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

[2023] SGHC 93

Magistrate's Appeal No 9146 of 2021

Between

Public Prosecutor

… *Appellant*

And

Tan Chee Beng

… *Respondent*

Magistrate's Appeal No 9236 of 2021

Between

Tan Chee Beng

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Offences — Sexual offences — Outrage of modesty — Whether complainant's testimony unusually convincing]

[Criminal Law — Offences — Sexual offences — Outrage of modesty — Whether complainant's testimony corroborated]

[Criminal Law — Offences — Sexual offences — Outrage of modesty — Adverse inference for accused's election to remain silent]

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v
Tan Chee Beng and another appeal

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Vincent Hoong J
6 April, 21 December 2022, 1 February 2023

13 April 2023 Judgment reserved.

Vincent Hoong J:

Introduction

1 The complainant ("the Complainant") alleged that her superior, the accused person, committed four acts that outraged or insulted her modesty over three separate incidents spread across a few months. Two charges were brought in relation to the first incident and one charge each was brought in relation to the second and third incidents. Her evidence was largely corroborated by three other witnesses. The accused person, whose submission of no case to answer was dismissed, elected not to take the stand to give his evidence.

2 Nonetheless, pointing to certain purported inconsistencies and omissions by the Complainant, such as her failure to scream for help during the incidents, the district judge ("DJ") found that her evidence was not unusually convincing. As only the second of the three incidents was in his view

corroborated by the other witnesses, the DJ only convicted the accused person for the charge pertaining to the second incident, and acquitted him of the remaining charges.

3 Having thoroughly considered the evidence, I agree with the Prosecution that the DJ erred in arriving at his decision to acquit the accused person of the three charges. On a careful and holistic analysis of the facts, the Complainant's evidence was not only internally and externally consistent, but it was also corroborated by witnesses. No contradictory evidence was proffered to cast doubt on the Complainant's corroborated account, in the main because the accused person elected not to take the stand notwithstanding the mounting evidence against him. Accordingly, I convict the accused person of the charges that he was, in my judgment, wrongfully acquitted of.

4 These are the detailed reasons for my decision.

Background facts

5 In 2018, the Complainant was employed as an administrative staff at [B] Pte Ltd ("the Company"). The Company was managed by two active directors, namely the accused person, Mr Tan Chee Beng (also known as "Sam" or "Samuel", and referred to hereinafter as "the Accused") and PW3, who each held a 10% share in the Company. The remaining 80% of the shares were held by PW4, who acted more "like an investor". [1]

6 The Company, which had been set up in mid-2018, was then in its infancy,[2] and had a few other staff alongside the Complainant, key of whom

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1 Record of Appeal ("ROA") p 27, ln 17–26 and p 139, ln 16 to p 140, ln 28.

2 ROA p 139, ln 16–18.

were PW2 and one Rizal, both of whom worked in the warehouse and were involved in the packing and delivery of shipments.[3]

7 While the Complainant reported directly to PW3, who was in charge of invoicing, she engaged with the Accused, who was focused on the operations of the Company,[4] during the course of her work. For example, whenever a shipment was arriving, she would arrange for its delivery by informing the Accused of the orders. The Accused would then arrange with PW2 and Rizal to pack and deliver such orders.[5]

8 On 23 January 2019, the Complainant lodged a police report wherein she alleged that "[s]ometime between August 2018 to September 2018, as well as sometime in January 2019, [she was] molested by [her] company's boss [*ie,* the Accused]".[6]

9 Following investigations, the Accused was served with four charges, all of which pertained to his sexual harassment of the Complainant between August 2018 and January 2019. These charges stemmed from three separate incidents, namely: (a) telling her that he had a "hard-on" and pulling her hand towards his penis ("the First Incident", constituting the First and Second Charges); (b) swiping her groin area with his hand twice ("the Second Incident", constituting the Third Charge); and (c) sliding his hand along her back to the side of her breast ("the Third Incident", constituting the Fourth Charge). In full, the charges provided as follows:[7]

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3 ROA at p 28, ln 24–26.

4 ROA at p 28, ln 6–7 and 27–28.

5 ROA at p 28, ln 29–31.

6 ROA at p 29, ln 32 to p 30 ln 23.

7 ROA at pp 6, 8, 10 and 12.

> **1st Charge (amended)**
>
> You … are charged that you, sometime between 15 August 2018 to 10 September 2018, sometime in the morning, at the office located at [C] Road, Singapore, intending to insult the modesty of a woman, [the Complainant], by uttering words, *to wit*, that you had a 'hard-on', i.e. an erection, intending that it would be heard by the [Complainant], and you have thereby committed an offence punishable under Section 509 of the Penal Code (Cap 224, 2008 Rev Ed).
>
> **2nd Charge (amended)**
>
> You … are charged that you, sometime between 15 August 2018 to 10 September 2018, sometime in the morning, at the office located at [C] Road, Singapore, did use criminal force on [the Complainant], *to wit*, by using your hand to pull her right hand towards your erect penis, knowing it likely that you would thereby outrage the modesty of the [Complainant], and you have thereby committed an offence punishable under Section 354(1) of the Penal Code (Cap 224, 2008 Rev Ed).
>
> **3rd Charge (amended)**
>
> You … are charged that you, on 10 September 2018, sometime in the morning, at the office located at [C] Road, Singapore, did use criminal force on [the Complainant], *to wit*, by swiping your hand on her groin area twice, knowing it likely that you would thereby outrage the modesty of the [Complainant], and you have thereby committed an offence punishable under Section 354(1) of the Penal Code (Cap 224, 2008 Rev Ed).
>
> **4th Charge (amended)**
>
> You … are charged that you, sometime in January 2019, sometime in the morning, at the cold room located at [D] Road, Singapore, did use criminal force on [the Complainant], *to wit*, by sliding your right hand along her back and up to the right side of her right breast, knowing it likely that you would thereby outrage the modesty of the [Complainant], and you have thereby committed an offence punishable under Section 354(1) of the Penal Code (Cap 224, 2008 Rev Ed).

