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

[2023] SGHC 74

Magistrate's Appeal No 9695 of 2020/01

Between

Loh Siang Piow @ Loh Chan Pew

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Offences — Sexual offences — Outrage of modesty]

TABLE OF CONTENTS

Loh Siang Piow (alias Loh Chan Pew)
v
Public Prosecutor

[2023] SGHC 74

General Division of the High Court — Magistrate's Appeal No 9695 of 2020/01
Hoo Sheau Peng J
13 August 2021, 11 August 2022

30 March 2023 Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 This is an appeal by Mr Loh Siang Piow @ Loh Chan Pew ("Mr Loh") against his conviction on two counts of outrage of modesty under s 354(1) of the Penal Code (Cap 224, Rev Ed 2008) ("Penal Code") and the global sentence of 21 months' imprisonment imposed on him by the learned District Judge (the "District Judge"). The District Judge's decision is found in *Public Prosecutor v Loh Siang Piow @ Loh Chan Pew* [2021] SGMC 16 dated 12 March 2021 (the "GD"), with further reasons contained in *Public Prosecutor v Loh Siang Piow @ Loh Chan Pew* [2022] SGMC 13 dated 9 February 2022 (the "Remittal Findings").

2 Mr Loh is a seasoned track and field coach of considerable reputation and standing in the athletics community in Singapore. At the material time, the

complainant, to be referred to as Ms C, was an athlete training with Mr Loh. According to Ms C, Mr Loh molested her under the guise of giving her massages after their individual training sessions on 24 February 2013 and 15 March 2013. I pause to highlight that at that time, there was a prevalent practice in the athletic community for coaches to give trainees massages after intensive training. Mr Loh admits that he had given Ms C such massages once or twice, but he denied the molest allegations. He also sought to provide alibis on the dates of the alleged offences.

3 Given that there were *no* witnesses to the alleged offences, the case largely pitted Ms C's accusation against Mr Loh's denial. At the outset, it is critical to emphasise that where a complainant's uncorroborated testimony forms the sole basis for conviction, the court must be persuaded that the complainant's testimony is "unusually convincing", such that her testimony, when weighed against all the other available facts, leaves no reasonable doubt as to the accused's guilt. It should also be borne in mind that whatever view the court may take of the defence, it remains the Prosecution's burden to prove the elements of an offence beyond a reasonable doubt. With these guiding principles in mind, I turn to consider the merits of the appeal.

Facts

Background facts

4 The facts have been extensively set out in the GD, and I provide a brief overview. At the material time, Mr Loh was 68 years old. He is now 79 years old. Mr Loh joined the Singapore Prison Service in 1965, and he retired as a Deputy Superintendent in 2002. As stated at [2] above, Mr Loh is also a prominent figure in the local track and field scene. In his coaching career

spanning 35 years, he had coached 600 to 700 athletes.[1] He had served as the Vice-President of the Singapore Athletics Association ("SAA").[2]

5 Ms C was born in 1994 and was 18 years old at the material time.[3] At present, she is around 28 years old. In junior college, she competed in short-distance sprints. A promising athlete, she was referred by her track teacher, Ms Michelle Eng ("Ms Eng"), to Mr Loh for track training under him.[4] Ms C started training under Mr Loh in early December 2012.[5] This was after she had completed her A-level examinations. She would attend group training sessions with other "private athletes" who were not participating as part of official school training. These other "private athletes" included:[6]

(a) Ms W (the only other female "private athlete");

(b) Mr Zaki Sapari (deceased);

(c) Mr Toh Wee Hong ("Mr Toh");

(d) Mr Jonathan;

(e) Mr Oon Kuan Yong; and

(f) Mr Eugene Tan.

---

1 Records of Appeal ("ROP") at p 1837, lines 5 to 27.

2 ROP at p 1899, lines 21 to 32.

3 ROP at p 157, lines 23 to 26.

4 ROP at p 170, lines 27 to 31; p 162, at lines 23 to 32; p 1878, lines 23 to 30.

5 ROP at p 175, lines 3 to 7.

6 ROP at p 175, line 31 to p176, line 24; p 177, lines 23 to 27; p 622, lines 12 to 16.

The Prosecution's case

6 The Prosecution's case is that in or around end January 2013, barely two months after Ms C started group training sessions with Mr Loh, Mr Loh invited her to attend one-on-one training sessions with him. Ms C testified that she attended a total of four individual training sessions with Mr Loh, with the likely dates to be 17 February 2013, 24 February 2013, 10 March 2013 and 15 March 2013 respectively. According to her, all four individual training sessions were held at the old Tampines Stadium (which has since been demolished). They were held either in the morning starting from about 9am to 10am, or in the evening starting at about 4pm to 5pm. They lasted about 1½ hours.[7]

7 Ms C says that the incidents in the first and second charges occurred on the second and fourth training sessions respectively. Her account of the four individual training sessions is summarised below:

(a) For the first session on 17 February 2013, Ms C says that Mr Loh offered to give her a "cool down massage". She thought it was normal given the prevalent practice of coaches massaging their athletes, and she had received such massages before. He massaged her legs for about five to ten minutes while she was lying in a prone position on a bench along a corridor on the same level as the track beside the spectator's stand. Nothing untoward happened on this occasion.[8]

(b) For the second session on 24 February 2013, Ms C says that Mr Loh similarly gave her a "cool down massage" on the bench along the

---

7 ROP at p 192, lines 19 to 32, p 203, lines 13 to 16.

8 ROP at p 187, lines 10 to 23.

corridor.[9] However, on this occasion, she says that Mr Loh massaged her from the back of her calves up to her thighs, briefly touching her multiple times in between her thighs, on her "vagina", over her tights using his thumb. In cross-examination, she described the brief contact as "brush and rub" and "touch-and-move".[10] This formed the subject matter of the first charge, which states that Mr Loh rubbed Ms C's "*vulva region* over her clothing in the course of massaging the back of her thighs [emphasis added]", and that this allegedly happened at or around 12pm or at or around 6pm that day.

(c) For the third session on 10 March 2013, Ms C says that her father accompanied her to this training after she told her mother that she was uncomfortable with Mr Loh's massage on 24 February 2013. No massage took place after this training session.[11]

(d) For the fourth session on 15 March 2013, Ms C says that Mr Loh offered her a "cool down massage" to which she said "no" but he told her "just massage".[12] She says that Mr Loh then led her into an equipment room under the spectator's stand[13] and massaged her on a massage bed inside the room.[14] She says that on this occasion, Mr Loh's thumb pressed into her "vagina" (the part in between her thighs and her groin) over her tights and he continued to rub the area for about 10 to 15 seconds before she asked him to stop, to which Mr Loh responded "just

9 ROP at p 196, lines 21 to 29.

10 ROP at p 199, lines 12 to 22; p 427, lines 5 to 6.

11 ROP at p 204, lines 6 to 31.

12 ROP at p 222, lines 6 to 16.

13 ROP at p 223, lines 4 to 30.

14 ROP at p 223, lines 4 to 30.

relax".[15] She further says that she squeezed her thighs together to "block" his fingers from "having access" "to wherever he was trying to rub",[16] but his thumb remained squeezed in between her thighs because Mr Loh was forcing his thumbs to be there with a lot of pressure.[17] She says that at some point, she experienced a "sick feeling" of being unable to control her body.[18] She attributed this to her having experienced an orgasm. This was the subject matter of the second charge, which states that Mr Loh rubbed Ms C's "*vulva region* over her clothing in the course of massaging the back of her thighs [emphasis added]", and again, this allegedly happened at or around 12pm or at or around 6pm that day.

8 More than three years later, on 30 July 2016, Ms C lodged the first information report ("FIR").

The Defence's case

9 Mr Loh denied the charges. He denied that he conducted any individual training sessions for Ms C. As he had many trainees under his charge, he only conducted individual training sessions for the top athletes. He, however, conceded that as a coach, once or twice, he had provided massages to Ms C. After speed training, lactic acid would build up, and the "rub down" sessions would loosen up the muscles.[19] This would extend from the hamstrings up to the thighs. In his police statement, he explained that he provided such massages to

---

15 ROP at p 230, lines 6 to 7 and p 233, lines 1 to 26.

16 ROP at p 230, lines 7 to 12.

17 ROP at p 233, lines 27 to 32.

18 ROP at p 230, lines 13 to 19.

19 ROP at p 1570 line 7 to p 1571 line 30.

other trainees, explaining that it is "one of the essential things a coach would do".[20]

10 In addition, Mr Loh advanced alibi defences to show that he was not at Tampines Stadium on the likely dates of the alleged offences. His account of events for the dates of the alleged individual training sessions is summarised as follows:

(a) On 17 February 2013, Mr Loh testified that he conducted a group training session for Ms C, Mr Eugene Tan and Mr Oon Kuan Yong.

(b) On 24 February 2013, Mr Loh testified that there was no training that day because he was celebrating the final day of the Lunar New Year ("*Chap Goh Meh*") with his extended family. He had gone marketing in the morning for some two hours at two different markets.[21] He returned home at around 12pm to prepare for prayers.[22] His siblings came over to his home for prayers at around 3pm, after which they had dinner from around 6pm to around 8pm.[23] Mr Loh's brother testified he had gone to Mr Loh's home for *Chap Goh Meh*; he also borrowed a jacket from Mr Loh that day.[24] Mr Loh's wife also testified that she recalled Mr Loh's brother trying on Mr Loh's jackets and chatting with Mr Loh.[25]

---

20 ROP at 3715, Answer to Q17, Exh P25, Annex A.

21 ROP at p 1583 line 31 to p 1584 line 10.

22 ROP at p 1584, lines 13 to 16.

23 ROP at p 1584, line 31 to p 1585, line 7.

24 ROP at p 2323, lines 20 to p 2324, line 3.

25 ROP at p 2255, lines 13 to 17.

(c) On 10 March 2013, Mr Loh testified that he attended an event named the "Venus Run" with one Mr Tan Wei Leong ("Mr Tan WL") in the morning.[26] Mr Tan WL was the coach and founder of Zoom Club, an athletic organisation which was officially sanctioned by the SAA on August 2012.[27] After that, Mr Loh testified that Mr Tan WL and he had lunch and attended the Akira Swift 60th Anniversary Track and Field Championship 2013 (the "Swift Event") at Toa Payoh Stadium from 2pm to around 4pm.[28] Following that, the two went to a coffeeshop until around 6pm before he left for home.[29]

(d) For 15 March 2013, Mr Loh testified that he conducted a training session for CHIJ Toa Payoh students that afternoon at the Bishan Stadium.[30] He relied on the testimony of Ms Mylvaganam Jayalaxmi ("Ms Jayalaxmi"), then the teacher-in-charge for cross-country and long-distance runners at CHIJ Toa Payoh, and Ms Amirah Aljunied ("Ms Amirah"), then a student at CHIJ Toa Payoh at the material time. After the training which ended at around 6pm, Mr Loh testified that Mr Terry Tan picked him up from Bishan Stadium to discuss a controversy over competing organisations seeking to hold tug of war competitions in Singapore.[31] Mr Terry Tan was a Deputy Superintendent in the

---

26 ROP at p 1597, lines 11 to 27.

27 GD at [244].

28 ROP at p 1599, lines 17 to 26.

29 ROP at p 1608, lines 11 to 32.

30 ROP at p 1747, line 31 to p 1748, line 10.

31 ROP at p 1659, line 10 to p 1660, line 8.

Singapore Prison Service who joined the service in 1999 and a fellow office holder at the SAA.[32]

Decision below

11 I turn to the decision below. The District Judge found Mr Loh guilty on both charges and sentenced Mr Loh to eight months' imprisonment for the first charge and 13 months' imprisonment for the second charge to run consecutively.[33]

12 The District Judge found that Ms C's testimony satisfied the "unusually convincing" threshold. He found Ms C's narration of the progression of Mr Loh's acts of sexual offending *internally consistent*.[34] Nothing untoward occurred on the first training session, which explained why Ms C had thought nothing of proceeding with the second session on 24 February 2013. Mr Loh's intrusion on the second session caused Ms C some alarm and she sought some measure of protection by bringing her father along for the third session on 10 March 2013. Even though nothing untoward happened on the third session, Ms C sought other trainees to go with her to Tampines Stadium for the fourth session on 15 March 2013, and it was only at 3.34pm that day that she realised that she would be training alone.[35] The District Judge found that Ms C was lucid and cogent in expressing herself despite the difficulties inherent in having to revisit and articulate a patently traumatic experience.[36]

---

32 GD at [163].

33 GD at [455].

34 GD at [352].

35 GD at [355].

36 GD at [365].

13 The District Judge found that Ms C's testimony was *externally consistent* with the testimonies of her parents, Ms W (a fellow "private athlete" training with Mr Loh), and Mr A (Ms C's friend in whom Ms C confided).[37] In particular, the District Judge found that Ms C's father's account "added immeasurably to the extrinsic consistency" because he testified that he had been present at an individual training session between Ms C and Mr Loh.[38] The father's evidence was that it started raining during the training which was consistent with metrological evidence for Tampines Stadium showing an episode of rain between 5pm and 6pm on 10 March 2013.[39]

14 The District Judge also found that Ms C's testimony cohered with sets of near-contemporaneous communications of the alleged acts of molestation.[40] These included:

(a) Ms C's WhatsApp message to Ms W, a fellow private trainee, on 17 March 2013 at 11.36pm, in which Ms C asked Ms W not to leave her to train alone with Mr Loh. Ms C further said, "I rily [sic] don't like it when he massages, feels like he's molesting me or smth, kept rubbing my groin", to which Ms W replied "Rly? Kinda felt the same way too like weird".[41]

(b) Ms C's message to Mr A, her close friend and track and field senior in junior college, on 30 March 2013, in which she stated "I think Mr. Loh molested me, idk ... Like I asked [Ms W] and she said that she

---

37 GD at [371].

38 GD at [379].

39 GD at [379].

40 GD at [371].

41 GD at [31].

felt the same thing but she didn't tell anyone".[42] When Mr A inquired more about Mr Loh's acts of molestation, Ms C said "it's always like in a room alone and I told him to stop but he went like just relax" and "Yeah it kinda got worse, like first few times, he just touched".[43]

(c) Ms C's message to Ms Eng on 2 June 2016, at 3.52pm in which Ms C stated "Rmb last time I told you [M]r Loh massaged me and made me uncomfortable, I didn't rily [sic] tell you what exactly happened. He kinda made me train individually with him on three occasions and kept massaging me further and further up my thighs, in this equipment room behind the spectator stands and eventually he rubbed me down there."[44]

