's cognitive ability was extremely low, and that this significantly reduced his culpability. His intellectual disability compromised his ability to control his impulses. He also manifested a limited understanding of the nature and consequence of his actions (*ASR* at [113]). The CA held that the extent of the respondent's intellectual disability significantly reduced the importance of both general and specific deterrence in this case. The court explained its reasoning as follows (at [115]):

> As we observed in *Soh Meiyun v PP* [2014] 3 SLR 299 at [43], general deterrence is premised on the cognitive normalcy of both the offender in question and the potential offenders sought to be deterred: see also *PP v Kong Peng Yee* [2018] 2 SLR 295 ("*Kong Peng Yee*") at [69]. Thus, the precise weight to be accorded to general deterrence would depend on, among other things, the causal link between the offender's intellectual disability and the

> offence: see *Kong Peng Yee* at [70]. Specific deterrence assumes that the offender can weigh the consequences before committing an offence. It is therefore unlikely to be effective when the offender's ability fully to appreciate the nature and quality of his actions is reduced: see *Kong Peng Yee* at [72]. As we have seen, the respondent is not cognitively normal, and did not fully understand the gravity of his offending conduct. Deterrence in both forms must therefore carry minimal weight here.

62 In both *Al-Ansari* and in *Boaz Koh*, the High Court cited *PP v Mohamed Noh Hafiz bin Osman* [2003] 4 SLR(R) 281 ("*Mohamed Noh Hafiz*") as an example of a case where rehabilitation was displaced as the primary sentencing consideration in the sentencing of a young offender. The accused in *Mohamed Noh Hafiz* was a 17-year-old male who had on various occasions followed pre-pubescent girls into the lifts of public housing estates when they were alone: he would attack them as they were leaving the lifts, by covering their mouths, dragging them to nearby staircase landings, and molesting them violently. The accused pleaded guilty to four charges of aggravated outrage of modesty, two of rape, three of unnatural sex offences and a robbery charge. The High Court rejected his argument that reformative training was appropriate in his case and instead sentenced him to 20 years' imprisonment and 24 strokes of the cane. The court found reformative training to be inappropriate "in the light of the number and the nature of the offences". In its judgment, the court noted (at [6]) that the Prosecution had pointed out, *inter alia*, that a total of 11 young female victims were involved (including those involved in the charges taken into consideration); the offences were not committed on the spur of the moment; and there was violence or the threat of violence. Victim Impact Statements were also tendered to demonstrate the psychological harm wrought to the victims. As the High Court in *Boaz Koh* put it, *Mohamed Noh Hafiz* was "a clear example of a case where the offences were sufficiently serious and the actions of the offender were sufficiently outrageous that rehabilitation had to yield to other sentencing considerations" (*Boaz Koh* at [32]).

Applying the Al-Ansari framework to the present case

63 Returning to the present case, it should be noted at the outset that neither the Prosecution nor the Defence raised any issues regarding the accused's cognitive abilities and / intellectual capacity. It was not disputed that the accused fully understood the nature and consequences of his actions, and that he was fully culpable for his actions. Unlike *ASR*, therefore, this was not a case where the accused's cognitive abilities – or more precisely, deficiencies in the accused's cognitive abilities – militated against considerations of deterrence and retribution being accorded significant weight. Indeed, the Prosecution submitted that in the present case, considerations of deterrence and retribution should displace the usual primacy accorded to rehabilitation.

64 I agree with the Prosecution. My reasons are as follows. First, insofar as the nature of the offences is concerned, there can be no question that they are very serious: they involved sexual penetration – including penile-vaginal penetration – of a victim who was extremely young (between 9 and 11 years old at the time of the proceeded charges). In this connection, Menon CJ has held in *AQW v PP* [2015] 4 SLR 150 (("*AQW*") at [15] – [16]), that the vulnerability of a minor ought to be a key consideration in sentencing for sexual offences against minors. The younger the minor, the more vulnerable she will likely be found to be; and the more vulnerable the minor is, the more protection she will require, and the more reprehensible the conduct of an offender in exploiting her for the offender's own gratification. For offences against more vulnerable minors, therefore, considerations of deterrence and retribution will weigh in favour of heavier punishments. Moreover, as Menon CJ noted in *AQW* (at [19]), penetrative sexual activity is regarded as the most serious form of exploitation of a minor and "merits greater sanction", because it "represents the greatest intrusion into the bodily integrity and privacy of the minor, and involves the

highest potential for physical, psychological and emotional damage to the minor".

65 In the present case, the victim was also the accused's biological sister and younger than him by some six years: *ie* this was a relationship in which the accused occupied a position of trust and some degree of responsibility – even authority – vis-à-vis the victim. Considerations of both specific and general deterrence must come to the forefront in the sentencing of accused persons who commit sexual assault of those with whom they share such a relationship. As the High Court in *PP v NF* [2006] 4 SLR(R) 849 ("*NF*") highlighted (at [42]):

> (O)ur courts would be grievously remiss if they did not send an unequivocal and uncompromising message to all would-be sex offenders that abusing a relationship or a position of authority in order to satisfy sexual impulse will inevitably be met with the harshest penal consequences. In such cases, the sentencing principle of general deterrence must figure prominently and be unmistakably reflected in the sentencing equation.

66 In terms of the harm caused to the victim, the facts narrated in the Statement of Facts ("SOF") made it clear that she had suffered considerable physical harm. In particular, the instances of penile-anal penetration and penile-vaginal penetration caused her great pain; in fact, to such a degree that she cried from pain during the penetrative activity. Following the instance of penile-vaginal penetration described in the 2nd Charge (TRC 900500-2021), the victim also found her vagina bleeding after the penetration by the accused.

67 Insofar as psychological and emotional harm was concerned, the Prosecution did not tender a Victim Impact Statement; and the 1.5-page report from the Child Guidance Clinic of the Institute of Mental Health ("IMH", dated 7 January 2021) was not particularly illuminating in this respect. The report stated briefly that following the offences, the victim had "felt angry and sad for

what [the accused] had done to her"; that she had "no more these feelings [*sic*] during the past 2 months"; and that "(s)he had no other psychological effects". With respect, I found this last statement somewhat startling, all the more because no explanation was proffered for it. The only sensible conclusion I could draw from this report was that it was not intended to be an evaluation of the psychological and/or emotional harm suffered by the victim *per se*, but was intended instead primarily to confirm her ability to testify in court if required. I say this because the last two paragraphs of the report stated that the victim was capable of understanding the nature and consequences of the acts and of giving consent; and that she was "fit to testify in court".

68 Leaving aside this report, I make the general observation firstly that the CA has pointed out in *PP v UI* [2008] 4 SLR(R) 500 ("*UI*") that rape *simpliciter* "is already 'an inherently odious and reprehensible act'… that exacts 'irretrievable physical, emotional and psychological scars on [the] victim'"; and that where the rapist and the victim are related, "the psychological suffering of the victim is likely to be greater" (*UI* at [23]). The CA also cited the advice of the UK Sentencing Advisory Panel to the Sentencing Guidelines Council in 2003 wherein the advisory panel had observed that:

> The psychological trauma caused by sexual offences can be so deep-seated that it can have a permanent impact on a victim's ability to function in society. This can particularly be the case where sexual violation has been perpetrated over a long period of time, especially where the perpetrator is a family member or a person in a position of trust. Existing personal relationships may break down and victims also find it extremely difficult to develop intimate relationships in the future.

69 In the present case, the facts narrated in the SOF make clear the psychological and emotional harm suffered by the victim. This was an extremely young minor who was subjected to painful sexual penetration by her older

sibling. Her attempts to resist him on the occasion of the penile-anal penetration in 2017 and on the occasion of the penile-vaginal penetration in 2018 failed as he was stronger than her. There was no-one else at home to help her or even to hear her cries of pain. The damaging effect of the sexual abuse on her psyche is evident from the fact that by the occasion of the penile-oral penetration in 2019, when told by the accused to follow him to the kitchen toilet, she "complied because she felt that it was pointless to resist the accused as he was stronger than her and there was no one else at home"[60]. Insofar as the penile-vaginal penetration was concerned, the SOF also stated that the victim found her vagina bleeding after the act, and that this was at a time when she had not started menstruating. It took more than three years of sexual abuse before the victim confided in a friend, and a police report was made in November 2020. On the evidence available, in short, this was a case where the psychological and emotional harm sustained by the victim must have been considerable.