10 The Accused claimed trial to all four charges.

The decision below

11 Two days into the trial, after the Complainant and three Prosecution witnesses, namely PW2, PW3 and PW4 testified, counsel for the Accused ("the

Defence") submitted that there was no case to answer. This was premised in the main on the fact that the Complainant was not, in their view, an unusually convincing witness as her evidence was inconsistent with that of PW2's and PW4's in certain respects.[8]

12 This submission was rejected by the DJ, who found that there was "some evidence not inherently incredible that satisf[ied] each and every element of the charges" brought.[9] The standard allocution was then administered to the Accused, informing him that he could either elect to give his evidence and be liable for cross-examination, or he could elect to remain silent, with the attendant risk that the court may draw adverse inferences against him for remaining silent.[10]

13 The Accused elected not to take the stand, and no witnesses were called in support of his defence. As such, the Defence closed its case and the parties were directed to file their written submissions.[11]

14 After considering the parties' submissions, the DJ found that the Prosecution had proven the Third Charge beyond a reasonable doubt, and he convicted the accused of the charge. However, in his view, the Prosecution had failed to prove the First, Second and Fourth Charges beyond a reasonable doubt, and so the Accused was acquitted on those charges.[12]

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8 ROA at pp 172–177.

9 ROA at p 185, ln 21–22.

10 ROA at p 185, ln 23–31.

11 ROA at p 186, ln 6–9.

12 ROA at p 192, ln 15–23.

15 The DJ's reasons for his decision on conviction may be found in *Public Prosecutor v Tan Chee Beng* [2021] SGMC 61 ("GD"). Briefly, while the DJ found, pursuant to the testimonies of the Complainant and the other Prosecution witnesses, that there was a *prima facie* case made out for each charge (GD at [14]–[24]), he took the view that the Complainant's evidence was not unusually convincing (GD at [25]). This was for the following reasons:

(a) First, the Complainant's evidence was non-specific as to the dates of the alleged incidents, save for the Second Incident (GD at [27]–[29]).

(b) Second, there was an inconsistency between the Complainant's and PW4's evidence. The Complainant testified that PW4 called to inform her that the Accused had mentioned that he was having an affair with her. In contrast, PW4's evidence was that the Complainant had told him that the Accused had asked her to lie and to say that she was having an affair with the Accused (GD at [30]).

(c) Third, the Complainant's evidence was "unsatisfactory" as she omitted to mention that she had worked for PW4 for a period of time after she left the Company. This fact was only revealed when PW3 and PW4 confirmed that she had worked at PW4's office after her employment was terminated by the Company (GD at [31]).

(d) Fourth, there were inconsistencies between the Complainant's and PW2's evidence as regards the location of the Third Incident. While the Complainant testified that she had pushed the Accused's hand away when PW2 entered the cold room, PW2's evidence was that he did not see the Complainant with the Accused in the cold room, nor did he see the Complainant exiting the cold room (GD at [32]). Further, the

temperature in the cold room was about four-degree centigrade which would "require one to wear a jacket and a pair of gloves when going inside". Yet, there was no evidence that the Complainant was wearing such attire, and thus "there could be a possibility that the [Complainant] was not in the cold room at the material time" (GD at [33]).

(e) Fifth, the Complainant had continued to accept car rides from the Accused after the occurrence of the First and Second Incidents. Although she explained that she had access to her phone to call for the police if the Accused "tried to be funny with her", the DJ "did not think this was a reasonable explanation" as "given the alleged incidents, a reasonable person would not take the risk of being alone with the Accused" (GD at [34]).

(f) Sixth, while the DJ accepted that "victims of sexual crimes cannot be straightjacketed in the expectation that they must act or react in a certain manner", he found that "there was no explanation given as to why the [Complainant] did not scream for help". In his view, "as a mature adult, there was no reason for her not to shout for help" (GD at [36]).

16 The DJ came to the conclusion that the Complainant's evidence was not unusually convincing even though he made certain key findings against the Accused. First, the DJ accepted that the Complainant's failure to report the incidents immediately ought not to be considered adversely against her because "one cannot expect the [Complainant] to behave in a particular way". In any case, the Complainant had "offered a reasonable explanation for the delay in reporting", namely that "she believed [that] the Accused would stop the sexual harassment as he had apologi[s]ed" and "[s]he was also afraid of losing her job"

(GD at [35]). Second, the DJ dismissed the submission that the Complainant had conspired with PW4 to frame the Accused as this was "not borne out in evidence" (GD at [37]). Third, the DJ concluded that the submission that "the [Complainant] had work related issue[s] with the Accused was a bare allegation without any substance" (GD at [38]). Ultimately, without benefit of the Accused's testimony, the DJ held that the burden on him had not been discharged in respect of the allegations of conspiracy and motive.

17 Having found that the Complainant's evidence was not unusually convincing, the DJ proceeded to consider the corroborative evidence. In his view, only the Second Incident was corroborated by the evidence of PW2, PW3, PW4 and other contemporaneous and independent evidence (GD at [41]–[47]), and accordingly, he found that the Prosecution had proven its case for the Third Charge (relating to the Second Incident) beyond a reasonable doubt (GD at [47]). However, given that the "evidence in support of the rest of the charges was not sufficiently corroborated" and as the Complainant's evidence was not unusually convincing, the Prosecution fell short of meeting its burden as regards the remaining three charges, and the Accused was thus acquitted of those charges (GD at [48]).

18 The Third Charge was for the offence of outrage of modesty under s 354(1) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). Applying the framework in *Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580, the DJ found that the Accused's offence fell at the lower end of Band 2, and he sentenced the Accused to five months' imprisonment: see *Public Prosecutor v Tan Chee Beng* [2021] SGMC 89 ("GD (Sentencing)") at [19] and [26].

19 In HC/MA 9146/2021, the Prosecution appeals against the Accused's acquittal on the three charges. In HC/MA 9236/2021, the Accused appeals against his conviction on the Third Charge and his sentence of five months' imprisonment.

20 In considering whether the conviction and acquittals were properly arrived at, I am mindful that an appellate court will generally be slow to disturb a trial judge's finding of fact, especially where such findings hinge on the assessment of the credibility and veracity of witnesses: *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 ("*Jagatheesan*") at [34], citing *Yau Giau Beng Terence v Public Prosecutor* [1998] 2 SLR(R) 855 at [24]. Nonetheless, "an appellate court is in as good a position to assess the internal and external consistency of the witnesses' evidence": *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 at [55(c)].