15 The District Judge also found that the inconsistencies in Ms C's testimony did not materially affect her credibility because she had provided adequate explanations for them. For instance, Ms C initially identified the second charge to have occurred on Sunday, 17 March 2013, but changed her testimony on the fifth day of trial and claimed that it occurred on Friday, 15 March 2013 instead. The District Judge accepted Ms C's explanation that she had erroneously deduced the date of the second charge from the dates of her WhatsApp chats with Ms W and Mr A.[45] He also noted that Mr Loh has not shown that Ms C had any malicious intention to frame Mr Loh.[46]

---

42 GD at [34].

43 GD at [34].

44 GD at [306]

45 GD at [128].

46 GD at [373].

16 The District Judge rejected all of Mr Loh's alibi accounts for 24 February 2013, 10 March 2013 and 15 March 2013 and found that Mr Loh had failed to establish his alibi defences on a balance of probabilities:[47]

(a) In relation to Mr Loh's alibi for 24 February 2013, the District Judge rejected his defence because there was no documentary evidence that he had gone marketing with his wife to prepare for *Chap Goh Meh*.[48] The District Judge disbelieved Mr Loh's brother's account that he borrowed a jacket from Mr Loh to attend his wife's award ceremony because the letter from his wife's employer announcing the conferment of the award was dated 11 March 2013, which was 15 days after 24 February 2013 and Mr Loh's brother could not have had prophetic foresight of the award.[49] The District Judge also disbelieved Mr Loh's wife's testimony because she merely recounted what the family would usually do on *Chap Goh Meh* and had no distinct recollection of 24 February 2013.[50]

(b) In relation to Mr Loh's alibi for 10 March 2013, the District Judge rejected his defence because there is no documentary evidence of his presence at the Swift Event. Mr Loh and his witness, Mr Tan WL, were unable to name a single athlete who attended the Swift Event and identify them, despite them occupying a conspicuous part of the Toa Payoh Stadium where athletes reported for their events. Neither of them

47 GD at [332], p 211.

48 GD at [332], p 211.

49 GD at [332], p 212.

50 GD at [332], p 212.

had seemed aware of a spell of rain in the late afternoon to early evening of 10 March 2013 which was indicated by the meteorological reports.[51]

(c) In relation to Mr Loh's alibi for 15 March 2013, the District Judge rejected Mr Loh's alibi because of inconsistencies between Mr Loh's testimony and that of Ms Jayalaxmi and Ms Amirah regarding the nature of the training that day.[52] Neither Ms Jayalaxmi's attendance record, nor Mr Loh's payment form, included 15 March 2013 as a training date.[53] The District Judge believed the Prosecution's rebuttal witness, Mr Daryl Chan ("Mr Chan"), a track teacher at CHIJ Toa Payoh, who testified that there was no official training for track athletes on 15 March 2013 because Friday trainings had been replaced by Tuesday trainings for the entire first quarter of 2013.[54] The District Judge disbelieved Mr Terry Tan's testimony because he found it unreasonable and irrational for Mr Terry Tan to make a circuitous trip to pick Mr Loh from Bishan Stadium to discuss a simple problem which they could have discussed over phone or text.[55]

17 The District Judge went on to find that Mr Loh's alibi accounts on 10 March 2013 and 15 March 2013 were "*Lucas* Lies" (see *Regina v Lucas (Ruth)* [1981] 3 WLR 120 ("*Lucas*")) which further corroborated the Prosecution's case.

---

51 GD at [332], p 213.

52 GD at [332], p 214.

53 GD at [391].

54 GD at [332], p 214.

55 GD at [332], p 215.

18 Lastly, the District Judge also found that Mr Loh's act of gathering photographs he took with Ms C and Ms W before he met the police on 2 August 2016 for his statement to be recorded suggested that he knew the identities of both his accusers even prior to the meeting. This was therefore indicative of his guilty conscience.[56] In this connection, the District Judge rejected Mr Loh's explanation that IO Goh Teck Heng ("IO Goh") revealed the names of the complainant to him in a phone call on 31 July 2016, reasoning it was implausible for an experienced investigation officer of 28 years' standing to have made such a fundamental error as to reveal the names of the victims of sexual offences to a suspect.[57]

19 In relation to sentencing, the District Judge applied the sentencing framework laid down by the High Court in *Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580 ("*Kunasekaran*") and held that both offences fell within Band 2 of *Kunasekaran*, the indicative sentencing range of which would be five to 15 months' imprisonment. The first charge fell within the moderate end of Band 2 because of the shorter duration of contact, whereas the second charge fell within the extreme end of Band 2 given the longer duration of the contact and the pressure Mr Loh applied on Ms C's vagina which caused Ms C to have experienced the involuntary orgasm.[58]

20 On 4 June 2021, Mr Loh filed HC/CM 54/2021 to adduce fresh evidence consisting of a statutory declaration from Ms Amelia Monteiro ("Ms Monteiro") dated 21 Oct 2020, testifying that she was with Mr Loh at Choa Chu Kang stadium on 31 July 2016 and that she overheard the police informing Mr Loh of

---

56 GD at [258].

57 GD at [268].

58 GD at [449].

the names of the complainants over the phone. I remitted the matter to the District Judge to take additional evidence on, *inter alia*, the timing of the race Ms Monteiro participated in on 31 July 2016 and what Ms Monteiro heard Mr Loh say in the purported phone call.

21 On 9 February 2022, the District Judge found that the additional evidence had no effect on Mr Loh's guilty verdict. In the Remittal Findings, he found Ms Monteiro's testimony to be unreliable because of her inconsistencies with Mr Loh's testimony as to the number of calls from IO Goh and the exact words said by IO Goh during the calls.[59] He also found Ms Monteiro's evidence to be classic hearsay and held that it is a "massive leap of conjecture" for Ms Monteiro to conclude that the caller was a police officer who had uttered the names of the complainants.[60]

The parties' cases on appeal

The appellant's arguments

22 In his appeal against the conviction for both charges, Mr Loh challenges the credibility of Ms C's testimony on the grounds that:

(a) Ms C could not remember, *inter alia,* the timings of the alleged individual training sessions and how the sessions were arranged;

---

59 Supplementary Record of Appeal ("Supp ROP") at p 369, Grounds of Decision (Findings of Remittal Hearing) ("Remittal Findings") at [29]; p 378, Remittal Findings at [43].

60 Supp ROP at p 388, Remittal Findings at [59].

(b) for the first charge, Ms C was unsure whether the alleged contact with her vagina was accidental and she had suspected that it might be because Mr Loh was "so old and big and clumsy";[61]

(c) Ms C was flippant in her testimony on the exact part of her vagina that Mr Loh allegedly touched for the second charge;[62]

(d) the descriptions of both alleged incidents of molest are anatomically awkward, if not downright impossible; [63]

(e) Ms C's apparent normalcy and delay in reporting after the alleged incidents were inconsistent with that of a victim of molest;[64]

(f) The near-contemporaneous communications with her friends were inaccurate, and show Ms C to be prone to exaggeration; and

(g) Ms C's testimony is inconsistent with that of the other witnesses. This is especially when Ms C testified that she had informed her mother that she felt uncomfortable with Mr Loh's massage after the incident in the first charge, but both her parents testified that they were only made aware of the allegation of molest after Ms C made the police report.[65]

23 Mr Loh argues that the District Judge had applied the wrong standard of proof in holding that "the burden is on the defence to establish an alibi on a

---

61 Appellant's Case ("AC") at para 17.

62 ROP at pp 1024 to 1026.

63 AC at para 51.

64 AC at para 67.

65 AC at para 136 to 137.

balance of probabilities".[66] He relies on the cases of *Ramakrishnan s/o Ramayan v Public Prosecutor* [1998] SGHC 273 ("*Ramakrishnan*") and *Syed Abdul Aziz v PP* [1993] 3 SLR(R) 1 (*"Syed Abdul Aziz*") and argues that the burden of proving his alibi is only an evidential burden on the defence and all that the defence has to do is to raise a reasonable doubt.

24 Mr Loh further argues that the District Judge erred in rejecting his alibis:

(a) In relation to his alibi on 24 February 2013, Mr Loh argues that the District Judge was too quick in disbelieving his brother's testimony that he borrowed a jacket from Mr Loh on *Chap Goh Meh*, especially when his brother's testimony is corroborated by his wife.[67]

(b) In relation to his alibi on 15 March 2013, Mr Loh argues that the District Judge was too quick to reject Ms Jayalaxmi's and Ms Amirah's testimony merely because the attendance records did not show any training on 15 March 2013, since both witnesses have testified that it was "light training" which may not have been recorded.[68] Mr Loh also argues that it is unfair and unsafe for the District Judge to dismiss Mr Terry Tan's testimony simply because Mr Terry Tan took a circuitous journey to Bishan Stadium to discuss an issue with Mr Loh.[69]

(c) In relation to his alibi on 10 March 2013, Mr Loh argues that the District Judge should not have disbelieved Mr Tan WL's testimony merely because of minor inconsistencies such as the weather on the day,

---

66 AC at para 25.

67 AC at para 40 to 42.

68 AC at paras 86 and 88.

69 AC at para 102.

especially when Mr Tan WL had a good recollection of what transpired that day.[70]

25 Mr Loh further argues that even if the District Judge disbelieved the testimonies of the alibi witnesses, he should not have found that Mr Loh's alibis constituted *Lucas* Lies given that there was no specific finding that any of the witnesses were lying.[71]

26 Mr Loh also contends that District Judge erred in drawing inferences about Mr Loh's guilty conscience from his knowledge of the complainants' identities and the proximate dates of the offences before he met the police on 2 August 2016. He argues that the District Judge should not have rejected the testimony of Ms Monteiro for minor inconsistencies.

27 Mr Loh further argues that the Prosecution has breached its disclosure duty under *Muhammad bin Kadar v PP* [2011] 4 SLR 1205 ("*Kadar*") and *Muhammad Nabill bin Mohd Faud* [2020] SGCA 25 ("*Nabill*"), in failing to disclose (a) Ms C's statements to the police; and (b) Ms Eng's other statements to the police.

28 To round up, Mr Loh argues that at the end of the day there is a "very real possibility that this may have been a case of a mistaken impression by [Ms C], which she had gradually built up over time with the echo chamber that was her private discussions with her personal friends." This has not been considered by the District Judge.[72]

---

70 AC at para 218.

71 AC at para 81.

72 AC at para 10.

29 In relation to his appeal against sentence, Mr Loh argues that the first charge should have been placed at the *lowest end* of Band 2 and the second charge should have fallen within the *lower to middle end* of Band 2, reasoning that (a) there was no skin-to-skin contact for both offences; (b) there was no evidence that Ms C suffered from emotional trauma; (c) Ms C was not a minor and should not be considered a vulnerable victim; and (d) there was no premeditation or deception by Mr Loh.[73] He also argued that insufficient weight has been given to the mitigating factors, such as his lifelong contributions to the athletics scene in Singapore and to the Singapore Prison Service.[74]

30 Based on the above, he submits for a sentence of five months' imprisonment for the first charge, and seven to ten months' imprisonment for the second charge. He asks for the sentences to be ordered to run concurrently, giving a global sentence of between seven to ten months' imprisonment.[75]

The Prosecution's arguments

31 The Prosecution argues that the District Judge is correct in assessing Ms C to be an unusually convincing witness. He based this on "the strength of her testimony, when analysed with the supporting evidence, as well as the case presented by the defence, within the factual matrix of the case."[76]

32 The Prosecution argues that Ms C's evidence was internally consistent, even after extensive cross-examination. She had provided compelling and detailed evidence of both incidents, which showed a logical progression and

---

73 AC at para 257.

74 AC at para 286.

75 AC at paras 283 and 284.

76 Respondent's Case ("RC") at para 53; GD at [134]

testing of boundaries by Mr Loh.[77] Ms C's change in position concerning the date of the second charge does not dent her internal consistency. The Prosecution refers to the case of *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2018] 4 SLR 1315 in which the court held that the victim's mistake in the date alone is insufficient to dent her internal consistency, given that the trial occurred some four years later after the alleged incidents of abuse.[78]

33 The Prosecution further argues that Ms C's post-incident conduct, *ie*, her apparent normalcy and delay in reporting to the police, is reasonable and coheres with her testimony that she had great difficulty processing and coming to terms with Mr Loh's actions, and that she was angry and upset at him for what he had done to her.[79] The delay in reporting, submits the Prosecution, has been reasonably explained.[80]

34 Further, Ms C's testimony was supported by an abundance of near-contemporaneous text messages, twitter posts, and witnesses.[81] In particular, the District Judge was right to observe that the Whatsapp messages with Ms W and Mr A could not have been fabricated in 2013 only for her to wait three years to make allegations against Mr Loh.[82]

35 The Prosecution also submits that the District Judge is correct to reject Mr Loh's alibi defences and that the burden of proof falls on a defendant to prove the defence of alibi on a balance of probabilities under s 105 of the

---

77 RC at paras 55 and 56.

78 RC at para 64.

79 RC at para 69.

80 RC at para 73.

81 RC at para 74.

82 RC at para 78.

Evidence Act (Cap 97, 1997 Rev Ed) ("EA").[83] The Prosecution further submits that even on the lower threshold of reasonable doubt, Mr Loh has not adduced sufficient evidence to raise a reasonable doubt that he was not at Tampines Stadium at the material time of the offences.[84]

36 The Prosecution further argues that the District Judge was correct in rejecting Ms Monteiro's evidence given that (a) the timing of the IO Goh's call and the timing of her morning race makes it impossible for her to have been with Mr Loh at the material time;[85] and (b) her testimony is contradicted by Mr Loh's testimony.

37 The Prosecution finally argues that it did not breach any of its disclosure obligations under *Nabill* and *Kadar*.

38 Turning to sentencing, the Prosecution argues that the individual and global sentence are appropriate.

Issues on appeal

39 Based on the parties' submissions, in relation to conviction, these are the main issues that arise for my determination:

(a) Whether the District Judge erred in accepting Ms C's testimony ("Issue 1");

(b) Whether the District Judge erred in rejecting Mr Loh's alibi defence on a balance of probabilities and in finding that Mr Loh's

---

83 RC at para 110.

84 RC at para 111.

85 Respondent's Further Submissions ("RFS") at para 16.

accounts of the events of 10 March 2013 and 15 March 2013 amounted to "*Lucas* Lies" ("Issue 2");

(c) Whether the District Judge erred in drawing inferences of Mr Loh's guilty conscience based on his conduct of gathering photographs of Ms C and Ms W before meeting the police on 2 August 2016 ("Issue 3");

(d) Whether the District Judge erred in finding that Ms C is an unusually convincing witness ("Issue 4"); and

(e) Whether the Prosecution has failed to comply with its disclosure obligations under *Kadar* and *Nabil* ("Issue 5").