70 To sum up: applying the first stage of the *Al-Ansari* framework, it is clear that in light of the seriousness of the offences and the harm caused to the victim, considerations of deterrence and retribution must displace rehabilitation as the dominant sentencing consideration(s).

71 Given my conclusion above, I do not need to consider the application of the second stage of the *Al-Ansari* framework to determine how rehabilitation may be given effect in this case. For completeness, I add that the facts of the present case are starkly distinguishable from those of *PP v Ong Jack Hong* [2016] 5 SLR 166 ("*Jack Ong*"). In that case, the accused had met the victim at a bar. The victim had been drinking and was inebriated. The accused approached her, and after they had chatted for a while, he started hugging and kissing her.

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60 SOF at para 22.

After they kissed for a while, the accused carried her to a stairwell, turned her to face the wall, and penetrated her while she was bending down. The accused was charged and convicted under s 376A(1)(*a*) (punishable under s 376A(2)) of the Penal Code. The District Judge sentenced him to probation, and the Prosecution appealed. At the time of the offence, the accused had just turned 17, and the victim was 14 years old. Menon CJ allowed the appeal and imposed a sentence of reformative training, noting (at [14]) that reformative training should ordinarily be preferred over probation if the court considers that there is a need for deterrence. In other words, there was no dispute in *Jack Ong* that rehabilitation remained the primary sentencing consideration; and the issue in contention was whether the accused should be sentenced to a term of probation or reformative training. In this case, conversely, for the reasons set out above, I am satisfied that rehabilitation has been displaced as the predominant sentencing consideration, and that the punishment statutorily provided for under s 376A(3) of the Penal Code is appropriate.

The applicable sentencing framework for an offence under s 376A(1)(a) PC

72 The next question I have to consider is the appropriate sentence to be meted out. To do so, I have to determine the appropriate sentencing framework to be applied. Where the 1st Charge (TRC 900498-2021) and the 3rd Charge (TRC 900502-2021) were concerned, both the Prosecution and the Defence were *ad idem* that these should be dealt with by the application of the *Pram Nair* sentencing framework, *per* Menon CJ's judgment in *ABC* (at [46] and [66]). In this connection, I note that prior to Menon CJ's judgment in *ABC*, the High Court in *PP v Yue Roger Jr* [2019] 3 SLR 749 ("*Roger Yue (HC)*") had dealt with the issue of applying the *Pram Nair* sentencing framework to offences charged under s 376A(1)(*a*) read with s 376A(3). In *Roger Yue (HC)*, the High Court had

convicted the accused of, *inter alia*, two offences under s 376A(1)(*a*) read with s 376A(3). In determining the appropriate sentence, the court noted (at [116]):

> 116 I thus read Pram Nair ([111] *supra*) as not requiring a more lenient treatment per se under s 376A(3) as compared to s 376, and if anything indicating that a similar approach with regard to the sentencing bands, with some modification, would apply to offences under s 376A(3) as that under s 376. The sentencing bands for s 376A(3) though would need to take into account that unlike in s 376(4)(b), there is no minimum imprisonment term and no mandatory caning in s 376A(3). In this regard, the sentencing bands for s 376A(3) may vary slightly from the sentencing bands for s 376.
>
> 117 Thus, based on the sentencing bands prescribed in Pram Nair for an offence under s 376, including seven to ten years' imprisonment and four strokes of the cane for Band 1 (see above at [111]), the starting point of the sentence for a s 376A(3) offence should no longer be ten to 12 years as prescribed in BAB and should instead be shorter than that. Due to the need for the sentencing bands for s 376A(3) to vary slightly from the sentencing bands for s 376 for the reason stated above at [116], **I was satisfied that Band 2 for a s 376A(3) offence may start at lower than ten years, and may indeed be as low as eight or nine years.**
>
> [emphasis in bold]

73 In *Roger Yue (HC)*, therefore, the High Court had – while acknowledging that *Pram Nair* did not require a more lenient approach *per se* under s 376A(3) as compared to s 376 – proposed the calibration *downwards* of the sentencing bands in the *Pram Nair* framework in its application to s 376A offences. In its view, this adjustment was appropriate to take into account the fact that s 376A(3) did not provide for a mandatory minimum imprisonment term and/or mandatory caning. On appeal, the CA left the issue of the appropriate sentencing approach for an offence of sexual penetration of a minor under 14 punishable under s 376A(3) open, as it found the aggregate sentence imposed by the High Court to be amply justified: *Yue Roger Jr v PP* [2019] 1 SLR 829 ("*Roger Yue (CA)*", at [9]).

74 In *ABC*, Menon CJ stated (at [45]) that while he did not disagree with some of the broad observations made by the High Court in *Roger Yue (HC)*, the court in that case "did not direct itself or consider the nuances of the provisions in question". Menon CJ held that the *Pram Nair* framework "*should* apply to all offences that are to be sentenced under s 376(3) and also to those under s 376A(3)" (subject to his provisional view that offences of penile-vaginal penetration prosecuted under s 376A(1)(*a*) instead of rape should be dealt with by applying the *Terence Ng* framework). At [47] of *ABC*, he explained:

> In the first place…the sentencing range for each of these two offences is identical. Second, while there will be some variance in the factual circumstances that apply, there will be very many common considerations to guide the sentencing judge in this context. Third, prior to the 2019 amendments, Parliament did not recognise the consent of a minor under the age of 14 as a mitigating factor under s376A. Both s 376(3) and s 376A(3) prescribed the same punishment. The lack of consent, however, was an aggravating factor that would trigger the mandatory minimum punishment under s 376(4)… Parliament did not recognise consent as a factor that displaced the offence even in the case of victims between the ages of 14 and 16; but once they were within that age threshold, and consented, the punishment was significantly lower under s 376A(2) as compared to that prescribed under s376A(3). And in this group, if there was no consent, then the more serious punishment provisions under s 376(3) would apply. As I have explained above (at [35]), the 2019 amendments addressed certain anomalies in these provisions, but save as to these, the statutory regime in relation to minors under the age of 14 remained substantively the same. I reiterate that consent remains a neutral factor but its absence is an aggravating factor that triggers the mandatory minimum punishment.

75 I understand Menon CJ's remarks to mean that leaving aside offences of penile-vaginal penetration prosecuted under s 376A(1)(*a*) instead of rape, *all* s 376A offences which fall to be sentenced under s 376A(3) are to be dealt with by applying the *Pram Nair* sentencing framework *without* the adjustment of the sentencing bands proposed by the High Court in *Roger Yue (HC)*. As such, in

the present case, the *Pram Nair* framework would apply to the 1st Charge (TRC 900498-2021) and the 3rd Charge (TRC 900502-2021) without any adjustment of the sentencing bands. This appeared to be the agreed position as between the Prosecution and the Defence as well.

76 The bone of contention between the Prosecution and the Defence related to whether the *Terence Ng* framework should be applied in respect of the 2nd Charge (TRC 900500-2021), *ie*, the charge involving penile-vaginal penetration of the victim – having regard to the provisional view expressed by Menon CJ in *ABC*, and bearing in mind the fact that the 2nd Charge as well as the other two proceeded charges were for offences committed prior to the 2019 amendments to the Penal Code (at [43]). As I noted earlier, the Prosecution submitted that the *Terence Ng* framework should apply to offences involving penile-vaginal penetration charged under s 376A(1)(*a*) PC, while the Defence submitted that the *Pram Nair* framework should still apply in such cases. Neither side provided any analysis or research in support of their respective submissions.