My decision

Was the Complainant's testimony "unusually convincing"?

The "unusually convincing" standard

21 I begin my assessment by focusing on the Complainant's testimony. Such testimony *may* be sufficient to prove the charges against the Accused beyond a reasonable doubt. As observed by the Court of Appeal in *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [111], "where no other evidence is available, a complainant's testimony can constitute proof beyond reasonable doubt … but only when it is so 'unusually convincing' as to overcome any doubts that might arise from the lack of corroboration". This "unusually convincing" standard "applies to the *uncorroborated* evidence of a witness in all offences (and not just sexual offences), where such evidence forms the *sole*

basis for a conviction" [emphasis added]: *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 ("*GCK*") at [104].

22 The "unusually convincing" standard is thus applicable in *all* offences where the *sole* basis relied upon for conviction is the evidence of a witness whose evidence is uncorroborated. This frequently, but does not always, arise in the context where a sexual offence is committed behind closed doors and without the presence of other persons. In assessing whether the witness' testimony is "unusually convincing", the court weighs the demeanour of the witness alongside the internal and external consistencies in the witness' testimony: *AOF* at [115]. In this regard, "reliance on the demeanour of witnesses *alone* will often be insufficient to establish an accused's guilt beyond reasonable doubt" [emphasis in original]: *Jagatheesan* at [42]. This is because there is "the possibility of judges being deceived by adroit or plausible knaves or by apparent innocence": *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 at [72], citing *Ah Mee v Public Prosecutor* [1967] 1 MLJ 220 at 223.

23 The focus must therefore be on "an assessment of the internal consistency within the *content* of a witness's testimony" and "an assessment of the external consistency between a witness's evidence and the *extrinsic* evidence, which includes testing the former against the inherent probabilities and uncontroverted facts" [emphasis in original]: *GCK* at [137].

24 This exercise of assessing whether a sole witness's evidence is "unusually convincing" is thus a holistic one which is considered against the entire body of evidence, and in particular with regard to the conflicting evidence raised by the Prosecution and the Defence in support of their respective cases (*GCK* at [149(k)]):

> Whether an eyewitness's uncorroborated evidence is unusually convincing (and therefore capable of discharging the Prosecution's burden of proving the case against the accused person beyond a reasonable doubt) *requires an assessment of the internal and external consistencies of the eyewitness's account, and of any other evidence that the court is bound to consider, which includes the Defence's case and the evidence adduced by the accused person (or the lack thereof).* A finding must be made as to the relevant facts before the court directs itself to the ultimate inquiry of whether the Prosecution's case has been proved beyond a reasonable doubt. [emphasis added]

25 With these principles in mind, I turn to consider the Complainant's evidence in greater detail.

The Complainant's testimony

The First Incident

26 According to the Complainant, the Accused "started to be very touchy" in August 2018.[13] This entailed touching her breast area, back, side of her body, and around her hips.[14] She alleged that one morning in late August 2018 when the both of them were in the Company's office, the Accused had smelled her hair and told her that it smelled nice. Thereafter, he informed her that he was having an erection and pulled her hand towards his groin area twice. She resisted each time.[15]

27 This happened while she was seated with her back to the wall, and the Accused was standing on her right-hand side as she was showing the Accused a work order on her computer screen. In her evidence, he was "very close" and

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13 ROA at p 31, ln 25.

14 ROA at p 31, ln 27–28.

15 ROA at p 31, ln 32 to p 32, ln 5.

she could "feel his clothes around [*sic*] [her] arm".[16] Queried for more details, she repeated her testimony above, stating that the Accused had been standing upright beside her and told her that her "hair smell[ed] nice", and that he was "having a hard-on" which the Complainant understood to mean that he was "having an erection".[17] The Accused's latter comment formed the subject of the First Charge. He then "took [her] hand"[18] by the wrist and asked her to feel it, but the Complainant immediately pulled her hand back and said "don't".[19] However, the Accused repeated his action for a second time, using his right hand to pull her right wrist towards his groin area. That was when the Complainant told him, "Sam, stop".[20] This formed the basis of the Second Charge.

28 She then got up and exited the office to smoke.[21] Sometime later, at an unspecified time, she told PW2 about the incident.[22]

The Second Incident

29 Sometime after the First Incident, on 10 September 2018,[23] the Complainant was updating the whiteboard in the office when "[the Accused] tried to touch [her] groin area".[24]

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16 ROA at p 32, ln 24 to p 34, ln 19.

17 ROA at p 35, ln 18–20.

18 ROA at p 34, ln 20–27.

19 ROA at p 35, ln 32 to p 36, ln 3 and p 36, ln 4–15.

20 ROA at p 36 ln 2 to p 37, ln 9.

21 ROA at p 39, ln 13–22.

22 ROA at p 39, ln 25–26.

23 ROA at p 40, ln 4–6 and p 50, ln 23 to p 51, ln 2.

24 ROA at p 40, ln 4–6.

30 She explained that she was standing up and updating the whiteboard while wearing a short black dress that was about two to three centimetres above her knee. The Accused then stood on her left side, remarking "[o]h, you're wearing dress [a] today" and "[o]h, so short". Following this, he swiped her groin area with his right hand above her dress twice without making skin-to-skin contact with her body.[25] He was smiling as he did so.[26]

31 This episode caused her to feel "really scared and very upset" and she immediately left the office and started crying.[27] Thereafter, she ran towards the warehouse area where PW2 and Rizal were.[28] Upon seeing her, PW2 asked why she was crying, and she told him that "[the Accused] touched me there". This was seen by Rizal. However, at this time, the Accused was walking out to his car, and so PW2 asked the Complainant to stop crying and "let [the Accused] go first".[29]

32 After the Accused drove off, the Complainant went with PW2 and Rizal to the canteen to smoke, where she told them that the Accused had touched her groin area.[30] She noted that they appeared shocked and advised her to "maybe … try to message him or talk to him to tell him to stop doing whatever he is trying to do".[31]

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25 ROA at p 40, ln 32 to p 43, ln 30.