The appellate court's role

40 Apart from Issue 3 which involves legal arguments on the burden and standard of proof for an alibi defence, the appeal essentially challenges the District Judge's factual findings. I begin by affirming the well-established position that in assessing findings of facts made by a trial judge, an appellate court's role is limited. Where the appellant seeks to appeal against a finding of fact that hinges on the trial judge's assessment of the credibility and veracity of witnesses based on the demeanour of witnesses, the appellate court would intervene only if the finding of fact can be shown to be plainly wrong or against the weight of the evidence. An appellate court may also intervene if after taking into account all the advantages available to the trial judge, it concludes that the verdict is wrong in law and therefore unreasonable: *ADF v Public Prosecutor* [2010] 1 SLR 874 ("*ADF*") at [16(a)]. However, where a finding of fact by the trial judge is based on inferences drawn from the internal consistency (or lack thereof) in the content of the witnesses' testimony or the external consistency

between the content of their testimony and the extrinsic evidence, the appellate court is in as good a position as the trial court to assess the veracity of the witnesses' evidence (*ADF* at [16(b)]).

Issue 1: Whether the District Judge erred in accepting Ms C's evidence

Analysis of Ms C's evidence for the first charge

41 I turn to analyse Ms C's evidence on the substance of the first charge, being her description of the alleged massage on 24 February 2013. Ms C described that Mr Loh started massaging her calves, after which he moved up to her thighs and that "his hand would unnecessarily go so high up and his thumb was just touching *there* multiple times [emphasis added]".[86] When asked to identify more precisely which part of her body Mr Loh came into contact with, Ms C responded, "My vagina. But isn't it the correct --- it's not the correct term?" Then, she further said, "It's like the part in between my legs".[87] Ms C then explained that Mr Loh would repeat the process of moving from the bottom of her thigh to the top of her thigh and that "somehow, his thumb had to just ... be in contact... as though it was an accidental part of the massage".[88] The brief contact was described as "touch-and-move" and "brush and then rub", and Ms C said she felt the contact around five times.[89]

42 My first observation is that Ms C was hesitant about using the word "vagina". When she did, she used it quite imprecisely to refer to a "part in between the legs". From her vague answers, it appears unclear whether Ms C's

---

86 ROP at p 199, lines 17-22.

87 ROP at 200, lines 2 to 6.

88 ROP at p 201, lines 12-15.

89 ROP at p 202, lines 3 to 5.

complaint related to specific contact with the vaginal area, or any other part in between her legs. In this connection, I note that the first charge states that the contact is on the "vulva region". Therefore, it is not the Prosecution's case that there was any intrusion into the *vagina.* That said, based on Ms C's use of "vagina" in relation to the "part in between [her] legs", I proceed on the basis that the claimed contact was at the vulva region as particularised in the first charge. However, this problem with the identification of where she was touched also arose again in relation to the second charge, and I shall return to discuss this aspect at [74] below.

43 Despite claiming that she felt the contact around five times, Ms C was unsure whether the alleged contact was merely an "accidental part of the massage"[90]. This is surprising. Ms C said she had suspected that it might be because Mr Loh is "so old and big and clumsy".[91] I am mindful that Ms C's perception of whether the contact was accidental is not wholly determinative of whether Mr Loh had intentionally touched Ms C at the vaginal area, and whether he did so knowing it to be likely that he would outrage her modesty. However, Ms C's testimony is the *only* direct evidence upon which the Prosecution had relied on to establish the first charge. The fact that even Ms C could not be certain as to whether Mr Loh had touched her accidentally is cause for caution. The question is whether the elements of the first charge can be safely inferred from Ms C's narrative.

44 One possible inference from Ms C's narrative is that Mr Loh intentionally touched her at the vaginal area under the guise of giving her a massage. However, an equally plausible inference is that Mr Loh was genuinely

---

90 ROP p 200, lines 23-32.

91 ROP p 201, lines 12-15.

massaging Ms C's legs but accidentally brushed against Ms C at the vaginal area when he was massaging Ms C's thighs. The latter inference is not an unreasonable one and is consistent with the manner of the massage as described by Ms C. Ms C testified that Mr Loh was pressing his fingers on her thighs and moving his hands from the bottom to the top of her thighs. In so doing, it is possible that his thumb could have accidentally come into brief contact with Ms C's vaginal area, particularly when his hands were massaging Ms C's upper thighs. This is consistent with Ms C's testimony that only his thumb came into contact with her vaginal area, while the rest of his fingers remained on her thighs.[92] The repeated motion of the massage (*ie* from the bottom to the top of Ms C's thighs) could have also explained the repetitive brief contact with Ms C's vaginal area. It bears reminding that it is a little unclear from Ms C's evidence which part in between her legs she was touched. I should also add that the massage took place over tights which Ms C was wearing. As discussed at [78] below, the "stretchable fabric" might have resulted in Ms C's impression of pressure being applied at the vaginal area.

45 With two equally reasonable inferences that can be drawn from Ms C's description of the incident, with respect, the District Judge's reliance on Ms C's testimony in support of the first charge is of concern. As I will go on to elaborate, the difficulties I have with Ms C's testimony are further exacerbated by the numerous inconsistencies between Ms C's testimony and her contemporaneous communications with Ms W, Ms Eng and Mr A, as well as her parents' testimonies.

---

92 ROP at p 201, lines 1 to 10.

Inconsistencies between Ms C's testimony and the contemporaneous communications

46 Contrary to the District Judge's finding at [14] above, I am of the view that Ms C's near-contemporaneous communications with Ms W, Mr Ang and Ms Eng do not support Ms C's testimony that she was molested on 24 February 2013. Indeed, at most, these communications seem to relate to the second charge rather than the first charge.

47 First, in relation to Ms C's WhatsApp message to Ms W (see [14(a)] above), the date of the WhatsApp message is 17 March 2013, which is two days *after* the date of alleged offence in the second charge (*ie*, 15 March 2013). As a matter of chronology, it is unclear whether Ms C's complaint to Ms W was made with specific reference to Mr Loh's actions in relation to the first charge. The timing of her message suggests that it would have been made in relation to the second incident. As an aside, I note that the original date for the second charge was 17 March 2013, and this message would have been even more closely tied to that occasion. Moreover, the content of her message, *ie*, "I rily [sic] don't like it when he massages, feels like he's molesting me or smth, kept rubbing my groin",[93] is ambiguous. There is no clear reference in her message to Ms W that supports her testimony that she was describing an earlier occasion of molest.

48 Second, turning to Ms C's text conversation with Mr A, her good friend and senior in junior college, on 30 March 2013, the context of the conversation was that Mr A had earlier revealed to Ms C that he was planning to "come out" about his homosexual orientation.[94] Ms C felt a reciprocal desire to share about

---

93 GD at [31].

94 GD at [34].

something she had been keeping from him[95] and therefore told Mr A "I think Mr. Loh molested me, idk ... Like I asked [Ms W] and she said that she felt the same thing but she didn't tell anyone".[96] When Mr A inquired more about Mr Loh's acts of molestation, Ms C said "it's always like in a room alone, then I told him to stop but he went like just relax", and that Mr Loh "kept rubbing [her] groin until [she] got that weird feeling.[97] Mr A then encouraged Ms C to confront the matter, to which she replied "I wanted to tell [Ms Eng] but I nvr got to see her then quite weird to tell her that her coach's like sick ... I won't dare ... I'm gna be another [Ms W]". Mr A then sought to convince Ms C to inform Ms Eng and said "[d]o it, or I'll ask for you".[98]

49 Ms C's description of the molest to Mr A, that it occurred in a room and that he kept rubbing her groin until she "got that weird feeling", were clear references to the allegations in the second charge rather than in the first charge. It does not support Ms C's testimony in relation to the first charge in which she alleged that Mr Loh molested her in a public area beside the spectator's stand, in a "touch-and-move" and "brush and rub" manner. For completeness, Ms C mentioned to Mr A that "it's *always* like in a room alone" and that "it kinda got worse, like *first few times* he just touched".[99] Admittedly, these messages appear to refer to previous acts of molest. However, the messages suggest that any previous act of molest happened in a room while she was alone with Mr Loh. The messages do not gel with the evidence she gave in respect of the first charge.

---

95 GD at [34].

96 GD at [34].

97 ROP at p 3553.

98 GD at [37].

99 ROP at p 3555.

50 Furthermore, the insinuation from these messages is that Mr Loh had molested Ms C on *many* previous occasions, and that it was a pattern for Mr Loh to molest her while she was alone in a room with him. These aspects are inconsistent with Ms C's testimony that she was molested on *only* two occasions, *one* of which occurred in the equipment room. As will be seen below, Ms C's communications tended *not* to be consistent with her testimony (including her account for the second charge). I am mindful that the informal communications between friends should be considered in context, and to allow for a degree of inconsistencies within Ms C's testimony. However, foreshadowing what is to come, in my view, a line has been crossed, and the internal inconsistencies and problematic aspects of her evidence as revealed by these messages tip Ms C's testimony into the unsatisfactory realm.

51 Reading Ms C and Mr A's communications in totality, I agree with Mr Loh that after Mr A shared with Ms C that he was homosexual, it appears that Ms C was prompted to reciprocate and share an equally important secret. She may have then exaggerated her discomfort over Mr Loh's massages and accentuated her vulnerability in an attempt to match the weight of Mr A's secret. This context undermines the reliability of the contents of the communications with Mr A.

52 I turn to Ms C's communications with Ms Eng on 2 June 2016. Again, I first set out the context of this set of communications. After Ms C's exchange with Mr A on 30 March 2013, Ms C testified that she was taken by surprise when Ms Eng approached her at the National Schools Championship 2013 and queried "[Mr A] says you have something to tell me".[100] She told Ms Eng that

---

100 GD at [41].

"Mr Loh massaged me until I [felt] very uncomfortable".[101] When Ms Eng enquired when this had happened, Ms C says she told Ms Eng "whenever I train with him alone". When Ms Eng asked about where Mr Loh touched her, Ms C said "well, my legs" and did not give any more explicit details. Ms C said that Ms Eng defended Mr Loh and suggested that the contact had likely been "not on purpose" and that maybe it was because Mr Loh was "so old that he doesn't understand what the comfort level of a massage should be".[102] Ms C did not proceed to disclosure further details on that occasion as she perceived Ms Eng's apparent defensiveness in issues relating to Mr Loh and because of the long-shared personal history between the two. However, it is worth highlighting that in March 2013, despite being asked specifically about the matter by Ms Eng, Ms C did not disclose any contact by Mr Loh at the vaginal area. Instead, she spoke only about being uncomfortable with the massages on her legs, which would be consistent with Mr Loh's version of having given "rub down" sessions to her.

53 Three years later, on 2 June 2016, at 3.52pm, Ms C texted Ms Eng to give a more detailed account of what had transpired because she was concerned that a new batch of promising female trainees would be sent to Mr Loh for training.[103] An extract of the parties' exchange is set out below:

> Ms C: Hi [M]s eng, can I be rily [*sic*] honest w you. [Remember] last time I told you [M]r Loh massaged me and made me uncomfortable, I didn't rily [*sic*] tell you what exactly happened. *He kinda made me train individually with him on three occasions and kept massaging me further and further up my thighs, in this equipment room behind the spectator stands*

101 ROP at p 260, lines 22 to 23.

102 ROP at p 260, lines 24 to 31.

103 ROP at p 3528.

> *and eventually he rubbed me down there. And I was scared and I didn't know what to do and I said stop but he just told me to relax. And I tried closing my thighs tight but he kept rubbing me until I came and I didn't know what an orgasm was and how wrong it was until [Mr A] tried explaining to me and told me to quit***.** I think I just spent rily [*sic*] long crying and feeling very dirty but when I tried to explain to you that time I didn't dare say it**.** I told [Ms W] what had happened and she told me he did the same to her too when she continued training with him after graduating from [name of school] but she just tried to forget about it. That's kinda why I stopped running and she stopped training under him, I'm scared you'll send the juniors to train under him when they graduate so just letting you know.
>
> Ms Eng: Thanks for telling me… [m]ust have taken you a lot to tell me all this … I am so sorry that I put you through this … Did he actually remove any clothing? And also, what happened after he did it? Did he ask any questions also? Which stadium was this?
>
> Ms C: Cos I just shared it with a few of my friends [yesterday] and when you came I realized the juniors now are rlly [*sic*] good and you might send them to him. I didn't want to tell you cos I know how much you respect him. I treated him like a dad too. And no it's rlly [*sic*] not your fault atll [*sic*]! He was good at track but maybe not so much as a person. He didn't remove anything, I was wearing tights.
>
> Ms Eng: I'm so so so sorry.
>
> Ms C: *The first time he massaged my calves, the second time my upper thighs and the third time it went there. And I didn't know I was orgasmingg* [*sic*] *so my body kept moving and it was so weird and I tried to hold everything in until he stopped.*
>
> [emphasis added]

54 As evident from the above, Ms C's main complaint to Ms Eng clearly pertained to the allegations in the second charge, and not the first charge. Indeed, a closer reading of Ms C's last message in the exchange above suggests that Mr Loh massaged her calves on the first individual training, her upper thighs on the

second individual training (presumably when the alleged first offence occurred) and only touched her vaginal area on the last training. These occasions occurred in the equipment room. On that score, her account of the first incident to Ms Eng also differed materially from that alleged in the first charge as to where Mr Loh touched her, and where it took place. I should also point out that in this exchange, Ms C spoke of *three* and not *four* individual training sessions with Mr Loh. The inconsistency in relation to the number of individual training sessions is one which I shall return to below at [66].

55 Notwithstanding the numerous inconsistencies between Ms C's testimony and her communications with Ms W, Mr A and Ms Eng as highlighted above, the District Judge relied on these communications in accepting Ms C's testimony for the first charge. In my view, such reliance is wholly misplaced. For the reasons mentioned above, I am of the view that contrary to the District Judge's analysis, an analysis of Ms C's communications with Ms W, Mr A and Ms Eng about Mr Loh's conduct do not actually lend support to Ms C's account of the first charge. In fact, to some extent, they undermine the cogency of her evidence.

Inconsistencies between Ms C's testimony and her parents' testimony

56 Next, I am deeply troubled by the contradiction of Ms C's evidence by her parents. Ms C testified that after the second individual training, she informed her mother that Mr Loh massaged her during their individual training sessions which made her uncomfortable. Ms C further testified that her mother then asked Ms C's father to accompany her to the alleged third individual training

session.[104] However, these aspects of her testimony were flatly contradicted by *both* her parents' testimonies.