Applicable sentencing framework for the 2nd Charge (offence of penile-vaginal penetration of minor below age of 14 under pre-2019 s 376A(1)(a) PC)

Legislative history

77 Looking at the legislative history of s 376A PC, it appears that the 2019 amendments to s 376A were intended, *inter alia*, to delineate it from s 375 PC. The Criminal Law Reform Bill which introduced significant amendments to s 376A traced its roots to the Penal Code Review Committee Report 2018 (the "Report") which contained a comprehensive review of the Penal Code, and made recommendations for reforms. *Inter alia*, the Committee examined how to "deal with circumstances where an offender has engaged in penetrative sexual activity with minors below 18 years of age, in the context of an exploitative relationship"

(Report at p 109, para 1). In particular, the Committee noted that there were overlaps between sections 375, 376 and 376A which might cause confusion especially in relation to the issue of consent (Report at p 110, para 3).

78 The Committee also made the following observation, which I reproduce below:

> 6 Section 376A(1) states that sexual penetration of the minor, "with or without [the minor's] consent" would be an offence. **Ostensibly, this provision admits the possibility that non-consensual sexual penetration could be covered by s 376A. If so, then the highest range of sentences in s 376A is likely to cater for such circumstances.** The overlaps within the current framework may then result in under-sentencing for consensual sexual penetration – because such offences will be punished at the lower to mid-spectrum of the sentencing range under s 376A.
>
> [emphasis added]

79 The Committee's observations, one might say, came as no real surprise. Given the broad manner in which s 376A(1) was framed, specifically that sexual penetration of the minor "with or without the minor's consent" would be an offence, its scope could potentially encompass offences falling under s 375 (which dealt with cases of statutory rape, for which there was – and still is – a prescribed statutory minimum punishment). This is usefully illustrated in the table included in the Report (at pp 109 – 110) which I reproduce below:[61]

Type of Activity	**Age of Victim**		
	Below 14 years	**14 to below 16 years**	**16 to below 18 years**
Non-consensual (With hurt,	• **Sections 375(3)(b), 376(4)(b):** minimum 8 years' imprisonment	• **Sections 375(3)(a), 376(4)(a):** minimum 8 years' imprisonment up	• Sections 375(3)(a), 376(4)(a): minimum 8 years'

[61] See the Annex to this Judgment for the versions of ss 375, 376 and 376A pre-2019 amendment as well as post-2019 amendment.

fear of hurt/death caused)	up to maximum of 20 years, discretionary fine, minimum 12 strokes of the cane • **Section 376A(3):** Maximum 20 years' imprisonment, discretionary fine, discretionary caning	to maximum of 20 years, discretionary fine, minimum 12 strokes of the cane • Section 376A(2): Maximum 10 years' imprisonment, and/or discretionary fine	imprisonment up to maximum of 20 years, discretionary fine, minimum 12 strokes of the cane
Non-consensual (No hurt, fear of hurt/death caused)	• **Sections 375(3)(b), 376(4)(b):** Minimum 8 years' imprisonment up to maximum of 20 years, discretionary fine, minimum 12 strokes of the cane • **Section 376A(3):** Maximum 20 years' imprisonment, discretionary fine, discretionary caning	• **Sections 375(2), 376(3):** Maximum 20 years' imprisonment, discretionary fine, discretionary caning • **Section 376A(2):** Maximum 10 years' imprisonment, and/or discretionary fine	• **Sections 375(2), 376(3):** Maximum 20 years' imprisonment, discretionary fine, discretionary caning
Consensual	• **Sections 375(2), 376A(3):** Maximum 20 years' imprisonment,	• **Section 376A(2):** Maximum 10 years' imprisonment, and/or discretionary fine	-

	discretionary fine, discretionary caning		
Exploitative (Commercial only)	• Section 376B(1): Maximum 7 years' imprisonment and/or fine		

80 The Committee's observations were reflected in the 2019 amendments to the Penal Code where s 376A(1A) and 376A(1B) were introduced. These provisions stated:

> (1A) This section does not apply to an act of penetration mentioned in subsection (1) which would constitute an offence under section 375(1)(a), 375(1)(b) read with section 375(3), 375(1A)(a), 375(1A)(b) read with section 375(3), 376(2) (if the victim B is of or above 14 years of age) or 376(2) (if the victim B is below 14 years of age) read with section 376(4).
>
> (1B) To avoid doubt —
>
> (a) it is not necessary for the prosecution to prove that B did consent to an act of penetration mentioned in subsection (1); and
>
> (b) it is not a defence that B did consent to that act.

81 The explanation for this amendment can be found in the Criminal Law Reform Bill (No 6 of 2019) which states:

> **Clause 112 amends section 376A to clarify that section 376A (Sexual penetration of minor under 16) does not cover sexual activity for minors below 16 years of age where the minor did not consent. The upper ranges of the prescribed sentences for an offence under that section will therefore apply to consensual sexual penetration of minors below 16 years of age with higher maximum punishments where the minors are below 14 years of age.** The amendment also introduces enhanced punishment for exploitative penetrative sexual activity with minors at least 14 but below 16 years of age. The limited marital immunity to sexual penetration under section 376A(5) is also repealed. A defence will be provided for sexual penetration of a spouse below 16 years of age with the spouse's consent. However, this should be read with section

> 90(*c*) which provides that a person below 12 years of age cannot provide consent.
>
> [emphasis added]

82 In sum, therefore, the previous overlap between s 375 and s 376A meant that non-consensual penile-vaginal penetration of a minor under 14 years could be prosecuted under s 376A instead of s 375 – the result of which was that the statutory minimum of sentence of 8 years' imprisonment and 12 strokes of the cane would not apply. That being said, it did not necessarily mean that if a charge for an offence of non-consensual penile-vaginal penetration of a minor under 14 had been brought under s 376A as opposed to s 375, there would be a very large variance in the sentence imposed. As the Committee noted in its Report (see the extract reproduced at [79] above), the highest range of sentences available under s 376A could cater for such offences.

83 The observation that pre-2019, the highest range of sentences under s 376A could cater for offences of non-consensual sexual penetration of a minor provides, in my view, some indication as to the appropriateness of applying the *Terence Ng* sentencing framework to an offence such as that in the 2nd Charge in the present case. I now turn to examine the decision in *Terence Ng* itself.

The decision in Terence Ng and other relevant cases

84 Prior to *Terence Ng*, the High Court in *NF* had set out a framework for the sentencing of rape cases. In that case, the accused had raped his biological daughter. He was charged under s 376(1) of the Penal Code, and elected to plead guilty. The High Court adopted the approach in *R v William Christopher Millberry* [2003] 2 Cr App R (S) 31 and *R v Keith Billam* (1986) 8 Cr App R (S) 48 of categorising rape offences into broad categories with benchmark sentences for each category, albeit with modifications intended to take into account our

local legislative regime. In doing so, the court classified rape offences into the following four categories:

(a) **Category 1 rapes**: These were rape offences without mitigating or aggravating factors, for which the benchmark sentence should be 10 years' imprisonment and not less than six strokes of the cane.

(b) **Category 2 rapes**: These were rape offences involving the exploitation of a particularly vulnerable victim for which the benchmark sentence should be 15 years' imprisonment and 12 strokes of the cane.

(c) **Category 3 rapes**: These were rape offences involving the repeated rape of the same victim, or of multiple victims. While such offenders posed more than an ordinary danger to society and thus ought to be severely penalised with draconian sentences, the court held that in most cases, the sentencing judge had the option to order that more than one sentence run consecutively to reflect the magnitude of the offender's culpability. There was thus no overriding need for judges to commence sentencing at a higher benchmark than that applied to category 2 rapes.

(d) **Category 4 rapes**: These were rapes committed by offenders who have demonstrated that they will remain a threat to society for an indefinite period of time. Unlike England, where the option of a life sentence was available, the local legislative scheme did not have such an option. In the court's view, therefore, it would not be inappropriate to sentence a category 4 offender to the maximum allowed under s 376 of the Penal Code (*ie*, 20 years' imprisonment and 24 strokes of the cane).