26 ROA at p 44, ln 7–9.

27 ROA at p 44, ln 2–3.

28 ROA at p 44, ln 14–24.

29 ROA at p 45, ln 4–11 and p 46, ln 2–15.

30 ROA at p 46, ln 32 to p 47, ln 11.

31 ROA at p 47, ln 4–7 and 13–16.

33 On their advice, the Complainant messaged the Accused on the same day at 10.52am, as follows ("the Message"):[32]

> Sam I think [yo]u should stop whatever [yo]u [a]r[e] trying to do.
> I don't feel comfortable.

34 After she sent the Message, the Accused immediately called her, and told her that he was "sorry", and that they were "just working colleagues".[33] He also asked her to delete the message, but she did not do so as she "felt very suspicious" and wanted to retain the message for her own safety.[34]

35 Thereafter, she returned to the office and told PW3 that the Accused "was trying to be funny" with her. She also said that if the Accused did not stop, she would not hesitate to make a police report. This caused PW3 to be shocked, and he said that he would take note of it, although PW3 did not do anything else after the conversation.[35]

36 The Complainant also did not do anything after informing PW3 about the incident, because in her view, she had already sent the Message, and so she "thought that he would have stopped, so things would go back to normal".[36]

The Third Incident

37 The Accused stopped his actions until sometime in January 2019, when they were in the cold room of the warehouse. On that day, the Complainant was standing in the room checking the products for delivery when the Accused

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32 ROA at p 47, ln 18–30; Exhibit P2, ROA at p 254.

33 ROA at p 51, ln 4–7.

34 ROA at p 51, ln 8–12.

35 ROA at p 51, ln 13–30.

36 ROA at p 51, ln 31–32 and p 52, ln 11.

entered and stood beside her. According to her, he then used his hand to rub her back and the front side of her breast area.[37]

38 Breaking the sequence up, the Complainant explained that the Accused was standing on her left-hand side while they both looked at the product order list.[38] While she was looking forward, he then used his hand to rub the middle part of her back. In a continuous motion, his hand moved straight towards her right breast area, where "he went down and he went up".[39] According to her, the entire episode took place within seconds, and it stopped when PW2 entered the cold room, at which point she brushed the Accused's hand away.[40]

39 After the incident, PW2 who was then walking into the cold room asked her why she looked so stressed and worried.[41] To this, she explained that the Accused had "started his nonsense again" and that he had "tried to touch" her.[42] Aside from PW2, she did not tell anyone else about what happened in the cold room.[43]

The meeting with PW4

40 A few days after the Third Incident, the Complainant received a call from Rizal, informing her that PW4 wanted to invite her for dinner.[44]

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37 ROA at p 52, ln 10–24.

38 ROA at p 53, ln 14–17.

39 ROA at p 54, ln 2 to p 55, ln 4.

40 ROA at p 55, ln 9–13 and p 55, ln 21 to p 56, ln 1.

41 ROA at p 56, ln 32 to p 57, ln 1.

42 ROA at p 57, ln 1–8.

43 ROA at p 57, ln 9–16.

44 ROA at p 57, ln 25–27.

41 The dinner was attended by PW4, the Complainant, and Rizal. At the dinner, PW4 brought up the topic of what the Accused had done. Rizal apologised to her and explained that "he had to tell" PW4.[45]

42 In her testimony, the Complainant said that she was surprised that PW4, who had known the Accused and PW3 for "very long", believed her. To this, she recounted that PW4 had explained that he believed her because the incidents happened within a few weeks of her working at the Company and she had no motive to accuse the Accused. PW4 also stated that he would not want the same thing to happen to his daughter, who was around the same age as the Complainant.[46]

43 Despite this, the Complainant did not provide PW4 with details of what happened, and she only told him that the Accused was "touching [her] here and there".[47] PW4 then informed the Complainant that the Accused's actions were not right, and that it was her choice to make a report against him.[48]

44 After the dinner meeting, PW4 informed the Complainant that if she really wanted to make a police report, she could call him, and he could give her a lift and be there to support her.[49]

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45 ROA at p 58, ln 27–32.

46 ROA at p 59, ln 9–21.

47 ROA at p 59, ln 32 to p 60, ln 5.

48 ROA at p 59, ln 2–4.

49 ROA at p 60, ln 17–20.

The making of the police report

45 A few days after her dinner with PW4 and Rizal, while at work, the Accused asked to speak to the Complainant on the pretext of a smoke break. The Accused told her that PW4 had called him to ask about what was going on between the Accused and the Complainant. The Accused asked if the Complainant had told PW4 "about this", to which the Complainant denied, and the Accused thus theorised that it was Rizal who had told PW4 what had happened.[50]

46 The Complainant testified that the Accused then told her that he denied that anything had happened during his call with PW4, asserting that "people [were] making up stories".[51] This made the Complainant very angry because "he [knew] what happened" as "[h]e was the one who [had done] it". She also debated internally about whether to lodge a police report as she was concerned about the effectiveness of it, given that he would deny his actions.[52]

47 After her confrontation with the Accused, the Complainant had a call with PW4. She informed him that she wanted to lodge a police report. However, at that juncture, PW4 told her that the Accused had asserted that he was having an affair with the Complainant. This made her even angrier. She then confirmed with PW4 that she intended to make a police report that night.[53]

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50 ROA at p 60, ln 23 to p 62, ln 1.

51 ROA at p 62, ln 2–6.

52 ROA at p 62, ln 8–13.

53 ROA at p 62, ln 19–27 and p 63, ln 10–17.

48 That night, PW4 met the Complainant at the canteen, where they had dinner before he brought her to a police station in Jurong to lodge a report.[54] She did not return to work the next day as she was advised by PW4 and the police officers[55] not to go to the office for the "next few days". As such, she messaged PW3 that she would be on "unpaid leave for 14 days".[56]

The termination of her employment

49 After the 14 days of unpaid leave, the Complainant returned to work at which point, PW3 informed her that they were considering terminating her employment because they did not agree to her taking two weeks of unpaid leave. A week later, they told her that Friday would be her last day.[57] She left the Company sometime in February 2019.[58]

Internal consistency of the Complainant's evidence

50 From the evidence detailed above, it is clear to me that the Complainant's evidence was internally consistent. She recounted how the incidents occurred and gave detailed particulars. She also adequately accounted for the gap in time between the Second and Third Incident, which she explained was because she had confronted the Accused by way of the Message after the Second Incident following the advice of her colleagues, PW2 and Rizal. In addition, she also explained why she did not lodge a police report at that point in time, namely, because she was afraid of losing her job and the Accused had apologised after he was confronted. She only decided to report the Accused after

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54 ROA at p 63, ln 20–28.