57 Ms C's father testified he brought Ms C to training for the alleged third individual training session because it was raining, and it was an opportunity for him to meet Mr Loh.[105] He further stated that it was not because his wife had asked him to do so after Ms C expressed discomfort. Ms C's father also testified that he only knew about the allegation of molest after Ms C made the police report in 2016.[106]

58 Similarly, Ms C's mother testified that she did not know about any allegation of molest until the night before Ms C made the police report in 2016.[107] She says that she remembered the incident where Ms C had asked her father to accompany her to the tracks, but did not know why Ms C wanted her father to send her. She further testified that Ms C did not say anything else to her. Had she known about the alleged molest, she would have lodged a complaint then, and would not have waited until years later to bring up this case.[108]

59 Given that both Ms C's parents testified that they only knew about the allegations of molest before Ms C made the police report in 2016, I am of the view that Ms C's evidence that she informed her parents about her discomfort with Mr Loh's massage after the alleged molest in the first charge is unreliable.

---

104 ROP at pp 204 to 205.

105 ROP at p 51.

106 ROP at p 62.

107 ROP at p 107.

108 ROP at p 116.

Had she truly complained to her parents about her discomfort with Mr Loh's massage on 24 February 2013, it is highly unlikely that *both* her parents would forget about such a significant complaint. This also bolstered my view that there is no contemporaneous evidence supporting Ms C's allegation that the alleged molest in the first charge had occurred.

60 I turn to the District Judge's treatment of the parents' evidence. The District Judge did not fault Ms C's mother for her inability to remember Ms C's complaints of her discomfort with Mr Loh's massages, given the effluxion of time between February 2013 and July 2016.[109] Furthermore, the District Judge found that the inconsistencies between Ms C's testimony and that of her parents showed that all three family members gave their testimonies independently and eschewed from colluding to render accounts of a "picture-perfect" consistency.[110] In other words, without discounting Ms C's evidence on these aspects, the District Judge also forgave the parents' fallibility in recall. I digress to remark that unfortunately, in my view, the same leniency has not been extended to many of the Defence witnesses' evidence on account of the lapse of time. For now, the point to be made is that, had Ms C informed them of her complaint, it is highly unlikely that both parents would have completely forgotten about it. This is especially so when Ms C's mother testified that she would have lodged the complaint years ago had she known about the alleged molest, which demonstrated how seriously Ms C's mother would have taken issues pertaining to an outrage of her daughter's modesty. It seems to me that these are material inconsistencies between the evidence of Ms C, and the testimonies of her parents. Not only do these material inconsistencies affect Ms

---

109 GD at [70].

110 GD at [70].

C's evidence on the first charge, they also taint her evidence on the second charge. In other words, they affected her overall credibility.

Ms C's omission to mention the incident in the first charge in the first information report

61 Moving on, I note that even when Ms C made her complaint to the police in 2016, she did not mention the incident in the first charge at all. The FIR provided that "on the above mentioned date, time and location, my modesty was being outraged". The date and time of incident was stated to be "01/03/2013 18:00".[111] Ms C has admitted in cross-examination that this incident referred to that in the second charge which occurred during the fourth individual training session.[112] The matters in the first charge were raised later.

Failure to recall other details of the first charge

62 Finally, I note that Ms C was also unable to recount several details of the alleged individual training on 24 February 2013. In particular, she could not remember (a) how the individual training was arranged by Mr Loh, (b) whether the training session occurred in the morning or the evening; and (c) whether there had been other individuals present in the stadium.[113] Despite the frequency of the group training sessions, it is noteworthy that it was Ms C's position that there were *only* four individual training sessions. While I agree with the Prosecution that given the passage of time, certain leeway should be given to Ms C for not being able to pinpoint the precise date and time of the individual

111 ROP at p 3581.

112 ROP at p 502, lines 13-18.

113 GD at [17] to [22].

training sessions, the lack of specificity is still relevant in an assessment of Ms C's testimony.

Conclusion on the first charge

63 To sum up, not only does Ms C's account suffer from the lack of specificity on the details of the training on 24 February 2013, it also contains a crucial concession that she did not know if Mr Loh's contact with the vaginal area was an "accidental part of the massage". In fact, Ms C was not entirely clear where she was touched. Also, Ms C did not specifically raise the incident with Ms W, Mr A or Ms Eng. Indeed, her own messages to them are inconsistent with her account. Ms C claimed to have expressed her discomfort to her parents, and that was why her father accompanied her to the third training session. However, her testimony is not supported by either of her parents. Even if I were to take Ms C's evidence at its highest, there remains a reasonable doubt as to whether Mr Loh had intentionally touched Ms C at the vulva region over her tights, knowing it to be likely that he would outrage Ms C's modesty. Therefore, it is plainly wrong for the District Judge to rely on her account to convict Mr Loh of the first charge.

Analysis of Ms C's evidence for the second charge

64 Unlike the first charge, if Ms C's account for the second charge were to be accepted, there is no difficulty inferring that the elements under s 354(1) of the Penal Code are established. This is because Ms C testified that Mr Loh's thumb pressed into her vagina over her tights and continued to rub the area, despite her asking him to stop. However, as I will elaborate below, Ms C's testimony for the second charge is rife with inherent difficulties, including (a) her change in position in relation to the date of the charge; (b) her inability to

recall important details of the second charge; and (c) her conduct after the occurrence of the alleged event.

Ms C's change in position on the date of the second charge

65 Initially, Ms C claimed that the second charge occurred on Sunday, 17 March 2013. On the fifth day of trial, Ms C changed her testimony and claimed that the second charge occurred on Friday, 15 March 2013. The District Judge readily accepted Ms C's explanation that she had erroneously deduced the date of the second charge based on the dates of her WhatsApp chats with Ms W and Mr A.[114] While a victim's inability to specify precise dates and times is not necessarily fatal to the Prosecution's case (*Tay Wee Kiat* at [32]), I am of the view that in this case, how Ms C came to change her position during the trial, and the impact of this change in date on the other aspects of her evidence, shake her credibility. I elaborate.

66 Originally, Ms C's firm position was that *all* the individual training sessions held by Mr Loh were on Sundays because Sundays were the only days when the trainees had *no* group training.[115] Also, Ms C testified that she was able to identify the date of the second charge as 17 March 2013 with "great accuracy" because she remembered sharing with Ms W about her discomfort "on that day itself".[116] She also testified that "[she] know[s] there was not one training where [she] was the only one feeling so sicked out by him and not mention it to anyone because *[she] knew immediately* … Because [she] *immediately* told [Ms W]" [emphasis added].[117] She also testified that "[she]

---

114 GD at [128].

115 ROP at p 179, line 30; ROP at p 571.

116 ROP at p 242, lines 22-32.

117 ROP at p 243, lines 3-7.

spent *the day* trying to convince herself, to pretend like nothing happened" before she told Ms W that night, *ie*, the night of 17 March 2013.[118]

67 Unfortunately, the "about-turn" came about *after* Mr Loh adduced evidence that he was involved in the SPH Schools Relay over the weekend of 16 to 17 March 2013. Such evidence meant that he could not have given Ms C any individual training session on 17 March 2013.

68 Ms C's change in date from 17 March 2013 to 15 March 2013 meant that she would have spent three whole days keeping the matter to herself, which contradicted her testimony that she "knew immediately" and "immediately told [Ms W]" that night. Considering Ms C's initial position that the second charge occurred on 17 March 2013 and her explanation that she informed Ms W immediately that night, it appears to me that at the very least, Ms C had exaggerated her certainty of the date of the second charge and embellished her initial evidence to present a more persuasive case against Mr Loh.

69 The change of the date meant that the fourth alleged individual training occurred on a Friday instead of a Sunday. After the change of date for the second charge, Ms C conceded she could no longer be sure if all the individual training days fell on Sundays.[119] This cast some doubt over whether any individual training session took place at all, as there were usually group training sessions on *all* the other days of the week.

70 Further, this change in position is also material because unlike the routine group training sessions, there were purportedly *only* four individual

---

118 ROP at p 246, lines 26-28.

119 ROP at p 571.

training sessions. These should have stood out in her training schedule. As I pointed out above at [54], her evidence with regards these individual training sessions is also weakened by the WhatsApp message to Ms Eng (see [14(c)] and [53] above), in which she spoke of only *three* (and not *four*) individual training sessions with Mr Loh. I also refer to my discussion at [114] below, where the Whatsapp messages exchanged with Mr Toh cast some doubt whether Mr Loh invited her for individual training sessions as she claimed (see [6] above).

71 Based on all these circumstances, Ms C's change in position as to the date of the second charge cannot be regarded lightly. Certainly, it should not be considered as a mere error of recollection, and the District Judge had been overly lenient in disregarding this shift in her testimony.

Unsatisfactory aspects of Ms C's account

72 Having reviewed Ms C's evidence, I also find Ms C's recollection of the second charge to be fragmented and incomplete. On one hand, Ms C seems to be able to recall, in remarkable detail, the chronology of the events on 15 March 2013 and her surroundings during the alleged offence. She testified that Mr Loh insisted on giving her a massage, and led her to an equipment room to do so. They had to pass through two doors and an office before getting there.[120] She provided a vivid description of the equipment room, saying that she saw a massage bed that was wide enough for one person,[121] and cages for balls and equipment on the left side of the room.[122] She further testified that her legs were facing the door and her head was facing a wall about three to four metres

120 ROP at p 236, lines 24-33.

121 ROP at p 227, lines 20-22.

122 ROP at p 223, lines 18-30.

away,[123] with a wall also on the right side about two metres away,[124] and cages and equipment on the left side about three to four metres away.[125]

73 In view of Ms C's allegation in the first charge, Ms C's version that Mr Loh was able to persuade her to proceed with him to the equipment room for a massage in a private area is not, in my view, entirely persuasive. Be that as it may, more importantly, I am troubled by Ms C's inability to recall other crucial facts in relation to the incident, including the act of molest itself. Not only was Ms C unable to remember (a) the time of the training for the second charge; (b) whether she went to the training after work; and (c) her mode of transport to the training, she was unable to even remember whether the training was in the morning or evening.[126] At first, she testified that she went with Mr Loh for dinner at Han's after the training but subsequently said that "[she] really could not remember whether it was lunch or dinner".[127] Given that Ms C had based her recollection off "mental images",[128] one would expect her to be at least able to recall whether the sky was bright or dark when she went for a meal with Mr Loh after the alleged offence. It was not until well into cross-examination that she stated that it should have been around 7.30pm – when the sky was getting dark – that they went out for dinner.[129]

---

123 ROP at p 227, lines 10-32.

124 ROP at p 228, lines 20-23.

125 ROP at p 228, line 27 to p 229, line 24.

126 ROP at pp 220-221.

127 ROP at p 231, lines 19-21

128 ROP at p 328, lines 23-32

129 ROP at p 1053 lines 25 – 32.

74 More importantly, I was disturbed by Ms C's inability to describe where exactly she was touched by Mr Loh. In her examination-in-chief, she referred to the "vagina", and explained that it was the part in between her thighs and her groin (see [7(d)] above). Once again, like the first charge, it is not the Prosecution's case that there was any intrusion into the *vagina.* Like the first charge, the second charge concerns contact with the vulva region over her tights (see [42] above).

75 Returning to Ms C's evidence, even when she was given a doll to demonstrate the exact part of her vagina that she claimed Mr Loh touched, she was unable to point to the exact part she was touched.[130] When asked whether Mr Loh's thumbs reached the opening of her vagina, her response was "[m]ost likely, yes" and that "until now, [she] also don't know".[131] When pressed further on whether the thumb reached her clitoris, her answer was "it must have reached" and "or shall I just say yes, it did reach".[132] Her qualified answers suggest that she was unsure about where exactly Mr Loh touched her, even though she testified that Mr Loh touched her vagina for 10 to 15 seconds on this occasion and caused her to experience an involuntary orgasm. In this regard, I should add that Ms C's inaccurate references to being touched on the "groin" in WhatsApp messages with Ms W and Mr A (see [47] and [48] above) added to the unsatisfactory state of her evidence.

76 The District Judge found no reason to fault Ms C for what he described as an "idiosyncratic" account from her. He found that Ms C is "academically brilliant but sexually naive". He observed that she is an "observant Christian"

---

130 ROP pp 1020-1021

131 ROP at p 1024, lines 5 to 14

132 ROP at p 1026, lines 6 to 14.

who attended "convent schools". He noted that she was "brought up in a conservative and heavily religiously observant background".[133] In my view, Ms C's sexual naivety and conservative upbringing are not sufficient reasons, in themselves, to justify her inability to describe more accurately where she was touched, especially given the serious nature of the second charge. I accept that Ms C was sexually inexperienced. That said, the District Judge should have given more weight to the fact that Ms C was not, by any stretch of the imagination, a young ignorant child. She had completed her A-level examinations at a good junior college. She had studied the anatomy of the female reproductive system in biology classes in school.[134] As the District Judge acknowledged, she secured a place at the medical faculty in a local university, before deciding to pursue studies in a different professional discipline. By the time of the trial, she was in her twenties. Even if Ms C could not name the anatomical parts intruded upon with accuracy, with the aid of a doll, she should have been able to point out where she was violated in relation to the second charge.

77 I turn to another aspect of Ms C's account which I found extremely disconcerting. Initially, Ms C did not attribute the "weird feeling" she experienced during the alleged offence in the second charge as an "orgasm". It was Mr A who suggested to her that what she had experienced was an "orgasm". Thereafter, Ms C adopted this as part of her narrative. The District Judge reasoned that it was because of Ms C's inexperience that she required Mr A to explain to her that she had experienced an orgasm – a known physiological reaction.[135] However, the Prosecution concedes that it is not their case that what

---

133 GD at [27] and [418].

134 ROA at p 426, lines 22-23.

135 GD at [27].

she experienced was physiologically an "orgasm" or that her body was actually moving during the incident. Their submission is that her description shows the intensity of her experience, provided "depth of detail", and "bears the ring of truth".[136] Reluctantly, I disagree with the Prosecution. Like her inaccurate references to various anatomical terms, including "vagina", I am not persuaded that Ms C used the word "orgasm" with true appreciation of its meaning. Her loose use of the word seems to be, in my view, a form of embellishment. The fact that she attributed the "weird feeling" to an "orgasm" after being prompted by Mr A also suggests, as Mr Loh argues (as set out in [28] above), that her communications with Mr A could have fostered an "echo chamber" which amplified her pre-existing beliefs (mistaken) that she had been molested.