85 Subsequently, in *Terence Ng*, the CA held that the sentencing framework set out in *NF* required some revision. In *Terence Ng*, the appellant, who was 42

years old at the time, met the victim – a 13-year-old minor at his stall. He invited her to his flat and offered to act as her godfather after learning that she had run away from home. Her parents accepted this offer, and the two began spending time together daily. Two weeks later, they began engaging in sexual activity. For this, the appellant faced a total of four charges: three for statutory rape under s 375(1)(*b*) of the Penal Code and one for the digital penetration of a minor under s 376A(1)(*b*) of the Penal Code. The appellant pleaded guilty to one statutory rape charge and to the digital penetration charge, and consented to have the two remaining charges of statutory rape TIC for the purposes of sentencing. The appellant was sentenced to 13 years' imprisonment and 12 strokes of the cane for the rape charge, and one year's imprisonment and two strokes of the cane for the digital penetration charge. Both charges were ordered to run consecutively to yield an aggregate sentence of 14 years' imprisonment and 14 strokes of the cane. The appellant only appealed against the sentence for the statutory rape charge on grounds that it was manifestly excessive.

86 The CA found (at [12] – [22]) that the *PP v NF* framework ought to be revised for the following reasons:

> (a) First, the categories are not sufficiently comprehensive and do not cover the full spectrum of the circumstances in which the offence of rape may be committed.
>
> (b) Secondly, there is no conceptual coherence to the Category 2 aggravating factors. As a consequence, Category 2 embraces factual scenarios of widely differing levels of culpability which should not (but currently do) attract the same starting point.
>
> (c) Thirdly, it is not clear as to how the statutory aggravating factors (and the statutory minimum sentence prescribed in relation to those factors) should be taken into account within the NF Framework.

87 The court outlined (at [39]) a new two-stage approach towards the sentencing of rape offences. First, the court should identify which band the

offence in question fell within, having regard to the "offence-specific" factors. Such factors included, *inter alia*, an abuse of position and breach of trust, premeditation, the forcible rape of a victim below 14 years of age, or the use of violence. Once the sentencing band – which defines the range of sentences that may usually be imposed for a case with those offence-specific features – has been identified, the court should then determine precisely where within that range the present offence falls in order to derive an "indicative starting point". The court proposed the following sentencing bands:

(a) **Band 1:** 10 to 13 years' imprisonment and six strokes of the cane. These were cases featuring no offence-specific aggravating factors or where the factor(s) were present to a very limited extent. The court also noted that the benchmark sentence here exceeded the statutory minimum for aggravated rape, and held that doing so did not render the statutory minimum sentence otiose. After all, the statutory minimum (in s 375(3) of the Penal Code) set an "absolute floor beyond which sentences imposed for aggravated rape [could] not fall irrespective of how exceptional the personal mitigating factors" were (at [49]).

(b) **Band 2:** 13 to 17 years' imprisonment and 12 strokes of the cane. These were more serious cases containing two or more of the offence-specific aggravating factors. The court noted, in particular, that cases which contained any of the statutory aggravating factors, and which were prosecuted under s 375(3) of the Penal Code, would almost invariably fall within this band. At the middle to upper reaches of this Band were offences marked by serious violence which had taken place over an extended period of time and which had left the victims with serious and long-lasting physical or psychological injuries.

(c) **Band 3:** 17 to 20 years' imprisonment and 18 strokes of the cane. These were extremely serious cases of rape by virtue of the number and intensity of the aggravating factors. Such cases would feature victims with particularly high degrees of vulnerability and/or serious levels of violence attended with perversities.

88 Second, the court, having regard to the "offender-specific" factors (which are aggravating and mitigating factors personal to the offender), should calibrate the appropriate sentence for that offender. Such factors included, *inter alia*, the presence of relevant antecedents, a lack of remorse, or the youth of the offender. A plea of guilt was also a relevant offender-specific factor to consider (at [71]). In particular, the sentencing court would have to decide the weight to be accorded to the "offender-specific" factors and their impact on the indicative starting sentence. While adjustments beyond the sentencing range prescribed for the band might be called for, clear and coherent reasons should be set out if this was to be done, so as to ensure transparency and consistency in sentencing (at [62]).

89 In setting out the sentencing framework, the CA also noted that the benchmark sentences laid down applied to "contested cases" (*ie*, convictions entered following trial): this was because there was difficulty in setting benchmark sentences by references to uncontested cases when no uniform weight could be attached to a guilty plea. Further, this was to avoid giving the appearance that offenders who claimed trial were penalised for enforcing their constitutional right to claim trial. This was because if benchmarks were set with reference to uncontested cases, an uplift would have to be applied where an offender claimed trial.

90 The decision in *Terence Ng* was followed by that in *Pram Nair* where the court held (at [157] – [158]) that there was an intelligible and defensible distinction to be drawn in terms of offence severity between rape and digital penetration – and that the benchmark sentences provided for under the *Terence Ng* framework should not, therefore, be equated to the latter category of offences. That said, the court did recognise the logic in the Prosecution's suggestion that the *Terence Ng* framework should be transposed to the offence of digital penetration: after all, as the court noted (at [158]), "many of the offence-specific aggravating factors listed in *Terence Ng* (such as premeditation, abuse of a position of trust, special infliction of trauma) may also be present and pertinent in offences involving digital penetration". Ultimately, the court took the view that the framework – suitably modified through the lowering of the range of starting sentence for each sentencing band – could be applied to the offence of digital penetration.

91 Following from this, the court set out (at [159]), the following three bands for the offence of sexual penetration of the vagina using a finger:

(a) **Band 1:** 7 – 10 years' imprisonment and 4 strokes of the cane;

(b) **Band 2:** 10 – 15 years' imprisonment and 8 strokes of the cane;

(c) **Band 3:** 15 to 20 years' imprisonment and 12 strokes of the cane.

92 In formulating these bands, the court noted two points. First, where the "offence of sexual assault by penetration discloses any of the two statutory aggravating factors in s 376(4) of the Penal Code – *ie*, where there is use of actual or threatened violence (s 376(4)(*a*)) or where the offence is committed against a person under 14 years of age (s 376(4)(*b*)) – there is a prescribed minimum sentence of eight years' imprisonment and 12 strokes of the cane". Such cases

should fall within Band 2 of the *Pram Nair* framework, or even Band 3 if there are additional aggravating factors (*Pram Nair* at [160]).

93 Second the court noted (at [161]), the possible relevance of the proposed bands to s 376A. In doing so, the court noted its earlier decision in *PP v BAB* [2017] 1 SLR 292 ("*BAB*"). In *BAB*, an adult female suffering from gender dysphoria was convicted on a number of charges involving a young female victim under s 376A. The court had, in that case, set out (at [65]), the following sentencing ranges for offences punishable under s 376A:

> (a) For offences punishable under s 376A(2), where there was an element of abuse of trust, the starting point would be a term of imprisonment of three years (and this would apply for each of the offences under this section in this case).
>
> (b) For offences punishable under s 376A(3), where there was an element of abuse of trust, the starting point would be a term of imprisonment of between 10 and 12 years. While that provision also provided for caning, the court in *BAB* did not discuss the starting sentence in respect of caning (since female offenders could not be caned under the law), save to say that an additional term in lieu of imprisonment of not more than 12 months could be imposed in lieu of caning under s 325(2) CPC.