55 ROA at p 65, ln 8 to p 66, ln 6.

56 ROA at p 65, ln 18–20.

57 ROA at p 65, ln 24–28.

58 ROA at p 67, ln 9–11.

the Third Incident in January 2019 because of a combination of factors, namely: (a) the fact that he had repeated his errant conduct; (b) PW4's (unexpected) urging and support; and (c) her anger when the Accused informed her that he had denied to PW4 that anything was going on and because he had allegedly told PW4 that they were having an affair.

51 As the Prosecution submitted, the Complainant was able to accurately describe the environment within which each incident took place. She was able to describe where the Accused and herself were positioned in relation to each other during each of the three incidents. Crucially, she was also able to describe the Accused's actions during each incident. She recounted clearly and consistently how the Accused had engaged with her and touched her across the various incidents.[59] For each episode, she was also able to recount the incident generally, before delving into the specific details which did not detract from the general account: see [26]–[28] (First Incident), [29]–[36] (Second Incident) and [37]–[39] (Third Incident) above.

52 It is also apposite to emphasise that the Complainant did not try to exaggerate the severity of the Accused's conduct at any stage. This lent to the credibility of her detailed account. To illustrate:

(a) For the First Incident, involving him pulling her hand towards his erection, she was clear that her hand "wasn't touching" the Accused's body because when he pulled it towards him, she pulled back. As such, her hand was "a few centimetres away" from his groin area.[60]

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59 Prosecution's submissions in HC/MA 9146/2021 ("PS MA 9146") at paras 74–75.

60 ROA at p 36, ln 24–29.

(b) For the Second Incident, involving him swiping her groin area, she was asked if the Accused had made (skin-to-skin) contact with her body. To this, she firmly said: "No. He only swiped above my dress".[61] She also clarified that the swipes were not hard, and that they were two "quick swipe[s]" to the front of her groin area, which she could feel on her dress, but not between her legs.[62]

(c) For the Third Incident, involving him moving his hand along her back and up to the right side of her right breast, she described the pressure of his touch as such: "It wasn't forced [*sic*] but I [could] feel his hand on my back and my side."[63]

53 Her version of events was also undisturbed during cross-examination, where she again took no steps to embellish her account or polish the evidence that she had given. For one, while she confirmed that the Accused did "something to her" in August 2018, "the very month that [she] started working" at the Company,[64] she readily admitted that she did not remember the exact date of the First Incident.[65]

54 Consistent with her evidence that the incidents occurred in private, she agreed that no one else saw the incidents first-hand.[66] Moreover, aside from PW3 and PW4, she "only told [PW2] and Rizal that [the Accused] did

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61 ROA at p 42, ln 16–17.

62 ROA at p 42, ln 21–31.

63 ROA at p 55, ln 14–17.

64 ROA at p 72, ln 29–31.

65 ROA at p 74, ln 7–9.

66 ROA at p 73, ln 2–5, p 74, ln 3–7 and ln 18–20.

something to [her]".[67] This was despite the fact that there were other employees in the Company.[68] In addition to her candour, she was also quick to correct the Defence when an improper suggestion was made – for example, when the Defence suggested to her that the Second Incident "happened in the cold room", she immediately responded: "No, [the Second Incident] happened in the office".[69]

55 In fact, her evidence was consistent even as regards details that were immaterial to the charges. To give a few examples, during her examination-in-chief *and* cross-examination, she was consistent that:

(a) Prior to the Second Incident, the Accused asked her why the whiteboard had not been updated. This led her to get up to update the whiteboard, which was how he came to stand next to her and interact with her.[70]

(b) After the Second Incident, the Accused exited his office and walked towards his car, at which point he asked her to "update him later" about other orders.[71] Thereafter, when she, PW2 and Rizal went to the canteen, she told them that the Accused had tried to touch her groin area, and both of them were shocked.[72] However, both told her to message the Accused rather than make a police report.[73]

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67 ROA at p 73, ln 29–32.

68 ROA at p 73, ln 8–12.

69 ROA at p 74, ln 21–22.

70 ROA at p 41, ln 21 to p 42, ln 15; ROA at p 75, ln 9–21 and p 76, ln 11 to p 77, ln 2.

71 ROA at p 45, ln 10–13; ROA at p 76, ln 22 to p 77, ln 9.

72 ROA at p 47, ln 2–13; ROA at p 77, ln 31–32.

73 ROA at p 47, ln 15–19; ROA at p 78, ln 7–9.

(c) She thought that PW4 would be offering her a job, and that was why she had accepted his invitation to dinner. It was only during the dinner that she learned that she was mistaken, and that PW4 in fact wished to discuss the incidents between the Accused and the Complainant as Rizal had informed him of them.[74]

(d) It was PW4 who gave her the encouragement to make the police report against the Accused,[75] although PW4 made it clear that it was her decision whether to make the report or not.[76]

(e) She stayed away from work for 14 days after making the police report on the police officers' and PW4's advice.[77]

56 Additionally, she rejected *all* assertions that she had a motive, stemming from a poor working relationship with the Accused, to frame the Accused for the offences. I produce full extracts of certain exchanges between the Complainant and the Defence to illustrate:[78]

Q And during the course of your work, I mean, there were times you made mistakes, correct?

A Yes.

Q And [the Accused] would get angry with you, correct?

A Yah.

Q And he would---I mean, he was your boss---oh, he was one of the bosses and he will scold you, correct?

A Yes.

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74 ROA at p 57, ln 25–31; ROA at p 58, ln 27–32; ROA at p 83, ln 25–27 and p 85, ln 15–26.

75 ROA at p 60, ln 17–20; ROA at p 80, ln 23–24.

76 ROA at p 59, ln 2–4; ROA at p 86, ln 2–3.

77 ROA at p 65, ln 18–20; ROA at p 66, ln 2–6; ROA at p 90, ln 30 to p 91, ln 6.

78 ROA at p 71, ln 13–24; ROA at p 72, ln 12–23; ROA at p 77, ln 4–19.

Q And you would get upset, correct?