78 To round off, Ms C claims that she was wearing tights at the material time. The District Judge explained that "the stretchable fabric of [Ms C's] tights would make it difficult to pin-point exactly where the pressure was being exerted, as the stretch of the fabric would tend to diffuse rubbing and touching sensations".[137] However, by that same reasoning, it is equally plausible that Mr Loh was simply giving Ms C an innocent massage on her thighs and the "stretchable fabric of her tights" caused Ms C to feel pressure being exerted on her vaginal area. This, as Mr Loh surmises, might have led to misunderstanding on her part.

79 For completeness, in *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 ("*GCK*"), the Court of Appeal cautioned against making generalisations about the victim's memories of the offence because "an individual's capacity for observation and memory recall may not always lie on

136 RC at [57].

137 GD at [351].

a continuum even when the account in question concerns events occurring within the same episode" (*GCK* at [113]). I am mindful of this and appreciate that victims of sexual offence may not remember every aspect of their traumatic experience and that alone does not undermine the credibility of their testimony. However, where the victim's testimony forms the sole basis of the Prosecution's case, the lack of specificity on important details of the offence may still be relevant in determining whether the Prosecution has proved its case beyond a reasonable doubt.

Ms C's immediate conduct after the alleged offence in the second charge

80 I now turn to the subsequent conduct of Ms C. Immediately after the alleged incident on 15 March 2013, Ms C said that she felt disgusted, and that she cried in private. But after that, she composed herself, and went out for a meal with Mr Loh. Then, at 9.24pm, Ms C posted on her Twitter account: "Prettiest crescent moon so many stars in the sky :)".[138] One "Iggy" replied to her post and asked her how her timed trial was, to which she responded, "surprisingly easy only 80 x 3 hehehe", followed by "I got lucky :D". The usage of smiley emoticons and the tone of the post and the messages indicate that Ms C was in a jovial mood at the material time when she posted them. Ms C admitted during cross-examination that her messages sounded jovial, but she insisted that "deep down" she was not feeling that way.[139]

81 The District Judge found that Ms C's apparent normalcy after the second charge did not undermine her testimony, reasoning that different victims may react differently to sexual offences. He further found that Ms C wished to "cast

---

138 ROA at p 3597.

139 ROP at p 1148, lines 8 to 18.

aside gross things" and focus on "positive aspects of life",[140] which is consistent with the reaction of a victim who is seeking to forget or come to terms with the sexual offence committed against her.

82 While I agree that a victim of sexual crimes cannot be straitjacketed into an expectation that he or she must act or react in a certain manner (*GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048 at [20]), this does not obviate the need of the court to examine the internal consistency of the victim's testimony, especially when the victim's post-offence behaviours appear clearly inconsistent with the gravity of the alleged offence.

83 In the present case, I am of the view that Ms C has not provided a sufficient explanation for her seemingly jovial mood merely hours after the alleged molest in the second charge had occurred, especially when she testified that it was an egregious act and she had purportedly experienced an involuntary orgasm. When asked how she could still be in the mood to admire the moon and the stars, Ms C's response was: "I was like, *why would I post something like that on the day itself* but maybe I was like trying to distract myself or something, I really don't know" [emphasis added].[141] She further explained that "*maybe* [she] just wanted to cast aside the gross thing and focus on the positive aspects of life" [emphasis added].[142]

84 It is clear from Ms C's uncertain answers that she could not remember or explain why she could be in the mood to post such messages. Ms C's explanations that she was trying to "distract [herself]" and focus on the positive

---

140 GD at [368].

141 ROP at p 1059.

142 ROA at p1060.

aspects of life" are qualified by the term "maybe", which indicates that these explanations are merely afterthoughts or *ex post facto* rationalisations of the Twitter post. Furthermore, as I discussed at [66] above, Ms C testified that she was feeling so "sicked out" that she *immediately* confided in Ms W on the night of the second charge. This was her evidence before the change of date of the second charge from 17 to 15 March 2013. For present purposes, what I am concerned about is that Ms C's account of her state of mind that made her want to confide in Ms W *immediately* after the second charge is somewhat contradictory to her explanations with regards the Twitter post.

85 In all these circumstances, it seems to me that the District Judge was too ready to accept Ms C's explanations, and as a result, failed to give weight to the objective evidence of Ms C's state of mind at the relevant time.

Conclusion on the second charge

86 To sum up, Ms C's sudden shift in position on the date of the second charge in the middle of the trial affected her previous stance that all the individual training sessions were held on Sundays, which once again undermined her intrinsic consistency. Her inability to recall material details of the second charge and to more accurately describe the exact part of her body that Mr Loh had allegedly touched also affect the cogency of her account.

87 While I agree with the District Judge that there is no reason for Ms C to fabricate her near-contemporaneous WhatsApp messages with Ms W, Mr A and Ms Eng, the exchanges must be treated with caution. As I pointed out at [50], [54] and [75] above, Ms C's messages contain inconsistencies with her version in court about the events. She had also exaggerated aspects of the events, especially to Mr A. Even in court, her account of where she was touched has

been unclear, and her account that she allegedly experienced an involuntary orgasm from the violation of her body seemed to be an embellishment (see [77]). Taken together with her apparent state of mind hours after the alleged offence, I am of the view that the District Judge's reliance on Ms C's evidence for the second charge is misplaced.

Conclusion on Ms C's evidence

88 I now expand on the applicable legal principles for assessing Ms C's evidence. As alluded to at the outset at [3], it is well-established that in order for an accused to be convicted of an offence based on the complainant's testimony alone, the complainant's evidence must be unusually convincing to overcome any doubt that might arise from the lack of corroboration (*Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2019] 2 SLR 490 at [58]; *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [111]). I pause to observe that subsequent repeated complaints by a victim cannot, in and of themselves, constitute corroborative evidence so as to dispense with the requirement for "unusually convincing" testimony (*AOF* at [114]). This would apply to Ms C's complaints in the near-contemporaneous exchanges with Ms W, Mr A and Ms Eng, as well as her subsequent discussions with Ms W and Mr A.

89 It should be noted that the "unusually convincing" standard is not a "test", but rather, a heuristic tool in determining whether the evidence of an uncorroborated witness is sufficient in itself to secure a conviction (*GCK* at [91]). A complainant's testimony would be "unusually convincing" if the testimony, when weighed against the overall backdrop of the available facts and circumstances, contains the ring of truth which leaves the court satisfied that no reasonable doubt exists in favour of the accused" (*Haliffie bin Marnat v Public Prosecutor and other appeals* [2016] 5 SLR 636 at [28]). In assessing whether

a witness's testimony meets the "unusually convincing" standard, the court must consider the totality of the evidence, including the Defence's case (*GCK* at [144]).

90 That said, the ultimate inquiry that the court has to make is whether the case against an accused has been proved by the Prosecution beyond a reasonable doubt (*GCK* at [91]). The Court of Appeal at [145], [149(e)] and [149(f)] of *GCK* held that:

> 145 Conversely, what the Defence needs to do to bring the Prosecution's case below the requisite threshold is to point to such evidence that is capable of generating a reasonable doubt … If the Prosecution fails to rebut such evidence, it will necessarily fail in its overall burden of proving the charge against the accused person beyond a reasonable doubt. ***We would add that such evidence need not necessarily be raised (in the sense of being asserted, or being made the subject of submissions) by the Defence in order for it to give rise to a reasonable doubt. What matters is that a reasonable doubt arises (in whatever form) from the state of the evidence at the close of the trial.***
>
> …
>
> [149e] The principle of proof beyond a reasonable doubt can be conceptualised in two ways. First, a reasonable doubt may arise from *within the case mounted by the Prosecution*. As part of its own case, the Prosecution must adduce sufficient evidence to establish the accused person's guilt beyond a reasonable doubt on at least a *prima facie* basis. Failure to do so may lead to a finding that the Prosecution has failed to mount a case to answer, or to an acquittal. In those situations, the court must nevertheless particularise the specific weaknesses in the Prosecution's own evidence that irrevocably lowers it below the threshold of proof beyond a reasonable doubt.
>
> [149](f)] ***Once the court has identified the flaw internal to the Prosecution's case, weaknesses in the Defence's case cannot ordinarily shore up what is lacking in the Prosecution's case to begin with, because the Prosecution***

> ***has simply not been able to discharge its overall legal burden.***
>
> [emphasis in original in italics; emphasis added in bold italics]

91 I have taken pains to elaborate on these legal principles because I want to emphasise that where there are internal flaws in the Prosecution's case that cast a reasonable doubt as to the accused's guilt, the weaknesses in the Defence's case cannot ordinarily act as a gap-filling device to supplement the Prosecution's case (see [149(f)] of *GCK*). I am of the view that the present case is one such instance. As I discussed above, I find that there are inherent weaknesses in Ms C's testimony in relation to the first and second charges as follows:

(a) For the first charge, Ms C's testimony was inconsistent with her communications with Ms W, Mr A and Ms Eng and with her parents' testimonies. This undermined the intrinsic and extrinsic consistency of her account. More importantly, Ms C's testimony is not sufficient, in itself, to establish the elements of the offence especially when she admitted that Mr Loh's acts could have been accidental.

(b) For the second charge, Ms C's sudden change in position on the date of the second charge undermined the intrinsic consistency of her testimony. Her inability to recall material details of the second charge and to describe the exact part of her vaginal area that Mr Loh has allegedly touched, as well as her apparent state of mind after the alleged offence, also affect the credibility of her account. The near contemporaneous exchanges with Ms W and Mr A should be treated with caution.

92 As explained above, I do not agree with the reasons of the District Judge explaining away these material internal and external inconsistencies and disregarding the obviously unsatisfactory aspects of her evidence. With respect, it is plainly wrong, and against the weight of the evidence, for the District Judge to have relied on Ms C's evidence to convict Mr Loh of the first and second charges. In accordance with the framework set out above, after I analyse certain aspects of the Defence's case and evaluate the overall circumstances of the case, I will return to consider the issue whether Ms C should be treated as an "unusually convincing witness" at [143] and [148] below.

Issue 2: Whether Mr Loh has proved his alibi defences and whether two of his accounts amounted to *Lucas* Lies

Burden and standard of proof for defence of alibi

93 Before turning to consider the merits of Mr Loh's alibi defences, I first address the preliminary issue of the burden and standard of proof for the defence of alibi.

94 Mr Loh argues that the District Judge has applied the wrong burden and standard of proof in holding that "it is important to bear in mind that the burden is on the defence to establish an alibi on a balance of probabilities"[143] Mr Loh argues that he only needs to raise a reasonable doubt that he was not at Tampines Stadium at the material time of the alleged offences. He relies on *Syed Abdul Aziz* in which the Court of Criminal Appeal held that "where the accused raises an alibi, the burden of proving the alibi is on the accused but this is only an evidential burden… the defence need only raise a reasonable doubt" (at [35]). This was subsequently followed by the High Court in *Ramakrishnan*, where the

143 GD at [227] and [332].

court held that "an acquittal must follow from reasonable doubt that the appellant might have been elsewhere at the material time" (at [34]). This was further endorsed by the Court of Appeal in *Vignes s/o Mourthi and another v Public Prosecutor* [2003] 3 SLR(R) 105 ("*Vignes"*) at [62].

95 The Prosecution argues that an accused bears the burden to prove his alibi on a balance of probabilities under s 105 of the EA. Section 105 of the EA provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless otherwise provided by any law. Illustration (b) provides that "B wishes the court to believe that at the time in question he or she was elsewhere. B must prove it". Further, the Prosecution highlights that by s 107 of the EA, an accused has the *legal burden* to prove defences set out in the Penal Code on a balance of probabilities (*Jayasena v The Queen* [1970] 2 WLR 448 ("*Jayasena*") and *Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 ("*Iskandar bin Rahmat*")). The Prosecution argues that for consistency, the same interpretation should be extended to s 105 of the EA, and the accused bears the legal burden to prove the alibi defence on a balance of probabilities.

96 That said, the Prosecution acknowledges the differing positions in *Syed Abdul Aziz* and *Vignes* where the court held that the burden of proof on the accused for an alibi defence is only an evidential burden. The Prosecution submits that to reconcile the two strands of cases, the approach proposed in Jeffrey Pinsler SC, *Evidence and the Litigation Process* (LexisNexis, 7th Ed, 2020) ("*Evidence and the Litigation Process*") should be adopted. The learned author proposed that the seemingly inconsistent positions can be reconciled by having regard to the Prosecution's and accused's roles in separate stages of the proceeding as follows (*Evidence and the Litigation Process* at [12.018]):

(a) First, the prosecution has to adduce sufficient evidence to satisfy each element of the charge, including evidence that the accused was at the scene of the crime.

(b) If, and only if, the prosecution adduces sufficient evidence to this effect so that the court determines that the accused has a case to answer, the accused will then have to prove his alibi on a balance of probabilities pursuant to s 105 of the EA.

(c) Even if the accused fails to prove his alibi on a balance of probabilities, the accused may still be in a position to raise a reasonable doubt concerning his presence at the scene of the crime. For example, although the witness giving evidence of alibi may not satisfy the court that the accused was with him at the time of the crime, the facts may emerge from his testimony which raise a reasonable doubt in respect of the Prosecution's evidence.

97 In my view, the present state of the law is clear, and it is that set out in *Syed Abdul Aziz* and *Vignes*. The cases of *Jayasena* and *Iskandar bin Rahmat* relied upon by the Prosecution pertain to the interpretation of s 107 of the EA which deal with the defences found in the "general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the Penal Code, or in any law defining the offence". Section 107 of the EA does not deal with the defence of alibi. Therefore, unlike *Syed Abdul Aziz* and *Vignes*, the holdings in *Jayasena* and *Iskandar bin Rahmat* do not specifically apply to the defence of alibi.

98 The defence of alibi overlaps with the Prosecution's duty to prove *actus reus* under s 103 of the EA. It is trite law that the Prosecution is required to

establish the elements of an offence beyond a reasonable doubt. It follows that if an accused is able to raise a reasonable doubt as to his presence at the scene of an alleged offence, he ought to be acquitted. In the present case, in accordance with *Syed Abdul Aziz* and *Vignes*, Mr Loh only bears an evidential burden, and an acquittal must follow should reasonable doubt be raised that at the material time, he was not at Tampines Stadium, but might have been elsewhere. By applying the standard of balance of probabilities in relation to Mr Loh's alibi defences, the District Judge fell into error by applying the wrong legal test.

99 With that said, the Prosecution argues that even on the lower threshold, Mr Loh has not adduced sufficient evidence to raise a reasonable doubt that he was not at Tampines Stadium because he was somewhere else at the material time of the offences. I now consider whether Mr Loh has discharged his evidential burden in relation to his alibi defences for 24 February 2013 and 15 March 2013. For this purpose, it bears reminding that Ms C's evidence is that each individual training session lasted about 1½ hours. Each session took place either in the morning starting at about 9am to 10am or in the evening starting at about 4pm to 5pm. But for the fourth training session, eventually, she said it took place in the evening (see [73] above).