94 In *Pram Nair*, the court noted (at [162]) that s 376 and 376A had a lot in common and overlapped in scope in some situations. The main differences were that s 376A dealt with sexual penetration offences against minors under 16 years of age, for which the consent of the minor was irrelevant. Crucially, the court observed (at [163] – [164]) that:

> 163 In the light of what we have set out at [159], the starting point of three years' imprisonment for a s 376A(2) offence in *BAB* may now look rather lenient when compared to the seven to ten years' imprisonment range in Band 1 for a s 376 offence. However, it must be remembered that s 376A(2) prescribes a maximum sentencing range of ten years or fine or both (with no caning) whereas s 376(3), the applicable provision in this appeal, provides for a maximum punishment of 20 years' imprisonment and a liability to fine or to caning. **Bearing that in mind, the question of whether the starting point of ten years' imprisonment for s 376A(2) cases proposed in *BAB* should be tweaked, and if so how, will have to be addressed on another occasion.**
>
> 164 On the other hand, it is clear that **the starting point of between ten and 12 years' imprisonment for s 376A(3) offences (involving victims below 14 years in age) may need to be reviewed in the light of what we have said at [159] and [160] above because this subsection has the same sentencing range as s 376(3), that is, a maximum imprisonment term of 20 years and liability to fine or to caning.** In a future case involving digital penetration of the vagina which falls within s 376A(3), the court will have to decide on the appropriate sentence after considering what we have set out at [159] and [160] above. In addition, we must also note one other difference: unlike s 376(4)(b), there is no minimum imprisonment term and no mandatory caning in s 376A(3).
>
> [emphasis added]

95 In *BPH* (at [55]), the CA held that notwithstanding that *Pram Nair* was a case concerning only digital-vaginal penetration, the *Pram Nair* sentencing framework was applicable to all forms of sexual assault by penetration under s 376. It was, as the court put it, neither useful nor practical to draw up a hierarchy of severity of the different types of sexual penetration which fell within the scope of s 376. The court set out three reasons for this. First, the multitude of permutations of the offence of sexual penetration under s 376 made setting benchmark sentences for each permutation impractical as fine distinctions would have to be drawn having regard to the facts. Second, the text of s 376 itself did not indicate that the types of sexual assault by penetration were to be ranked in terms of severity. Third, there was no unanimity of views as to whether one form

of sexual penetration was inherently more serious or detestable than another. In this respect, though, the CA went on to note that there was "reasonable consensus and good reasons to hold that rape (as presently defined) [was] the worst of the sexual penetration offences"; and it took pains to stress that its decision "[did] not detract from the distinction which the court had drawn in *Pram Nair* between rape (*ie*, penile-vaginal penetration) and sexual assault by penetration under s 376: the *Terence Ng* framework would continue to apply to the offence of rape (*BPH* at [62]).

96 Having considered the legislative history and the relevant authorities, I am of the view that the *Terence Ng* sentencing framework is applicable to the offence of penile-vaginal penetration in the 2nd Charge (TRC 900500-2021). My reasons are as follows.

97 In both *Pram Nair* and *BPH*, the CA has made it clear that there is "an intelligible and defensible distinction to be drawn", in terms of the gravity of the offence, between rape (*ie*, penile-vaginal penetration) and other forms of sexual assault by penetration (*Pram Nair* at [157], *BPH* at [62]). In both cases, the CA stressed that "rape is the gravest" – "the worst" – of all sexual offences (*Pram Nair* at [156], *BPH* at [60]). As seen in *Pram Nair*, while the CA accepted the logic in transposing the *Terence Ng* framework to offences of digital penetration, it found it necessary to modify the framework by adjusting the starting sentences in each band to a lower level in order to reflect the lesser gravity of these offences.

98 As I noted earlier (above at [79]), prior to the 2019 amendments, the overlap between s 375 and 376A of the Penal Code meant that offences of non-consensual penile-vaginal penetration could potentially be charged under s 376A instead of s 375, given that the scope of s 376A was wider than that of s 375.

Notwithstanding this, the sentencing range for each of the two offences was the same: *ie*¸ a term of imprisonment up to a maximum of 20 years with either a fine or caning. The main difference would be that a charge of rape under s 375 carried a mandatory minimum punishment of 8 years' imprisonment and 12 strokes of the cane (s 375(3)). However, the absence of a similar mandatory minimum punishment under s 376A should not, in my view, pose a major hurdle to the application of the *Terence Ng* framework to offences of penile-vaginal penetration such as that concerned in the 2nd Charge herein. As seen earlier, he CA in *Terence Ng* took into account the statutorily prescribed minimum punishment in the formulation of the sentencing framework, noting that it had "the effect of setting an absolute floor beyond which sentences imposed for aggravated rape cannot fall, irrespective of how exceptional the personal mitigating factors" (*Terence Ng* at [49]). In cases where an offence of non-consensual penile-vaginal penetration of a minor below 14 has been prosecuted under s 376A, the starting point for any sentence in my view would likely tend towards the higher range of that allowed by the statute. In this vein, there should be no objection in principle to using the *Terence Ng* framework, as the sentencing bands thereunder occupy the higher range of permissible sentences allowed under statute (*ie*, 10 – 20 years' imprisonment).

99 Further, to borrow a phrase from Menon CJ's judgment in *ABC*, "while there will be some variance in the factual circumstances that apply, there will be very many common considerations to guide the sentencing judge" in dealing with an offence such as the present, of non-consensual penile-vaginal penetration of a minor below 14 under s 376A. Indeed, the offence-specific factors – *ie*, those factors which "indicate the level of gravity of the crime in specific relation to the offence upon which the accused was charged" (*Terence Ng* at [42]) – would logically be identical whether such an offence was charged under s 376A or under s 375. In this connection, it must be remembered that a key plank in

sentencing is that of consistency. It would be wholly anomalous if an offender who had been convicted of non-consensual penile-vaginal penetration of a minor below 14 stood to receive a significantly lighter sentence where the charge was brought under s 376A as opposed to s 375. Such discrepancy of treatment would also run contrary to the clear legislative intention to take a firm stance against the sexual abuse of minors.

100 I stress that my views are confined to cases such as the present, where the offence of non-consensual penile-vaginal penetration of a minor was committed prior to 2019. Post the 2019 amendments, as noted earlier, s 376A(1A) ensures that prosecutions for such cases – if they would constitute an offence under s 375(1)(*b*) read with s 375(3) – may no longer be brought under s 376A(1)(*a*) in the alternative.

101 For the reasons set out above, I conclude that the *Pram Nair* framework is the appropriate sentencing framework to apply in respect of the 1st and the 3rd Charges in the present case, while the *Terence Ng* framework is the appropriate framework to apply for the 2nd Charge. I next apply the relevant framework to determine the appropriate sentence for each charge.

The appropriate sentences in the present case:

The appropriate sentence for the 2nd Charge (TRC 900500-2021)

102 I begin with the sentence for the 2nd Charge (TRC 900500-2021). I agree with the Prosecution that the presence of the following offence-specific factors place the present case squarely within Band 2 of the *Terence Ng* framework. First, at the time of the offence, the victim was only 9 years old. The sexual assault of a victim who is particularly vulnerable because of her young age is recognised as an offence-specific aggravating factor (*Terence Ng* at [44(e)]. In

GBR v PP [2018] 3 SLR 1048 ("*GBR"*), where the High Court took a leaf from *Terence Ng* in setting out a sentencing framework for offences under s 354(2) of the Penal Code, the court held that the aggravating factor of young age would, in relation to enhanced offences, apply if the victim concerned was materially younger than the stipulated age ceiling, and in a graduated manner depending on how much younger the victim was (*GBR* at [29(f)]. In the present case, the victim was significantly younger than the stipulated age ceiling of 14 years, which made the offending in this case all the more grave. Because of her young age, the victim would not even have had the legal capacity to consent to the sexual penetration, which – as the Prosecution pointed out – underscored the severity of the accused's offending (see *Terence Ng* at [44(f)].

103 Second, there was a severe breach of trust in the familial context. As the CA pointed out in *BPH* (at [67]), the recognition of abuse of trust as an aggravating factor is a reflection of the position that is occupied by members of a family. In the present case, the accused was the victim's biological elder brother, but instead of protecting her and looking after her, he proceeded to breach the trust reposed in him on multiple occasions in the most heinous manner.

104 Third, these offences were committed over a prolonged period of some three years – and they came to light only because the victim eventually confided in a friend. Fourth, there was indisputably severe harm done to the victim. As highlighted in the SOF, at the time of the offence stated in the 2nd Charge, the victim had not even started menstruating. The pain and horror she experienced when she realised that the accused's actions had left her bleeding from the vagina must have been considerable. As I noted earlier, the trauma she suffered and her abject helplessness were such that by the time of the offence in the 3rd Charge the following year, she had come to believe that it was "pointless" to resist the

accused (at [22] of the SOF): her spirit, if not entirely broken by then, must have been greatly diminished. Finally, the victim was exposed to the risk of sexually transmitted diseases given that the accused did not use a condom during the sexual penetration.