A Uh, get upset in a sense of what? I don't really get upset. If it is my fault, I just tell him, "Okay, I'm sorry. I won't make the same mistake again."

…

Q And so, I put to you that you did not have a good working relationship with [the Accused] but you knew you had to stay on in the company, agree or disagree?

A There wasn't anything wrong---not---not good relationship. What do you mean by that? We didn't have any issues going on.

Q No, he would scold you and you would get upset.

A That---that is a normal wherever you work. To me, I believe, if you do a mistake, your boss reprimand you, you move on from there. And what is there to be really upset and hold grudges? If you did a mistake, you are wrong, you said "sorry", you move on from there.

…

Q I put it to you that what really happened was you had not updated the board, he got angry with the board in relation to the deliveries. He got angry with you, you started to cry, and you ran out of the office. I put that to you. You agree or disagree?

A Disagree.

Q And even after when he came out, he was still telling you, you know, to remember to update him on the deliveries. And---and he said that in relation to your failure to update the whiteboard. Agree or disagree?

A Disagree.

Q And now you say that you were crying and you told---you went over to speak to [PW2] and Rizal.

A Correct.

Q And you told [PW2] and Rizal that you were molested.

A Correct.

57 In sum, the Complainant's account remained consistent even when she was put under pressure and faced with difficult and directed questions from the

Defence. Such consistency extended beyond details about the charges and included details about immaterial facts such as what led her to lodge the police report. Aside from being remarkably consistent, the Complainant's evidence was also in no way overstated. Indeed, she made concessions, such as her inability to remember when exactly the First Incident occurred, and readily explained the precise degree of intrusion, even if doing so minimised the Accused's culpability. I am thus wholly satisfied with the internal consistency of her evidence.

External consistency of the Complainant's evidence

58 The Complainant's testimony was also externally consistent with documentary evidence. In particular, she recounted that after the Second Incident, she was urged by PW2 and Rizal to message the Accused to ascertain his intentions. This resulted in the Message, sent on the day of the incident, which according to her, was followed up with an apology by the Accused. Consistent with this, the Accused did indeed stop his actions for a period of time before resuming his conduct some months later, in January 2019.

59 The Complainant's testimony was also consistent with the police report which she lodged at 9.32pm on 23 January 2019 at 2 Jurong West Avenue 5. In the report, she alleged that she had been molested between August 2018 and September 2018, as well as sometime in January 2019.[79] The timing and location of the report is entirely consistent with the Complainant's evidence that she finally resolved to make the report after the Third Incident in January 2019, and that she had made her police report at night, after dinner with PW4, at a police station in Jurong. The details in her brief report also cohere with her

[79] Exhibit P1, ROA at p 253.

testimony of the incidents, *ie,* that the First and Second Incidents occurred sometime between August and September 2018, while the Third Incident occurred in January 2019.

60 Having combed through the entirety of the Complainant's testimony, I am satisfied that her testimony was both internally and externally consistent with the contemporaneous documentary evidence available. In addition, I note that while the DJ expressed that he had "considered the demeanour of [the Complainant]", no express findings were made; had such a finding been made, I would have been slow to overturn it because as an appellate court which has neither seen nor heard the witness, I am in a less advantageous position as compared to the DJ who had the benefit of hearing the evidence of the Complainant and observing her demeanour: *GBR v Public Prosecutor and another appeal* [2018] 3 SLR 1048 ("*GBR*") at [18].

61 Furthermore, as I will explore in greater detail below, the Complainant's testimony was also materially consistent with the evidence given by the other Prosecution witnesses, PW2, PW3 and PW4 (see [67]–[105] below).

62 Absent any adverse findings pertaining to her demeanour and given the internal and external consistency of the Complainant's testimony, I am satisfied that her testimony was unusually convincing, in the sense that it is sufficient to establish the charges against the Accused beyond a reasonable doubt. Nonetheless, I am cognisant of the fact that "[t]he finding that a complainant's testimony is unusually convincing does not automatically entail a guilty verdict. The court must consider the other evidence and in particular, the factual circumstances peculiar to each case": *Public Prosecutor v Wee Teong Boo and other appeal and another matter* [2020] 2 SLR 533 at [45], citing *XP v Public*

Prosecutor [2008] 4 SLR(R) 686 at [34]. It is thus to the other evidence that I now turn.

Was the Complainant's testimony corroborated?

Relevance of corroborative evidence

63 It is settled law that where the evidence of a complainant is not "unusually convincing", an accused's conviction is unsafe unless there is some corroboration of the complainant's story: *AOF* at [173]; *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2019] 2 SLR 490 ("*Mohd Ariffan*") at [58].

64 Where corroborative evidence is available, the court adopts "a liberal approach to corroboration, focusing instead on the substance, relevance, and confirmatory value of the evidence in question": *GCK* at [96]. This liberal approach equips the trial judge with "the necessary flexibility to treat relevant evidence as corroborative", and to focus on the substance and relevance of the evidence, and "whether it is supportive or confirmative of the weak evidence which it is meant to corroborate": *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [43].

65 In this regard, a subsequent complaint by the complainant to another party can amount to corroborative evidence (see *AOF* at [173], citing *Public Prosecutor v Mardai* [1950] MLJ 33 at 33):

> *… It would be sufficient, in my view, if that corroboration consisted only of a* ***subsequent complaint by complainant herself*** *provided that the statement* ***implicated the Appellant*** *and was* ***made at the first reasonable opportunity after the commission of the offence.*** [emphasis in original]

66 This much is also made clear by s 159 of the Evidence Act 1893 (2020 Rev Ed):

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

To add, under s 159, the timing of such a corroborative "former statement" would affect the relevance and weight to be attributed the statement. For example, in *Lee Kwang Peng v Public Prosecutor* [1997] 2 SLR(R) 569 ("*Lee Kwang Peng*"), applying s 159, Yong Pung How CJ explained at [80] that the complaints by the first and second complainants to each other "did not even fall within the ambit of s 159, because they were made so long after the alleged incidents. Even if that difficulty could be circumvented, [he] would still have to conclude … that such corroboration, not being independent, could only be of 'little additional evidential value'".