Mr Loh's alibi on 24 February 2013

100 Mr Loh says that on 24 February 2013, he was celebrating *Chap Goh Meh* with his extended family. He had gone marketing with his wife at a market in Pasir Ris and another market in Tampines in the morning from around 10am to 12pm.[144] After that, Mr Loh and his wife prepared their place for his siblings

144 ROP at p 1584 at lines 2 to 16.

to come over for prayers at around 2pm.[145] His siblings would come at different timings, some at around 3pm and others at around 5pm to offer their prayers.[146] He further testified that his brother and his brother's wife arrived at his house on 24 February 2013 at around 3pm.[147] He also testified that dinner would be served around 6pm or 6.30pm.[148] After the dinner, Mr Loh and his extended family will sit down to chit-chat and have their usual tea session, after which his siblings and their families would leave from 7pm to 9pm.[149]

101 Mr Loh's principal alibi witnesses were his wife and his brother:

(a) Mr Loh's wife testified that on 24 February 2013, she went to church for mass in the morning and returned home at around 9.15am.[150] After she returned home, she left the home with Mr Loh at around 9.30am and drove to Pasir Ris to do marketing for *Chap Goh Meh*.[151] After that, the two then drove to Tampines to buy more items, reaching Tampines at around 10am.[152] She further testified that as soon as she reached home, she started cooking and preparing for *Chap Goh Meh* and that Mr Loh would assist her by moving things from the storeroom for

145 ROP at p 1583 at lines 16 to 19.

146 ROP at p 1583 at lines 21 to 25.

147 ROP at p 1583, at lines 28 to 30.

148 ROP at p 1584, at lines 28 to 32.

149 ROP at p 1585, at lines 2 to 17.

150 ROP at p 2284, at lines 5 to 7.

151 ROP at p 2284 at lines 19 to 21.

152 ROP at p 2286, lines 25 to 32; p2288, lines 5 to 7.

the prayers.[153] She also testified that she recalled Mr Loh's brother trying on a number of jackets and chatting with Mr Loh.[154]

(b) Mr Loh's brother testified he had gone to Mr Loh's residence for *Chap Goh Meh* at around 3pm on 24 February 2013.[155] He testified that he had a chat with Mr Loh and told him that he was travelling to Boston for his wife's award ceremony.[156] He also testified that he borrowed a jacket from Mr Loh on that day for his wife's award ceremony.[157] He adduced a letter dated 11 March 2013 from his wife's employer confirming that his wife was selected to receive the 2012 Chairman Award.[158] He testified that he had dinner at around 6pm and left Mr Loh's place after dinner at around 7pm.[159]

102 The District Judge rejected Mr Loh's alibi defence for the following reasons:

(a) There was no documentary proof which suggested that Mr Loh had gone marketing with his wife in the morning or entertained his relatives for *Chap Goh Mei* in the evening.[160]

(b) Mr Loh's brother's account that he borrowed a jacket from Mr Loh to attend his wife's award ceremony was unbelievable because the

---

153 ROP at p 2289, at lines 6 to 9.

154 ROP at p 2255, line 16.

155 ROP at p 2319, at lines 11 to 12.

156 ROP at p 2320, lines 4 to 13.

157 ROP at p 2322, lines 19 to 32.

158 ROP at p 2320, line 32 to p 2321, line 9.

159 ROP at p 2323, lines 13 to 19.

160 GD at [332], p 211.

letter from his wife's employer announcing the conferment of the award was dated 11 March 2013, which was 15 days after 24 February 2013 and Mr Loh's brother could not have had prophetic foresight of the award.[161]

(c) Mr Loh's wife had no distinct recollection of that day and merely recounted what the family would usually do on *Chap Goh Mei*. She could not show that Mr Loh never left the home that day, especially given that Tampines Stadium was situated just one MRT stop from Mr Loh's home in Pasir Ris.[162]

103 I have some difficulties with these reasons relied on by the District Judge for dismissing the evidence of Mr Loh's brother and his wife. First, I am not sure what documentary proof could have been expected for such a family event. Secondly, Mr Loh's brother explained that his wife's employer had informed her of the award informally before the issuance of the official letter.[163] Mr Loh's brother's explanation is not unbelievable — it is entirely possible that his wife would have received indications from her employer regarding her award before the issuance of the official letter. Thirdly, Mr Loh's brother's testimony is corroborated by Mr Loh's wife who testified that she witnessed Mr Loh's brother trying on Mr Loh's jackets. Fourthly, even if Mr Loh's wife was testifying on her routine memory of the events for *Chap Goh Meh*, her clear and consistent testimony was that the arrangement for Chap Goh Meh every year would be the same.[164] The only difference she recalled for *Chap Goh Meh* in

---

161 GD at [332], p 212.

162 GD at [332], p 212.

163 ROP at p 2334, lines 8 to 18.

164 ROP at p 2281, line 3 to p 2282, line 24.

2013 was that Mr Loh's brother had borrowed a jacket from him.[165] Upon perusing the GD, with due respect, it seemed to me that there was a stark contrast between the District Judge's treatment of the inconsistencies in the testimonies of the Prosecution's witnesses *vis* the Defence's witnesses. While the District Judge generally forgave some of the Prosecution's witnesses, including Ms C's parents, for not being able to recall details due to the lapse of time (for instance, see above at [60]), the same latitude had simply not been extended to these Defence witnesses.

104 With that being said, I agree with the Prosecution that even on the lower threshold *ie,* to raise a reasonable doubt, Mr Loh could still have been at the Tampines Stadium on 24 February 2013, especially in the late morning or late afternoon, to conduct a training session for Ms C. Although Mr Loh's wife testified that Mr Loh accompanied her for marketing in the morning, the evidence regarding the time Mr Loh returned home was not clear. Furthermore, neither Mr Loh's wife nor Mr Loh's brother could testify that Mr Loh did not leave the home in the late morning or late afternoon. Given that Tampines Stadium was situated just one MRT stop from Mr Loh's home in Pasir Ris, Mr Loh could have gone to Tampines Stadium, and then returned home to continue with his *Chap Goh Mei* obligations. Therefore, I am prepared to accept the Prosecution's contention that there was a lack of evidence that Mr Loh was at home that day in the late morning or late afternoon. Mr Loh has not raised a reasonable doubt that he could not have been at Tampines Stadium, by showing that he might have been at home at the material time.[166]

---

165 ROP at p 2255, lines 7 to 17.

166 RC at para 129.

105 In any event, the District Judge did not find that Mr Loh's alibi defence for the first charge amounted to a *Lucas* Lie. I agree. There is no objective evidence suggesting that Mr Loh lied about celebrating *Chap Goh Meh* with his family on 24 February 2013. Mr Loh's account was externally consistent with the testimonies of his wife and his brother in most material aspects, and there is nothing to suggest that his family members lied on the stand to corroborate his story. Therefore, even though Mr Loh's alibi defence failed, this cannot be used to corroborate the Prosecution's case.

Mr Loh's alibi on 15 March 2013

106 Mr Loh maintains that he was at Bishan Stadium conducting school training for CHIJ Toa Payoh students on 15 March 2013. He testified that the training started at around 3.30pm and he was at Bishan Stadium before 3.30pm.[167] He trained students who were not selected to represent the school for the SPH Schools Relay held on 16 and 17 March 2013. He also trained his team that was participating in the "4 by 1" and "4 by 4" events in the SPH Schools Relay so that they could "sharpen up" their "corner baton passing" skills.[168] He remembered that they completed their training at around 6pm.[169]

107 Mr Loh's key alibi witnesses were Ms Jayalaxmi, Ms Amirah and Mr Terry Tan:

(a) Ms Jayalaxmi testified that a training session was conducted at Bishan Stadium on 15 March 2013 at 3.30pm.[170] She reached before

---

167 ROP at p 1658, lines 1 to 8.

168 ROP at p 1658, line 21 to p 1659 at line 5.

169 ROP at p 1659, lines 8-9.

170 ROP at p 2607, line 31 to p 2608, line 5.

3.30pm and saw Mr Loh there.[171] She testified that this was an ordinary training session for students who are not competing in the SPH Schools Relay Championship.[172] For athletes participating in the "4 by 4" event for the SPH Schools Relay on that Sunday (*ie*, 17 March 2013), Ms Jayalaxmi testified that the training was intended for them to "polish up" their baton-passing skills.[173] She further testified that one of the main purposes of the training was to prepare one of her cross-country athlete, one Alexandra Louise Wee ("Alex"), who was competing in the "4 by 4" relay for the first time.[174] She testified that the training ended at around 5.30pm.[175] She left Bishan Stadium around that time, and she recalled seeing Mr Loh inside the stadium when she left.[176]

(b) Ms Amirah testified she participated in the SPH Schools Relay in 2013 and that there was a "light" training session on 15 March 2013, from 3.30pm to around 5.30pm,[177] for the team to practice their "baton passing" for the SPH Schools Relay that weekend.[178] She testified that Mr Loh and Ms Jayalaxmi were present at the training on 15 March 2013.[179] She further testified that Alex, who was a cross-country athlete, was participating in the "4 by 4" event that year and that her team needed to practice with Alex at least once on 15 March 2013 before the event

171 ROP at p 2608, lines 5 to 8.

172 ROP at p 2605, lines 10 to 16.

173 ROP at p 2605, lines 17 to 24.

174 ROP at p 2671, lines 1 to 14.

175 ROP at p 2608, lines 9 to 16.

176 ROP at p 2608, lines 17 to 27.

177 ROP at p 2686, lines 22 to 27.

178 ROP at p 2685, lines 23 to 28.

179 ROP at p 2685, lines 29 to 31; ROP at p 2686, line 30 to p 2687, line 1.

on 17 March 2013.[180] At the time of the trial, Ms Amirah was a second year student in university.

(c) Mr Terry Tan testified that he picked Mr Loh up from Bishan Stadium at around 6pm on 15 March 2013[181] to discuss with Mr Loh a controversy over competing organisations seeking to hold tug of war competitions in Singapore. Mr Terry Tan further said that he sent Mr Loh home that day, after which they continued their discussion for another 20 to 30 minutes before he left at about 7.20 to 7.30pm.[182]

108 The District Judge rejected Mr Loh's alibi defence on 15 March 2013 for the following reasons:

(a) Mr Loh claimed to have an ordinary training session on 15 March 2013 with the full track team at Bishan Stadium but Ms Jayalaxmi and Ms Amirah testified that the training would involve only a small cadre of relay athletes for them to practice baton-passing for the SPH Schools Relay event that weekend.[183]

(b) The Prosecution's rebuttal witness, Mr Daryl Chan ("Mr Chan") who was a track teacher at CHIJ Toa Payoh, testified that there had been no official training for track athletes that day. The documentary evidence showed that Friday had been replaced by Tuesday as a formal training day for that entire first quarter of 2013. Ms Jayalaxmi's attendance record had not shown any attendance taken for 15 March 2013, and Mr

---

180 ROP at p 2698, lines 22 to 32.

181 ROP at p 2162, lines 5 to 19.

182 ROP at p 2162, line 29 to p 2163, line 8.

183 GD at [332], p 214.

Loh himself signed a payment form which specified ten training days in March 2013 which did not include 15 March 2013 as a day he had trained the CHIJ Toa Payoh track and field team.[184]

(c) The fact that neither Ms Jayalaxmi and Ms Amirah realised the change in training days from Fridays to Tuesdays cast doubt on the reliability of their accounts.[185]

(d) The WhatsApp correspondence between Mr Toh and Ms C showed that Mr Toh was inquiring with Ms C at 9.47am on 15 March 2013 whether Mr Loh would be conducting any training at Bishan Stadium, to which Ms C ultimately responded "*Tampines !!!*" at 1.53pm. Ms C's subsequent message at 3.26pm was that while Mr Loh had advised her, Zaki, and Ms W to rest, she had resolved to attend as she had missed two days' training.[186]

(e) Mr Terry Tan's testimony that he picked Mr Loh outside Bishan Stadium on 15 March 2013 to discuss problems between two competing tug-of-war federations was unreasonable and irrational. The two men lived close to each other in the east of Singapore, which makes it a circuitous trip for Mr Terry Tan to pick Mr Loh and send him home. It was also unclear why the two men had not simply discussed by phone or text message, given that the discussion did not seem particularly complex, with Mr Loh's final solution to Mr Terry Tan being to formally seek the opinion of Sports SG.[187]

---

184 GD at [391].

185 GD at [332], p 214.

186 GD at [332], p215; ROP at p 3669.

187 GD at [332], p215.

109 The District Judge went on to find that Mr Loh's alibi on the 15 March 2013 could not possibly be true when set against the objective evidence and that it amounted to a *Lucas* Lie that corroborated the Prosecution's case.[188]

110 Turning to Ms Jayalaxmi's evidence, I am mindful that she shifted her stance as to the type of training that took place that day. However, Ms Jayalaxmi and Ms Amirah were consistent in their testimony that there was a "light" training session on 15 March 2013 for the team to practice their "baton passing" for the SPH Schools Relay that weekend. Both witnesses were certain of the date of the "light" training because 15 March 2013 was two days before the SPH Schools Relay on 17 March 2013. Both also specifically testified that one of the main reasons for the "light" training was to prepare Alex, who was a cross-country athlete competing in "4 by 4" event for the first time that year. In these important aspects, Ms Jayalaxmi's and Ms Amirah's accounts are internally and externally consistent.

111 The District Judge, however, preferred Mr Chan's testimony over that of Ms Jayalaxmi and Ms Amirah. In accepting Mr Chan's testimony that Friday trainings were replaced with Tuesday trainings for the first quarter of 2013, the District Judge discounted the credibility of Ms Jayalaxmi's and Ms Amirah's accounts on the ground that they could not remember the change in training days. However, I am of the view that Mr Chan's testimony does not necessarily contradict the testimonies of Ms Jayalaxmi and Ms Amirah. Their evidence was that there was "light" training session on 15 March 2013, not an official training session. Therefore, even if there had been a change in the official training dates, Mr Chan's testimony should not have a material impact on the credibility of Ms Jayalaxmi's and Ms Amirah's accounts. In a similar vein, the fact that the

188 GD at [389].

unofficial training session was not recorded on Mr Loh's payment form and Ms Jayalaxmi's attendance sheet does not undermine Ms Jayalaxmi's and Ms Amirah's credibility.