105 Given the number of offence-specific factors, it was clear that the case fell within at least the middle range of Band 2 of the *Terence Ng* framework. Accordingly, for the 2nd Charge, the indicative starting point for the sentence should be 15 years' imprisonment and 12 strokes of the cane (see [87(b)] above). In this respect, I disagreed with the Prosecution's submission that the indicative starting point should be 14 to 16 years' imprisonment *and seven to nine strokes of the cane*. Given that the Prosecution's position was that the 2nd Charge fell within "the mid to upper end of Band 2 of the *Terence Ng* framework" and given that Band 2 of the *Terence Ng* framework specifies 13 to 17 years' imprisonment and *12 strokes of the cane*, I did not see how a case falling within "the mid to upper end of Band 2" would attract an indicative starting sentence of 14 to 16 years' imprisonment *and seven to nine strokes of the cane*. When asked, the Prosecuted stated that it had submitted for a significantly reduced number of strokes of the cane in order to take into account the accused's relative youth both at the time of the offences and at the time of sentencing. The Prosecution also stated, in response to my queries, that it had taken the accused's youth into account at both the first stage and the second stage of the *Terence Ng* framework. However, as I noted during the hearing, the accused's youth and any prospects for rehabilitation constitute an offender-specific factor to be considered at the second stage of the *Terence Ng* framework. To factor it in both at the first and the second stages of the framework is to double-count a factor that has potential mitigating weight. I do not think this can be correct in principle.

106 Next, at the second stage of the *Terence Ng* framework, offender-specific factors must be taken into account in calibrating the indicative starting sentence. On the one hand, as the Prosecution pointed out, although the accused has no antecedents on record, he should not be treated as a first-time offender in view of the six TIC charges in this case (*Chen Weixing Jerriek v PP* [2003] 2 SLR(R) 334 at [17]). These TIC charges would ordinarily have the effect of enhancing the sentence to be imposed (*PP v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 at [19]).

107 On the other hand, as both the Prosecution and the Defence pointed out, the accused has chosen to plead guilty and ought therefore to be given some credit for sparing the victim the horrific ordeal of a trial (*Terence Ng* at [71]).

108 It must also be borne in mind that the accused is a relatively youthful offender: he is currently 20 years old; and he was between 15 and 18 years old at the time of the offences in the proceeded charges. In *Terence Ng*, the court recognised that the youth of the offender and his prospects of rehabilitation constitute a factor to be taken into consideration. In *PP v See Li Quan Mendel* [2019] SGHC 255 ("*Mendel See (HC)*"), the High Court dealt with the sentencing of a 19-year-old accused who had pleaded guilty to serious charges including a robbery charge and a rape charge. Eight other charges, which related primarily to property offences, were taken into consideration for the purposes of sentencing. The offences had been committed when the accused was 17 years old. In sentencing the accused, the court held that the offences were sufficiently serious that deterrence displaced rehabilitation as the dominant sentencing consideration (*Mendel See (HC)* at [48]). As such, the court declined to call for a reformative training suitability report. However, the court held that in calibrating the sentences of imprisonment and caning, the rehabilitation of the accused remained a significant factor (at [85]). The accused in that case was

sentenced to six years and nine months' imprisonment and three strokes of the cane on the rape charge (which was held to fall into the higher end of Band 1 of the *Terence Ng* framework), and to three years' imprisonment and 12 strokes of the cane on the robbery charge. On a third charge involving theft in dwelling, he was sentenced to three months' imprisonment; and with this sentence being ordered to run consecutively to the sentence for the rape charge, his total sentence was seven years' imprisonment and 15 strokes of the cane. His appeal against sentence was dismissed by the CA (*See Li Quan Mendel v PP* [2020] 2 SLR 630).

109 In the present case, while in the first stage of the *Al-Ansari* framework, I have held that deterrence and retribution have displaced the presumptive emphasis on rehabilitation, I accept that in considering the offender-specific factors at the second stage of the *Terence Ng* framework, the accused's youth carries some mitigating weight. Given his relative youth, the accused still has a prospect of rehabilitation, and a chance of turning his life around upon release from prison. While any sentence imposed must have a retributive and deterrent effect, it should also not snuff out the glimmer of hope for rehabilitation.

110 Taking into account the above factors, I am of the view that a sentence of **10 years' imprisonment and 8 strokes of the cane in respect of the 2nd Charge** is one which recognises that deterrence and retribution are the predominant sentencing considerations, but which also tempers it with the prospect of rehabilitation.

The appropriate sentences for the 1st Charge (TRC 9005498-2021) and the 3rd Charge (TRC 900502-2021)

111 I next consider the sentences to be imposed in respect of the 1st and the 3rd Charges. At the first stage of the *Pram Nair* sentencing framework, all of the

offence-specific factors which I have outlined (at [102]) in relation to the 2nd Charge are also applicable in relation to the 1st and the 3rd Charges.

112 Taking into consideration the offence-specific factors outlined above, I find that the offences described in the 1st and the 3rd Charges fall within at least the middle range of Band 2 of the *Pram Nair* framework. In my view, the starting indicative sentence should be at 13 years' imprisonment and 8 strokes of the cane (see [91(b)] above). I note that the Prosecution has submitted that the starting indicative sentence should be 12 to 14 years' imprisonment *and five to seven strokes of the cane*. This submission is at odds with the Prosecution's position that the 1st and the 3rd Charges fall within the "middle to upper end of Band 2 of the *Pram Nair* framework". For Band 2, *Pram Nair* specified a sentencing band of 10 to 15 years' imprisonment *and 8 strokes of the cane*. The Prosecution has explained how it arrived at its indicative starting position for caning by taking into account the accused's youth. For the reasons I explained earlier, I reject the Prosecution's approach and their suggested indicative starting sentence of 12 to 14 years' imprisonment *and five to seven strokes of the cane*.

113 As for the offender-specific factors to be considered at the second stage of the *Pram Nair* framework, the factors which I have outlined above (at [102] – [106]) are equally applicable. Following the same reasoning set out above (at [107] – [109]), the accused's plea of guilt and his youth carry mitigating weight which justifies a downward calibration of the indicative starting sentence. I add that although there appears to be some attempt in the mitigation plea to attribute some blame to the accused's and victim's parents for having left them alone at home, I find such argument to be devoid of merit. From the SOF, it is clear that both parents worked long hours and also took in tenants in order to provide for the family; and it was no doubt because they trusted the accused to take care of his much younger sister that he was left alone with her at home.

114 I find that **for the 1st and the 3rd Charges, a term of imprisonment of 8 years and 4 strokes of the cane *per* charge** is appropriate.

The global sentence

115 Having determined the appropriate sentence for each of the three charges, I next consider the global sentence which should be imposed in respect of all three charges. Two of the three sentences must be ordered to run consecutively. I agree with the Prosecution that the sentences for the 1st Charge and the 2nd Charge should run consecutively. This results in **a global sentence of 18 years' imprisonment and 16 strokes of the cane**.

116 I am satisfied that this global sentence does not violate the totality principle in *Shoufee*. The totality principle in *Shoufee* has two limbs: the first requires that the global sentence not be substantially above the normal level of sentences for the most serious of the individual offences committed; the second calls for consideration of whether the effect of the sentence on the accused is crushing and not in keeping with his past record and future prospects. The most serious of the individual proceeded offences is that of non-consensual penile-vaginal penetration in the 2nd Charge. I am satisfied that the global sentence of 18 years' imprisonment and 16 strokes of the cane is not substantially above the normal level of sentences meted out for such an offence; nor is it crushing and/or not in keeping with the accused's prospects.