PW2's evidence

67 According to PW2, on the morning of the Second Incident, he and Rizal were starting to unload items from a lorry when they saw the Complainant rushing out of the office looking scared and teary "like she was about to cry". This was out of the norm because "usually on most days she would be smiling". She then told PW2 and Rizal that the Accused "did something improper to her". When questioned further, he explained that the Complainant had said that the Accused had tried to touch her, but he could not recall where the Accused had tried to touch.[80]

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80 ROA at p 109, ln 10 to p 110, ln 26; ROA at p 116, ln 18 to p 117, ln 6.

68 This caused him to be shocked, but at the time, he noticed that the Accused was coming out of the office looking "normal". After hearing from the Complainant, he and Rizal advised her to inform PW3 "to do a report".[81]

69 PW2 also gave details about the First Incident, specifically concerning the Accused's attempt to get the Complainant to touch his groin area (*ie*, the Second Charge). In his testimony, he recounted that prior to the Second Incident, there was another incident whereby the Accused "had tried to take [the Complainant's] hand and put it at his groin area".[82] This, he was clear, was a separate and different incident from the Second Incident.[83] He further explained that after the Second Incident, the Complainant had said that it was "not the only incident that had happened" as "[b]efore that … there was another incident that happened, where she [*sic*] pulled her hand towards his groin".[84]

70 After the above two incidents, PW2 recounted that sometime in early 2019, the Complainant "came out from the cold room" and said that the Accused had "start[ed] his nonsense again". While the Complainant did not elaborate on what this meant, PW2 understood this to mean that the Accused was "trying to get another opportunity",[85] and that the Accused had "tried to grope her again".[86]

71 PW2's evidence was broadly consistent with the Complainant's evidence in that he had been informed by her that there were three instances whereby the Accused had behaved improperly. While PW2 agreed that he never

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81 ROA at p 112, ln 3–21.

82 ROA at p 110, ln 29 to p 111, ln 2.

83 ROA at p 111, ln 10–15; ROA at p 112, ln 25–30.

84 ROA at p 113, ln 5–8; see also ROA at p 121, ln 14–19.

85 ROA at p 113, ln 23–29.

86 ROA at p 114, ln 4–5.

saw any of the incidents, his account of the incidents was aligned with the Complainant's in all material aspects. As regards the Second Charge during the First Incident, both his and the Complainant's account was that the Accused had tried to pull her hand towards his groin area. As for the Second Incident, both he and the Complainant were consistent that she had come out crying after the incident and informed him and Rizal about what the Accused had done. Also, both recounted that shortly after the Complainant had exited the office, the Accused did the same. Finally, PW2 corroborated the Complainant's account that she had informed him that sometime in early 2019, the Accused "started his nonsense again"; this, it is significant to note, was the *same* expression the Complainant testified that she had used to describe the Accused's conduct after the Third Incident to PW2.

PW3's evidence

72 PW3, the Complainant's direct supervisor, also recounted that he came to know of the Accused's acts because on the morning of the Second Incident, the Complainant told him that she had been touched by the Accused. While he was shocked, he did not reply or do anything because he "really did not know what to do".[87] Instead, he left it to her to decide what she wanted to do, and they "just continue[d] to do [their] normal work".[88]

73 Thereafter, sometime in 2019, PW4 called PW3 to ask if he knew that the Accused had touched the Complainant, to which PW3 responded "[y]es … [the Complainant] has spoken to me". After the call, he again took no action.[89]

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87 ROA at p 127, ln 25 to p 128, ln 23.

88 ROA at p 128, ln 25–32.

89 ROA at p 129, ln 4–18.

74 Finally, he confirmed that the Complainant was terminated from employment by him as "she did not have permission to be away from work".[90]

75 The brief testimony given by PW3 was also materially consistent with the Complainant's evidence that she had reported the Accused's conduct to him after the Second Incident, and that he did not do anything afterward. Furthermore, as the Complainant recounted, it was PW3 who had terminated her employment after she took 14 days away from work. While these aspects of her evidence were unrelated to the elements of the charge, the marked consistency between her evidence and PW3's adds greater credibility to the evidence given by the Complainant, which, as I have already explained, was internally and externally consistent, and broadly supported by PW2's evidence. PW3's testimony was thus corroborative of the Second Incident having occurred.

PW4's evidence

76 I turn finally to PW4's evidence, which was also materially consistent with the Complainant's evidence. In sum, PW4 testified that he came to know of the incidents in relation to the Complainant being molested by the Accused through Rizal.[91] To verify the facts, he asked Rizal to arrange a meeting with the Complainant, and this culminated in a dinner between the three parties.[92]

77 During the dinner, PW4 asked the Complainant if the Accused had molested her, to which she replied "yes".[93] However, PW4 did not ask the

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90 ROA at p 130, ln 12–17.

91 ROA at p 141, ln 26–28.

92 ROA at p 142, ln 15–30.

93 ROA at p 143, ln 5–15 and 26–28.

Complainant about the specifics of the incidents as he thought it was "very sensitive". Nonetheless, he trusted the Complainant, and he told her that if she wanted to lodge a police report, he would be "okay". However, as he gathered from her facial expression that she was "a little bit unwilling" to make a report, he told her that he would "leave it to her".[94]

78 Thereafter, he also verified the matter with PW3, who said that the Complainant had told him about an incident between the Accused and the Complainant, although PW3 said that he could not do anything because it was between the both of them.[95]

79 In addition, at a physical meeting, PW4 confronted the Accused, who initially refused to divulge any details of wrongdoing on his part.[96] As PW4 was about to leave, the Accused and him had an important heated exchange, which PW4 recounted during his examination-in-chief as follows ("the Important Conversation"):[97]

> A Yes, I stand up. I was about to walk off.
>
> Q Okay. And at this point what happened?
>
> A Then he say, "Is it because of [the Complainant]?" So I told him, "Oh, now, you can remember." So I sit down.
>
> Q And now, when you sat down, what else did [the Accused] say to you?
>
> A He told me he's just joking.
>
> Q And what did you respond to that?
>
> A So I told him this---"Such thing can joke?"

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94 ROA at p 132, ln 32 to p 144, ln 18.