112 I am also of the view that the District Judge was hasty in dismissing Mr Terry Tan's testimony. While I agree with the District Judge's observations that Mr Terry Tan made a circuitous trip to pick Mr Loh to discuss a problem which could have been discussed over the phone, this alone does not render Mr Terry Tan's account unbelievable. It is entirely possible that Mr Terry Tan made a circuitous trip to send Mr Loh home out of their friendship, or out of respect or gratitude towards Mr Loh for listening to his problems.

113 Against the evidence of these witnesses, I note that there are the WhatsApp messages between Ms C and Mr Toh on 15 March 2013 to support Ms C's version. To recapitulate, Mr Toh asked Ms C at 9.47am on 15 March 2013 whether Mr Loh would be conducting any training at Bishan Stadium, to which Ms C responded "*Tampines !!!*" sometime later at 1.53pm. As understood by the District Judge, Ms C's subsequent message at 3.26pm was that while Mr Loh had advised Zaki, Ms W and her to rest, she had resolved to attend as she had missed two days' training.[189] While these messages suggest that Mr Loh might have intended to conduct training at Tampines stadium on 15 March 2013, they do not clearly show that any individual training session for Ms C was confirmed with Mr Loh (or that it actually proceeded on that day).

114 I should add that the District Judge stated that Ms C only found out at 3.34pm that day that she would be training alone, after a message from Mr Toh that he would not be attending "as the '*Ntu boys*' had been advised by Mr Loh

---

189 GD at [332], p 215.

to rest" (see [12] above).[190] This is not strictly correct. While there was a message at 3.34pm from Mr Toh to say that he was not going for training because the "ntu boys" were told that they did not need to go for training, there was an earlier message to the same effect. At 1.54pm, Mr Toh had already messaged Ms C to say that Mr Loh told "zaki and the ntu boys" that there was no training that day.[191] For completeness, these messages between Ms C and Mr Toh indicate that the alleged training on 15 March 2013 was being discussed primarily as a *group training* with Zaki, Ms W, Mr Toh and Ms C. According to the District Judge, Ms C's request to train was then acceded to.[192] This somewhat contradicts Ms C's account that Mr Loh had invited her to attend four *one-on-one* training sessions with him (see [6] and [70] above).

115 It seems to me that based on the evidence of his witnesses, Mr Loh has raised a reasonable doubt that he was not at the Tampines Stadium, but might have been elsewhere, in the afternoon of 15 March 2013. However, even if the District Judge was correct to reject the alibi defence, there is little basis for the District Judge to proceed to find that this amounted to a *Lucas* Lie. In *Lucas*, the court held that lies told by an accused person might be capable of amounting to corroboration if they were (a) deliberate; (b) related to a material issue; (c) premised upon a motive of realisation of guilt and a fear of the truth; and (d) proved independently to be untrue. In the present case, even if Mr Loh failed to prove his alibi defence, there is insufficient evidence to show that his alibi was a deliberate lie. Given that Mr Loh's alibi on 15 March 2013 was supported by Ms Jayalaxmi, Ms Amirah and Mr Terry Tan, a finding that Mr Loh has

190 GD at [335].

191 ROP at p 3669.

192 GD at [332], p 215.

deliberately lied in his alibi will necessarily implicate the witnesses, suggesting that they were lying in their testimonies to support Mr Loh's account of events.

116 While the District Judge disagreed with the versions of Ms Jayalaxmi, Ms Amirah and Mr Terry Tan of the events on 15 March 2013, the District Judge did not specifically find that they were lying to the court. I agree with this. Although the individuals know and respect Mr Loh and could not be said to be completely impartial witnesses, their accounts are largely consistent and not inherently unbelievable (see above at [110] to [112]). Furthermore, Ms Jayalaxmi and Mr Terry Tan are working adults with responsible jobs. She was a teacher for many years, and he is a senior officer with the Singapore Prison Service. At the time of the trial, Ms Amirah was a second-year undergraduate at a local university. There is simply no reason offered as to why any of them would *lie* to help Mr Loh. Given that by the time of the trial, five years had elapsed since 15 March 2013, should their evidence be unsatisfactory in certain aspects, some leeway should be given to these Defence witnesses, as well as Mr Loh, for their inability to recall what exactly transpired that day (and the exact timings of those events). This is especially since Ms C had actually changed her position as to the date of the alleged incident and was unable to clearly testify whether the alleged incident took place in the morning or the afternoon until in cross-examination. The District Judge has relied on the passage of time as a justification for several inconsistencies in the testimonies of the Prosecution witnesses, and I am of the view that the District Judge should have extended the same consideration to the Defence witnesses, including Mr Loh, in relation to similar types of inconsistencies.

Mr Loh's account of events of 10 March 2013

117 For completeness, Mr Loh also provided evidence in relation to the third alleged individual training session (see [10(c)] above) to prove that he had never conducted any individual training sessions for Ms C. Given that nothing untoward happened on this occasion, this was strictly speaking not an alibi defence. Nonetheless, the District Judge rejected this alibi and found that it amounted to a *Lucas* Lie, reasoning that (a) Mr Loh and Mr Tan WL could not name any one person they saw or met at the Swift Event despite Mr Loh's prominent status in the athletic scene; and (b) both of them could not recall the evening rain that day, as evidenced by the meteorological report.

118 I will only spend a moment to discuss the District Judge's finding that Mr Loh's evidence amounted to a *Lucas* Lie. Once again, there was no specific finding by the District Judge that Mr Tan WL was lying in his testimony to the court. Indeed, some leniency should be extended to Mr Tan WL, as well as Mr Loh, for their inability to identify other attendees of the Swift Event given that more than five years have elapsed by the time of the trial. While the District Judge faulted Mr Loh and Mr Tan WL for their inability to remember a spell of rain that started from 5pm and persisted till 9pm,[193] I note that Mr Loh's testimony was that the two chatted at a coffeeshop from 5pm to around 6pm, after which he left for home.[194] The meteorological report for 10 March 2013 showed that for the hour from 5pm to 6pm, only 0.2mm of rain was collected and the duration of the rain for that hour was only five minutes.[195] The two men should not be faulted, or Mr Loh treated as having lied, for failing to recall a

193 GD at [252]

194 ROP at p 1608, lines 11 to 32.

195 ROP at p 3750.

spell of rain while they were at the coffee shop that occurred more than five years ago. It seems to me there is insufficient basis to find that there is a *Lucas* Lie which corroborates the Prosecution's evidence.

Conclusion

119 To round up, as set out in *Syed Abdul Aziz* and *Vignes*, in relation to an alibi defence, an accused only bears an evidential burden, and an acquittal must follow from reasonable doubt that the accused might have been elsewhere at the material time. The District Judge erred by imposing the burden on Mr Loh to establish the alibi defences on a balance of probabilities.

120 In relation to the alibi defence for 24 February 2013, contrary to the position taken by the District Judge, I am prepared to accept the evidence of Mr Loh's wife and brother. However, I agree with the Prosecution that the alibi defence is not made out even on the lower threshold to raise a reasonable doubt. Based on the evidence of Mr Loh's wife and brother, Mr Loh could still have been at the Tampines Stadium, particularly in the late morning or late afternoon that day. That said, I agree with the District Judge that Mr Loh's alibi defence did not amount to a *Lucas* Lie so as to provide support for the Prosecution's case.

121 For the alibi defence for 15 March 2013, as supported by the evidence of Mr Loh's witnesses, namely, Ms Jayalaxmi, Ms Amirah and Mr Terry Tan, I am of the view that Mr Loh has raised a reasonable doubt that he was not at the Tampines Stadium, but might have been elsewhere that afternoon. Even if the District Judge was correct to reject the alibi defence, I am of the view that he erred in proceeding to find that this amounted to a *Lucas* Lie.

122 As for Mr Loh's evidence of 10 March 2023, again, it seems to me that the District Judge was too hasty to dismiss the evidence put forth by Mr Loh and Mr Tan WL. In any case, there was inadequate basis to rule that there is a *Lucas* Lie which corroborates the Prosecution's case.

Issue 3: Whether Mr Loh's conduct at the police meeting on 2 August 2016 indicated his guilty conscience

123 Another very key plank the District Judge relied on in convicting Mr Loh on both charges was the fact that Mr Loh gathered photographs he took with Ms C and Ms W before he attended at the police station before Station Inspector Alan Khor ("SI Khor") for the recording of his statement on 2 August 2016. The District Judge took the view that Mr Loh's conduct suggests that he knew the identities of his accusers, and the period of the commission of the offences, even before his statement was recorded by SI Khor.[196] He then held that Mr Loh's "prescience" of the identities of the complainants was indicative of his guilty mind.[197]

124 Mr Loh's evidence was that he received a call from Tanglin Police Station on 31 July 2016, sometime after 9am.[198] On that day, he was at Choa Chu Kang Stadium sometime after 8am because he was organising the Singapore National Games.[199] He testified that the caller told him that he was an investigator and informed him that two girls had lodged a report against him.[200] Mr Loh then informed the caller that he had 500 to 600 girls training under him

196 GD at [258].

197 GD at [277].

198 SROP at p 143, lines 10 to 13.

199 SROP at p 143, lines 1 to 9.

200 SROP at p 143, lines 18 to 29.

and if the caller did not inform him of the names of the girls, Mr Loh would not go down to the police station.[201] Mr Loh then testified that the caller put down the phone for around 20 to 30 seconds before calling him back again.[202] This time, the caller identified himself as IO Goh and informed Mr Loh that the two girls who lodged a report against Mr Loh were Ms C and Ms W.[203]

125 Mr Loh therefore argues that the District Judge erred in finding that he had "prescience" of the identities of the victims when he gathered photographs he took with Ms C and Ms W before he attended the meeting with SI Khor on 2 August 2016. This is because according to Mr Loh, the identities of the victims were already revealed to him on 31 July 2016 via the phone call from IO Goh before his statement recording on 2 August 2016.

126 Having considered the evidence at the trial and at the remittal hearing, I am of the view that the District Judge should *not* have inferred a guilty conscience on the part of Mr Loh. At the very least, the benefit of the doubt should have been given to Mr Loh. I explain.

127 First, Mr Loh's account comports with the objective contemporaneous evidence. In a WhatsApp message from Ms C to Ms Eng on 31 July 2016, at 1.10pm, she told Ms Eng that the police called Ms W *that morning* and said that they had no choice but to reveal their names to Mr Loh. I set out the message in full below:

> Ms C: Hi ms eng, just to let you know that [Ms W] and I went to make a police report yesterday. Her friend kept encouraging her to do it so we just decided to go do it.

---

201 SROP at p 145, lines 3 to 21.

202 SROP at p 145, lines 23 to 26.

203 SROP at p 145, line 30 to p 146, line 5.

> *The officers said they won't leak our names out but this morning they called [Ms W] to say they had no choice, cos mr Loh kept saying that he has too many students etc and they said our names ._. And to just say we have no knowledge of anything whatsoever.*
>
> And MR Loh is prob telling people making it sound as if we're falsely accusing him cos one of the twins called [Ms W] to question her if she reported and [Ms W] kept saying no and the twin told [Ms W] that loh can sue [Ms W] for defamation etc without asking what happened… Not rlly sure what [Ms W] should do now though but yup just to keep you informed!
>
> Ms Eng: Oh dear. How did it become like this…
>
> [emphasis added]

128 No suggestion is made that Ms W lied to Ms C about the police disclosing their names to Mr Loh, or that Ms C lied to Ms Eng about the disclosure of their identities by the police. Also, no reason is proffered why they would lie about this. The District Judge faulted Mr Loh for not confronting Ms W with this message during the trial. However, Mr Loh had asked both IO Goh and Ms C about the message. In fact, Ms C confirmed the contents of the message.[204] The message should have been given due weight by the District Judge.

129 Secondly, Mr Loh's account is supported by IO Goh's phone records which showed that he called Ms W on 31 July 2016 at 9.33am, after his two calls with Mr Loh at 9.24am and 9.28am. The timing of IO Goh's call to Ms W matches Ms C's description in her message to Ms Eng that the police called Ms W in the morning. The sequence of the calls is in accord with IO Goh revealing the identities to Mr Loh, before informing Ms W of this.

---

204 ROP p 1128 line 15 to 1129 line 10.

130 IO Goh insisted that he did not reveal the complainants' names but was unable to explain why he would need to call Ms W immediately after calling Mr Loh.[205] The District Judge's main reason for believing IO Goh's account is that IO Goh was an experienced investigation officer of 28 years standing, and it was improbable that he could have gone against what "must have been the most sacrosanct and hard wired tenets that investigation officers presumably adhered to" so as to reveal the identities of the complainants to the alleged offender.[206] However, unfortunately, slip-ups happen even to the most experienced of officers. As Mr Loh explained, he had pressed for more information from IO Goh. In the face of the objective contemporaneous evidence, IO Goh's experience as an investigation officer is insufficient ground for disbelieving Mr Loh altogether. Indeed, I note that prior to being shown his phone records, IO Goh had said that he called Ms W ten minutes *before* calling Mr Loh, but not *after* contacting Mr Loh. The phone records showed that this was not correct.

131 Instead of giving due weight to the objective evidence of the WhatsApp messages and the call records, the District Judge, proffered his own explanation for Ms C's message.[207] He reasoned that Ms W was likely to have been confused by an earlier call she had received that morning from Ms T, another trainee under Mr Loh. During this call, Ms W was confronted by Ms T on whether she made a police report against Mr Loh. The District Judge reasoned that Ms W might have conflated Ms T's confrontation with the fact that IO Goh had disclosed the names of the complainants to Mr Loh, and "misrepresented the actual state of affairs". This is because Ms W had "a history of making loose

---

205 ROP at p 2914 to 2915.

206 GD at [266] to [270].

207 GD at [104] and [265].

situational connections". For instance, she mistook Mr A for Ms C's boyfriend. With respect, the District Judge's explanation appears to be purely speculative. While he explained that "we are none the wiser as Ms W was never examined in this area when she gave her testimony", there is nothing to suggest that Ms W made such a mistake. On the face of it, this message sent by Ms C is plain and unambiguous. The message mentions both (a) the call from the police informing Ms W about the leakage of their identities; and (b) the call from Ms T confronting Ms W about the police report, as two *distinct* events. It seems unlikely, therefore, that Ms W (or Ms C) would have conflated the two incidents. Based on the above, I am inclined to believe that IO Goh might have disclosed the identities of the complainants to Mr Loh.

132 After the District Judge's treatment of this aspect of the evidence, Mr Loh sought to adduce Ms Monteiro's testimony. Ms Monteiro filed a statutory declaration stating that she was with Mr Loh when the police called Mr Loh. Given that the District Judge had given little weight to Ms Monteiro's testimony in the Remittal Findings, I turn now to consider Ms Monteiro's evidence.