117 I am also satisfied that the global sentence of 18 years and 16 strokes is in line with precedent. As an example: in *PP v Ridhaudin Ridhwan bin Bakri and others* [2020] 4 SLR 790, three accused persons ("Ridhwan", "Faris" and "Asep") aged between 18 and 20 were tried for offences of rape and sexual assault penetration which had been committed against the victim at a hotel formerly located along Duxton Road, Singapore (apart from the trio, there were

two other co-offenders who were also involved and had committed offences against the same complainant – however, they had elected to plead guilty and were dealt with separately: *PP v Muhammad Fadly Bin Abdull Wahab* [2016] SGHC 160). The trio and the complainant had met at a birthday party which was held at a room at the hotel. The complainant got drunk at the party; and taking advantage of her drunken state, the trio proceeded to sexually assault and rape her. The trio were charged with the following offences:

(a) **Ridhwan:** One charge of sexual assault by penetration under s 376(2)(*a*) of the Penal Code punishable under s 376(3) of the Penal Code; one charge of rape under s 375(1)(*a*), punishable under s 375(2) of the Penal Code, and one charge of using criminal force with intent to outrage the modesty of the complainant punishable under s 354(1) of the Penal Code.

(b) **Faris:** One charge of rape under s 375(1)(*a*), punishable under s 375(2) of the Penal Code and one charge of sexual assault by penetration under s 376(2)(*a*), punishable under s 376(3) of the Penal Code;

(c) **Asep:** One charge of sexual assault by penetration under s 376(1)(*a*), punishable under s 376(3) of the Penal Code and one charge of attempted rape under s 375(1)(*a*), punishable under s 375(2) read with s 511 of the Penal Code.

118 The trial judge found Ridhwan and Asep guilty of all charges. As for Faris, he was found guilty of rape, but acquitted on the charge of sexual assault by penetration: see *PP v Ridhaudin Ridhwan bin Bakri* [2019] SGHC 105 at [282]. In calibrating the appropriate sentences, amongst other considerations, the trial judge took the view (at [48]) that given the gravity of the offences committed, the youth of two of the offenders – Ridhwan and Faris – (who were

only 20 years of age at the time of the commission of the offences) was not a mitigating factor. The following sentences were meted out:

(a) **Ridhwan:** 13 years one month and 13 days' imprisonment with 13 strokes of the cane;

(b) **Faris:** 11 years ten months and 18 days' imprisonment with six strokes of the cane;

(c) **Asep:** 9 years 11 months and 28 days' imprisonment, and eight strokes of the cane.

119 Asep's appeal against his conviction was dismissed (see *Asep Ardiansyah v PP* [2020] SGCA 74). None of the trio appealed against their sentences.

120 There is also the decision of *BAB* which I have mentioned above. In that case, the accused was biologically female but had lived as a male since she was 16 years old. She maintained a charade of dressing like a man and wearing a dildo. The accused got acquainted with the victim who was her neighbour: they developed feelings for each other and eventually engaged in sexual activities. The accused was charged, and pleaded guilty to the following charges:

(a) Two charges under s 376A(1)(*b*) punishable under s 376A(3) of the Penal Code;

(b) Two charges under s 376A(1)(*b*) punishable under s 376A(2) of the Penal Code;

(c) Two charges under s 376A(1)(*b*) punishable under s 376A(2) of the Penal Code;

(d) One charge under s 7(*a*) of the Children and Young Person's Act (Cap 38, 2001 Rev Ed).

121 The accused consented for some 14 other charges to be taken into consideration for the purposes of sentencing. The CA imposed a global sentence of 10 years' imprisonment – but the sentence meted out in this case must be treated with some degree of caution when relied on as precedent given the CA's comments in *Pram Nair* which I have highlighted above (at [94]).

122 Apart from *BAB*, there is also the *ex-tempore* judgment of the CA in *Muhammad Anddy Faizul bin Mohd Eskah v Public Prosecutor* [2020] SGCA 113 ("*Anddy Faizul*"). The accused in that case had faced a total of 68 charges arising out of sexual offences involving 19 victims. At the time of the offences, the accused was approaching 16 years of age, and by the date of the last offence, he was 18 years old (*Anddy Faizul* at [3]). The accused pleaded guilty to and was convicted on nine charges, with the remaining charges being taken into consideration for the purposes of sentencing. The High Court Judge ordered the following three sentences to run consecutively (resulting in an overall sentence of 22 years' imprisonment and 24 strokes of the cane):

(a) A count of aggravated statutory rape of victim number 5 punishable under s 375(1)(*b*) read with s 375(3)(*b*) of the Penal Code ("the 25th charge"). The accused was sentenced to nine years' imprisonment and 12 strokes of the cane for this offence.

(b) A count of sexual assault by penile-oral penetration of victim number 6 punishable under s 376(1)(*a*) read with s 376(3) of the Penal Code ("the 30th charge"). The accused was sentenced to six years' imprisonment and four strokes of the cane for this offence.

(c) A count of sexual assault by penile-anal penetration of victim number 11 punishable under s 376(1)(*a*) read with s 376(3) of the Penal Code ("the 47th charge"). The accused was sentenced to seven years' imprisonment and four strokes of the cane for this offence.

123 The accused appealed against his sentence. The CA, in dismissing the appeal, found little reason to disagree with the High Court Judge's ruling on the applicable sentences for each charge. The CA noted, in particular that the sentences imposed for the 25th and 30th charges which respectively concerned "rape and sexual assault, were below the lowest end of the sentencing frameworks in *Pram Nair* and *Terence Ng*". It was therefore, in the CA's view, clear that the accused's mitigating factors and the totality principle had been given "sufficient consideration and resulted in these comparatively low sentences" – crucially, there was little doubt that had the accused been older, his sentence would have been more severe (*Anddy Faizul* at [11]). The CA further noted that "[i]n view of the number of victims involved and the range and number of offences, the imposition of three sentences to be run consecutively properly reflected" the accused's culpability.

Conclusion

124 In summary, the accused is sentenced to a total of 18 years' imprisonment and 16 strokes of the cane. The imprisonment term is backdated to his date of arrest, 11 November 2020.

Mavis Chionh Sze Chyi
Judge of the High Court

Yap Wan Ting Selene and Tay Xin Ying Michelle for the Public Prosecutor.
Vangadasalam Suriamurthi (V. Suria & Co) for the defendant.

Annex

Penal Code provisions dealing with rape and sexual assault penetration pre-2019 amendments

Rape

375.—(1) Any man who penetrates the vagina of a woman with his penis —

(a) without her consent; or

(b) with or without her consent, when she is under 14 years of age,

shall be guilty of an offence.

(2) Subject to subsection (3), a man who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning.

(3) Whoever —

(a) in order to commit or to facilitate the commission of an offence under subsection (1) —

(i) voluntarily causes hurt to the woman or to any other person; or

(ii) puts her in fear of death or hurt to herself or any other person; or

(b) commits an offence under subsection (1) with a woman under 14 years of age without her consent,

shall be punished with imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning with not less than 12 strokes.

(4) No man shall be guilty of an offence under subsection (1) against his wife, who is not under 13 years of age, except where at the time of the offence —

(a) his wife was living apart from him —

(i) under an interim judgment of divorce not made final or a decree nisi for divorce not made absolute;

(ii) under an interim judgment of nullity not made final or a decree nisi for nullity not made absolute;

(iii) under a judgment or decree of judicial separation; or

(iv) under a written separation agreement;

(b) his wife was living apart from him and proceedings have been commenced for divorce, nullity or judicial separation, and such proceedings have not been terminated or concluded;

(c) there was in force a court injunction to the effect of restraining him from having sexual intercourse with his wife;

(d) there was in force a protection order under section 65 or an expedited order under section 66 of the Women's Charter (Cap. 353) made against him for the benefit of his wife; or

(e) his wife was living apart from him and proceedings have been commenced for the protection order or expedited order referred to in paragraph (d), and such proceedings have not been terminated or concluded.

(5) Notwithstanding subsection (4), no man shall be guilty of an offence under subsection (1)(b) for an act of penetration against his wife with her consent.

Sexual assault by penetration

376.—(1) Any man (A) who —

(a) penetrates, with A's penis, the anus or mouth of another person (B); or

(b) causes another man (B) to penetrate, with B's penis, the anus or mouth of A,

shall be guilty of an offence if B did not consent to the penetration.