133 Ms Monteiro was one of Mr Loh's trainees who met Mr Loh when she was 16 years old and trained under Mr Loh while she was in junior college.[208] Ms Monteiro stepped forward as a witness, after learning of this aspect in relation to the outcome of the trial in the media reports. She stated in her statutory declaration she was at the Singapore National Games 2016 held at the Choa Chu Kang Stadium on 31 July 2016 and that she was scheduled to run in the 200-metre race in the morning at around 9.15am.[209] She initially stated in her statutory declaration that she bumped into Mr Loh at the carpark beside the

---

208 SROP at p 17, lines 1 to 11.

209 SROP at p 504, para 13.

stadium *after* her race.[210] However, the competition race schedule showed that her 200-metre race in the morning was rescheduled to the afternoon. The race schedule also showed that her 200-metre event would have been held at 10.15am, instead of 9.15am (which was the scheduled time for a different 200-metre event for the under-20s).[211] Ms Monteiro admitted that she had "mixed up the chronology of events" in her statutory declaration by reading the competition schedule wrongly, but maintained that she had been at Choa Chu Kang Stadium "very early in the morning … intending to run a morning race".[212]

134 Ms Monteiro's testimony on her interactions with Mr Loh cohered with her version in the statutory declaration. She testified that she had seen Mr Loh at the car park of Choa Chu Kang Stadium and was chatting with Mr Loh when Mr Loh broke off because he had to pick up a call. In the course of this call, she noted that Mr Loh appeared "very surprised and a bit agitated on the phone". I reproduce Ms Monteiro's testimony on Mr Loh's call verbatim below, given that it formed the crux of her testimony:[213]

> And (Mr Loh) kept, uh, asking the person on the line to repeat what he was saying, kept saying like "What? What? What?" like that on the phone. And---and then, *he started to ask the person on the phone to tell him like "No, tell me" and he was very persistent on the phone, like, asking the other person on the line to tell him.* And then, after that, I heard him mention, um, the runners' names, uh, some of my group, track and field runners' names and it was something like, uh, (Ms W) and "*You mean, my girl (Ms W) and who? (Ms C)? You mean my girl, (Ms W) said that?*" Yes. And, um, so because during the phone call, I also heard him mentioned something about the police station and something about molest which …caught my attention at the beginning which is why I started to listen to the conversation. And then, after the entire conversation and looking at Mr. Loh's

---

210 SROP at p 505, para 16.

211 SROP at p 103, line 31 to p 104, line 4.

212 SROP at p 20, lines 22 to 30.

213 SROP at p 21, line 24 to p 22, line 13.

> body language and also his, uh, how his emotion was, I gathered that, uh, it was the police that was calling him and that, um, it was about two girls who to---the two runners whose names I have mentioned, uh, who said something about him and it was along the lines of molest. *And after the phone call, when I asked him, he said, um, (Ms W) and (Ms C) went to the police station.*
>
> [emphasis added]

135 After the remittal hearing, the District Judge rejected Ms Monteiro's testimony for the following reasons:

(a) Ms Monteiro had never directly heard the caller's voice and was not in a position to identify the caller as a police officer. She had merely extrapolated that Mr Loh had been speaking to a police officer from references to "police station".[214]

(b) There were external inconsistencies between Ms Monteiro's testimony and Mr Loh's testimony, which include:

(i) Ms Monteiro testifying that Mr Loh was agitated from the start of the call, where Mr Loh's version had been more of a progression;[215]

(ii) Ms Monteiro never heard Mr Loh's ultimatum that he would not attend at the police station unless the officer had given him the name of the accusers, which formed the crux of Mr Loh's testimony;[216]

---

214 Remittal Findings at [62].

215 Remittal Findings at [63].

216 Remittal Findings at [64].

(iii) Ms Monteiro testifying that she heard Mr Loh reference the word "molest" which differed from Mr Loh's account that he had never used the word "molest" during the call;[217] and

(iv) Ms Monteiro's testifying that the interaction had involved just one long call, rather than two calls with a 28 second separation.[218]

(c) Ms Monteiro was also unable to recall that her race has been held at 5.30pm on 31 July 2016, rather than her indication of 9.15am in her statutory declaration, which further compromised her credibility.[219]

136 In my view, the District Judge's rejection of Ms Monteiro's evidence showed, once again, the District Judge's different treatment of the Prosecution's witnesses and Defence's witnesses. Little latitude was accorded to Ms Monteiro for the minor inconsistencies in her testimony which was given *more than five years* after the alleged calls took place on 31 July 2016. Contrary to the Remittal Findings, I am inclined to believe her account notwithstanding the minor inconsistencies she made in relation to the timing of the race and the exact content of the call.

137 First, I find it probable that Ms Monteiro would have been at Choa Chu Kang stadium early in the morning that day. Although Ms Monteiro's race was rescheduled from 10.15am to 5.30pm that day, she would only have been informed of the postponement when she reported for her morning race at about

---

217 Remittal Findings at [62].

218 Remittal Findings at [64].

219 Remittal Findings at [65].

9.35am to 9.45am (30 to 40 minutes before 10.15am). This meant that it was possible for Ms Monteiro to have met Mr Loh at around 9.28am that morning.

138 The Prosecution argued that it is *impossible* for Ms Monteiro to have met Mr Loh at around 9.28am because she testified that she remained with Mr Loh for an hour after the call and went to buy lottery for him later.[220] The Prosecution says that if Ms Monteiro he had met Mr Loh at around 9.28am, she would have had to report to her morning race at about 9.35am to 9.45am, which would be inconsistent with her testimony that she remained with Mr Loh for an hour after the call.

139 I find the Prosecution's argument unconvincing. The race official's evidence is that athletes would *usually* report 30 to 40 minutes before their race,[221] but this is a *rough estimate* — some athletes may report slightly earlier or slightly later. It is therefore entirely plausible for Ms Monteiro to have reported for her race *before* 9.28am, after which she bumped into Mr Loh and stayed with him.

140 Furthermore, I agree with Mr Loh's submissions that the inconsistencies highlighted by the District Judge are not material and did not destroy Ms Monteiro's credibility:

(a) Ms Monteiro's recollection that Mr Loh only took one long call, instead of two distinct calls, is a minor inconsistency given the two calls were seconds apart.[222]

---

220 Supp ROP at p 96 line 19 to p 97 line 9.

221 Supp ROP at p 385; Supp ROP at p192, lines 14 to 17.

222 Appellant's Further Submissions ("AFS") at [44].

(b) Ms Monteiro's testimony that the word "molest" was used did not materially contradict Mr Loh's testimony, given that more than five years have passed and the parties are not expected to provide a verbatim account of the phone call.[223]

(c) Ms Monteiro's testimony that Mr Loh appeared "angry" is not materially inconsistent with Mr Loh's own description that he was in disbelief and shock.[224]

141 Therefore, considering the contemporaneous communications between Ms C and Ms Eng, IO Goh's phone records, and Ms Monteiro's testimony, I am of the view that the District Judge erred in relying on Mr Loh's knowledge of the identities of the two complainants, and his action of producing photographs of him and the two complainants to the police at the meeting on 2 August 2016, as being indicative of his guilty mind. For completeness, I should state that I find that the District Judge wrongly found that Mr Loh was already aware of the "proximate date and time of the offence" well before the session to take his statement on 2 August 2016. In this connection, the District Judge focused on the fact that Mr Loh produced a photograph of Ms C's birthday celebration in April 2013, the month after the alleged molests in March 2013.[225] However, it should be noted that Mr Loh only trained Ms C for a few months. If he had been informed by the police that Ms C had lodged a complaint against him for molest, there was only a limited range of dates in which the alleged offences could have occurred. Furthermore, Mr Loh had provided a number of photographs to the

223 AFS at [31].

224 AFS at [65]-[66].

225 ROP at p 3707, Exhibit P23-1.

police on 2 August 2016.[226] It is wrong to focus on one specific photograph in April 2013 and conclude that Mr Loh knew the approximate timing of the alleged offences.

142 Therefore, I fail to see how it can be said that Mr Loh's conduct at the police meeting on 2 August 2016 was pre-emptive or indicative of his guilty mind. Accordingly, I find that the District Judge erred in relying on such an inference of Mr Loh's "guilty conscience" to convict Mr Loh of the charges.

Issue 4: Whether Ms C is an unusually convincing witness

143 Having considered both the Prosecution's and Defence's case, I now return to the overarching question as to whether Ms C is an unusually convincing witness.

144 I begin with the context. It bears reminding that as a coach, Mr Loh provided massages to athletes. Mr Loh admitted to giving Ms C massages once or twice, and Ms C accepted that there was this prevalent practice amongst coaches. Against this backdrop, Ms C's testimony is that Mr Loh then took advantage of her. However, assessed as a whole, her accounts of both the incidents were not cogent, and were lacking in relation to the material details of the alleged acts of molest (which went beyond the boundaries of normal massages after intensive training). For the first charge, she was unclear where the contact occurred, saying that "vagina" was "the part in between the legs". She also said the contact could have been accidental. Her failure to identify the exact part of her body that Mr Loh has allegedly touched for the second charge, and her embellishment as to its effects *ie, that she experienced an orgasm*, were

226 ROP at pp 3720 to 3724, Exhibit P25,

unsatisfactory. As expressed in the near-contemporaneous WhatsApp messages with Ms W, Mr A and Ms Eng, she was generally uncomfortable with the massages. But that is not the crux of the charges. For the reasons explained above, her complaints in the WhatsApp messages about the acts of molest (which went beyond the normal massages) must be treated with caution. Taken together with her immediate conduct after the second charge, I have grave hesitation in relying on Ms C's testimony that she was touched at the vulva region.

145 I also add that Ms C continued to attend group training sessions with Mr Loh until August 2013. In May 2013, she sought his advice on which university course to pursue. On 28 February 2015, she also attended a social gathering with Mr Loh. While it is the Prosecution's position that Ms C had taken precautions by avoiding any other individual training sessions with Mr Loh, such subsequent conduct remains somewhat incongruent with the allegations made against Mr Loh, especially in relation to the second charge. Despite all these unsatisfactory aspects of the Prosecution's case, individually and collectively, the District Judge nonetheless assessed them not to affect the strength of Ms C's testimony. With due respect, I find this evaluation to be wrong.

146 For completeness, I deal with the question whether Ms C had any intention to frame Mr Loh. Ms C lodged the FIR on 30 June 2016. Ms C had read a newspaper report about a coach being accused of molest. Thinking the offender could be Mr Loh, she decided to lodge the police report because she was worried that other new trainees might suffer her plight while training under Mr Loh. However, as it transpired, the newspaper report concerned a different coach. What I find troubling is that Ms C's communications with Ms W at that time revealed some strongly worded condemnation of sexual offenders in general. If Ms C had misunderstood Mr Loh's conduct in 2013, there is the

distinct possibility that over the three years, this misunderstanding might have deepened (especially after more conversations with Ms W and Mr A with whom she had continued to confide in). Unfortunately, I could not discount the possibility that there was a build-up of mistrust towards Mr Loh over the three years. Precipitated by the newspaper report, and coupled with her strong sentiments against sexual offenders, the complaint was eventually made in 2016.

147 I note that even during her examination-in-chief on 24 January 2018, Ms C continued to express her strong condemnation of sexual offenders:[227]

> …. Like I just want to have enough money to go on, well, join the UN firm under organization, on like features like around this. **All these sick pervert up and like just---you know, really I just wish I could just chop off all these like---like molesters and rapist's dicks, you know like, just---just chop off every body parts that they have that you can insert it into someone's vagina you know. Like it makes you so angry**.
>
> [emphasis added]

The District Judge found that Ms C's strong condemnation of sexual offenders did not affect the credibility of her account because it could be a result of her "cathartic release" or frustration from her "prolonged stints of cross-examination". He noted that "[i]t would however have helped the coherence of the defence case had there been a clearly articulate motive on the part of Ms C".[228] While I do not disagree with the District Judge that there is no evidence that Ms C had any malicious intention to frame Mr Loh, there is the real concern discussed which, as Mr Loh points out, has not been considered by the District

---

227 ROP at p 270, lines 9 to 17.

228 GD at [402] to [403].

Judge (see [28] above). In my view, this lack of a motive to frame Mr Loh is, at best, a neutral factor in the case.

148 As the Prosecution's case contains a reasonable doubt as to Mr Loh's guilt, I reiterate that Mr Loh should be acquitted of both offences for this reason alone. At the risk of repetition, the weaknesses in Mr Loh's defence cannot ordinarily shore up the Prosecution's case. In any event, as I have found above, none of the Mr Loh's alibis amounted to *Lucas* Lies that can corroborate the Prosecution's case. In relation to the second charge, Mr Loh has shown a reasonable doubt as to his presence at Tampines Stadium on 15 March 2013. Also, there should not be an inference of a guilty mind drawn against Mr Loh by virtue of his conduct during the statement recording on 2 August 2016. Having analysed Ms C's evidence against the entirety of the case, I am of the view that Ms C is not an unusually convincing witness.

Issue 5: Whether the Prosecution has breached its disclosure obligations under *Kadar* or *Nabill*

149 Given my findings above, it is not necessary for me to address Mr Loh's arguments on the Prosecution's breach of its disclosure obligations.

Conclusion

150 Before I conclude, I return to the fact that at the material time, there was a prevalent practice in the athletic community for coaches to give trainees massages after intensive training. If the practice remains today, the community, including the coaches, should rethink and review the appropriateness of such a practice. Should this continue to be a necessary practice, there should be proper safeguards adopted to minimise the potential for any abuse by the coaches of

trainees, or in some cases, to prevent genuine misunderstandings between coaches and trainees in the conduct of the massages.

151 In respect of the present appeal, I appreciate that this has been a long and protracted trial, with its twists and turns, with the testimonies of many witnesses to assess, and much information to sift through. Indeed, the District Judge took care to provide his reasons in detail. That said, the District Judge tended to resolve all doubts, discrepancies and contradictions in favour of the Prosecution. In the final analysis, the serious doubts as to the veracity of Ms C's allegations cannot be dismissed. Accordingly, I find that the District Judge has erred in finding that the Prosecution has proved the elements of the first and second charges beyond a reasonable doubt. I allow the appeal and acquit Mr Loh on both charges.

Hoo Sheau Peng
Judge of the High Court

Tan Chee Meng SC, Paul Loy Chi Syann and Calvin Ong Yik Lin (WongPartnership LLP) for the appellant;
Gail Wong, Susanna Abigail Yim and Colin Ng (Attorney-General's Chambers) for the respondent.