(2) Any person (A) who —

(a) sexually penetrates, with a part of A's body (other than A's penis) or anything else, the vagina or anus, as the case may be, of another person (B);

(b) causes a man (B) to penetrate, with B's penis, the vagina, anus or mouth, as the case may be, of another person (C); or

(c) causes another person (B), to sexually penetrate, with a part of B's body (other than B's penis) or anything else, the vagina or anus, as the case may be, of any person including A or B,

shall be guilty of an offence if B did not consent to the penetration.

(3) Subject to subsection (4), a person who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning.

(4) Whoever —

(a) in order to commit or to facilitate the commission of an offence under subsection (1) or (2) —

(i) voluntarily causes hurt to any person; or

(ii) puts any person in fear of death or hurt to himself or any other person; or

(b) commits an offence under subsection (1) or (2) against a person (B) who is under 14 years of age,

shall be punished with imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning with not less than 12 strokes.

Sexual penetration of minor under 16

376A.—(1) Any person (A) who —

(a) penetrates, with A's penis, the vagina, anus or mouth, as the case may be, of a person under 16 years of age (B);

(b) sexually penetrates, with a part of A's body (other than A's penis) or anything else, the vagina or anus, as the case may be, of a person under 16 years of age (B);

(c) causes a man under 16 years of age (B) to penetrate, with B's penis, the vagina, anus or mouth, as the case may be, of another person including A; or

(d) causes a person under 16 years of age (B) to sexually penetrate, with a part of B's body (other than B's penis) or anything else, the vagina or anus, as the case may be, of any person including A or B,

with or without B's consent, shall be guilty of an offence.

(2) Subject to subsection (3), a person who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 10 years, or with fine, or with both.

(3) Whoever commits an offence under this section against a person (B) who is under 14 years of age shall be punished with

imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning.

(4) No person shall be guilty of an offence under this section for an act of penetration against his or her spouse with the consent of that spouse.

(5) No man shall be guilty of an offence under subsection (1)(a) for penetrating with his penis the vagina of his wife without her consent, if his wife is not under 13 years of age, except where at the time of the offence —

(a) his wife was living apart from him —

(i) under an interim judgment of divorce not made final or a decree nisi for divorce not made absolute;

(ii) under an interim judgment of nullity not made final or a decree nisi for nullity not made absolute;

(iii) under a judgment or decree of judicial separation; or

(iv) under a written separation agreement;

(b) his wife was living apart from him and proceedings have been commenced for divorce, nullity or judicial separation, and such proceedings have not been terminated or concluded;

(c) there was in force a court injunction to the effect of restraining him from having sexual intercourse with his wife;

(d) there was in force a protection order under section 65 or an expedited order under section 66 of the Women's Charter (Cap. 353) made against him for the benefit of his wife; or

(e) his wife was living apart from him and proceedings have been commenced for the protection order or expedited order referred to in paragraph (d), and such proceedings have not been terminated or concluded.

Penal Code provisions dealing with rape and sexual assault penetration post-2019 amendments

Rape

375.—(1) Any man who penetrates the vagina of a woman with his penis —

(a) without her consent; or

(b) with or without her consent, when she is below 14 years of age,

shall be guilty of an offence.

(1A) Any man (A) who penetrates, with A's penis, the anus or mouth of another person (B) —

(a) without B's consent; or

(b) with or without B's consent, when B is below 14 years of age,

shall be guilty of an offence.

(2) Subject to subsection (3), a man who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning.

(3) Whoever —

(a) in order to commit or to facilitate the commission of an offence under subsection (1) or (1A) —

(i) voluntarily causes hurt to any person; or

(ii) puts a person in fear of death or hurt to that person or any other person;

(b) commits an offence under subsection (1) or (1A) against a person below 14 years of age without that person's consent; or

(c) commits an offence under subsection (1) or (1A) against a person below 14 years of age with whom the offender is in a relationship that is exploitative of that person,

shall be punished with imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning of not less than 12 strokes.

(4) No man shall be guilty of an offence under subsection (1)(b) or (1A)(b) for an act of penetration against his wife with her consent.

(5) Despite section 79, no man shall be guilty of an offence under subsection (1)(a) or (1A)(a) if he proves that by reason of mistake of fact in good faith, he believed that the act of penetration against a person was done with consent.

(6) No man shall be punished under subsection (3)(b) if he proves that by reason of mistake of fact in good faith, he believed that the act of penetration against a person below 14 years of age was done with consent.

Sexual assault involving penetration

376.—(1) [Deleted by Act 23 of 2021 wef 01/03/2021]

(2) Any person (A) who —

(a) sexually penetrates, with a part of A's body (other than A's penis, if a man) or anything else, the vagina or anus, as the case may be, of another person (B);

(b) causes a man (B) to penetrate, with B's penis, the vagina, anus or mouth, as the case may be, of another person including A; or

(c) causes another person (B), to sexually penetrate, with a part of B's body (other than B's penis, if a man) or anything else, the vagina or anus, as the case may be, of any person including A or B,

shall be guilty of an offence if B did not consent to the penetration or if B is below 14 years of age, whether B did or did not consent to the penetration.

(3) Subject to subsection (4), a person who is guilty of an offence under this section shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning.

(4) Whoever —

(a) in order to commit or to facilitate the commission of an offence under subsection (2) —

(i) voluntarily causes hurt to any person; or

(ii) puts any person in fear of death or hurt to himself or any other person;

(b) commits an offence under subsection (2) against a person below 14 years of age without that person's consent; or

(c) commits an offence under subsection (2) against a person below 14 years of age with whom the offender is in a relationship that is exploitative of that person,

shall be punished with imprisonment for a term of not less than 8 years and not more than 20 years and shall also be punished with caning with not less than 12 strokes.

(5) No person shall be guilty of an offence under subsection (2) —

(a) for an act of penetration against his or her spouse with the consent of that spouse; or

(b) if despite section 79, that person proves that by reason of mistake of fact in good faith, the person believed that B mentioned in those subsections did consent to the penetration and B was not below 14 years of age.

(6) No person shall be punished under subsection (4)(b) if the person proves that by reason of mistake of fact in good faith, the person believed that the act of penetration against a person below 14 years of age was done with consent.

Sexual penetration of minor below 16 years of age

376A.—(1) Any person (A) who —

(a) penetrates, with A's penis, the vagina, anus or mouth, as the case may be, of a person below 16 years of age (B);

(b) sexually penetrates, with a part of A's body (other than A's penis, if a man) or anything else, the vagina or anus, as the case may be, of a person below 16 years of age (B);

(c) causes a man below 16 years of age (B) to penetrate, with B's penis, the vagina, anus or mouth, as the case may be, of another person including A; or

(d) causes a person below 16 years of age (B) to sexually penetrate, with a part of B's body (other than B's penis, if a man) or anything else, the vagina or anus, as the case may be, of any person including A or B,

shall be guilty of an offence.

(1A) This section does not apply to an act of penetration mentioned in subsection (1) which would constitute an offence under section 375(1)(a), 375(1)(b) read with section 375(3), 375(1A)(a), 375(1A)(b) read with section 375(3), 376(2) (if the victim B is of or above 14 years of age) or 376(2) (if the victim B is below 14 years of age) read with section 376(4).

(1B) To avoid doubt —

(a) it is not necessary for the prosecution to prove that B did consent to an act of penetration mentioned in subsection (1); and

(b) it is not a defence that B did consent to that act.

(2) Whoever commits an offence under this section against a person (B) who is of or above 14 years of age but below 16 years of age —

(a) in a case where the offender is in a relationship that is exploitative of B, shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning; and

(b) in any other case, shall be punished with imprisonment for a term which may extend to 10 years, or with fine, or with both.

(3) Whoever commits an offence under this section against a person (B) who is below 14 years of age shall be punished with imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning.

(4) No person shall be guilty of an offence under this section for an act of penetration against his or her spouse with the consent of that spouse.