95 ROA at p 145, ln 11–20.

96 ROA at p 145, ln 22 to p 146, ln 29.

97 ROA at p 147, ln 1 to p 148, ln 3.

Q Now what did you understand by him saying he's just joking?

A I don't know, but he told me that this---he's just joking. What kind of joke, I seriously don't know.

Q What did you mean when you said, "How can you joke?"

A Yes, because when you talk about touching girls, this is no joke.

Q And then what happened after that?

A So after that I was talking. The situation was very unpleasant. After a short while I said, "Okay" and I left.

Q Now before you left and you said, "How can you joke?"---

A Yes.

Q what---how did [the Accused] respond to you saying that?

A He told me, "If I cannot joke like this, then a lot of girls already lodged a police report."

Q And did you notice his facial expression?

A No. Defensive.

Q Well, did he say anything else?

A And he say, "Who asked---who asked her to dress until so sexy and seducing?"

Q Who is this "her"?

A [The Complainant].

Q And what was your response to that?

A So I told her [sic]---I say, "Short means you can touch?"

Q And did you noticed his facial expression when he said this?

A Defensive.

80 Thereafter, PW4 then explained that one day the Complainant had called and informed him that the Accused told her to say that they were having an

affair and she could not do that.[98] At the Complainant's request he accompanied her to lodge a police report against the Accused after work that day. After he picked her up, they had dinner before heading to the police station in the Jurong area. He then told her to take two weeks' (14 days) unpaid leave, but later found out from her that she had been terminated from her employment.[99]

81 This caused PW4 to be displeased, and in messages sent on 21 February 2019 in a group chat between PW4, PW3 and the Accused, PW4 explained his feelings of injustice for the Complainant. In his messages, PW4 stated that he had been informed by the Complainant that "she was terminated" by the Company, and that she had told him that this was "due to the [two] weeks unpaid leave she ha[d] requested [for] but was rejected". PW4 "confirmed with [PW3] twice … that was the main reason for her termination."[100]

82 PW4 then stated that he was supportive of her two weeks' unpaid leave due to the "molest issue":[101]

> As a human, I fully understand and also support the idea of her going on 2 weeks unpaid leave to avoid any further unpleasant confrontation due to the molest issue which involved our one [*sic*] of director.

83 He further added that the Complainant had told her that she was "jobless now and [that] she need[ed] a job badly to support her family". As such, he said that he would employ her in another company that he ran, but that the Company ought to bear the costs:[102]

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98 ROA at p 149, ln 7–11.

99 ROA at p 149, ln 12 to p 150, ln 11.

100 Exhibit D1-I, ROA at p 1098.

101 Exhibit D1-I, ROA at p 1098.

102 Exhibit D1-I, ROA at p 1098.

> … Once again as human being. I am sure we have *FEELINGS* and also *CONSCIENCE*. As this shameful matter happened in [the Company], already a victim and still being fired is extremely unfair to her. As a director, I strongly believe that we must do something.
>
> I will employ her but [the Company] will have to bear the cost. If this shameful incident didn't happen, I will not have to spend time solving this matter. My time is very precious.
>
> If I d[on't] hear anything from our directors by 1700hrs today, I will take it as we all agree to employing her. … My main reasons for employ her is I must be responsible for the things we've done. …

84 As with PW2 and PW3, PW4's evidence was materially consistent with the Complainants in all aspects. Like the Complainant:

(a) he said that he had learned of the incidents from Rizal;

(b) he confirmed that he had asked her about the incidents during the dinner, although they did not go into the specifics of what the Accused had done;

(c) he explained that the police report had been made at a police station in the Jurong area after the Complainant finished work, and that they had dinner before making the report; and

(d) he testified that he had told her to take two weeks' unpaid leave, and this was precisely the period of absence that she took.

85 Aside from the material consistency lending further credibility to the Complainant's version of events, PW4's evidence also bolstered her evidence as he added to the body of evidence through his recounting of the Important Conversation which I have set out in full at [79] above. Read as a whole, the Important Conversation reads like a partial confession by the Accused. While they did not delve into the details of the incidents, the Accused did not reject PW4's assertion that he had touched the Complainant. Instead, he sought to

trivialise his behaviour as a "joke". He also attempted to justify it by placing the blame on the Complainant, suggesting that it was her fault for having dressed "so sex[il]y and seducing[ly]".

86 The messages detailed at [81]–[83] above are also wholly consistent with the reason that PW3 had given for her termination, namely that she had taken two weeks' unpaid leave which was not approved by the Company. This also accorded with the Complainant's understanding that she had been terminated for her two-week absence. This can be seen from her testimony both during her examination-in-chief and under cross-examination:[103]

> Examination-in-chief
>
> A I called---I actually message PW3 and I told PW3 that, "I won't be coming to office for 2 weeks. I will be under unpaid leave for 14 days.
>
> Q And did you go back to the office after 14 days?
>
> A Yes.
>
> Q And what happened then?
>
> A After 14 days, uh, I went back to office then PW3 told me that they---*they might let me go but they are still considering because I took the 2 weeks unpaid leave they didn't agree with that. So, 1 week after I came back, they told me that, that Friday was my last day*.
>
> Cross-examination
>
> Q And then you stayed away from work for 14 days, correct?
>
> A Correct.
>
> Q And after that, the---PW3 told you, "You had no permission to stay away from work for 14 days." And he terminated your employment, correct?

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103 ROA at p 65, ln 18–28 and p 90, ln 30 to p 91, ln 3.

A 1 week after I come back.

[emphasis added]

87 Hence, it can also be seen that the Complainant's evidence was that two weeks after making the police report (on 23 January 2019), she returned to work. However, just one week thereafter, she was told that her employment was terminated. In other words, she was terminated from her employment about *three weeks* after 23 January 2019, on or about 13 February 2019 (a Wednesday). In her evidence, PW3 had told her that Friday would be her last day, meaning that her employment with the Company likely ended on 15 February 2019. A few days later, and as per the messages sent by PW4, she then reached out to PW4 to inform him of her termination, and this was then reflected in his messages to the Accused and PW3 on 21 February 2019 (see [81]–[83] above). As such, aside from being consistent with the reasons provided by the Complainant for her termination, PW4's messages further corroborate the timeframe pertaining to the termination of her employment, as his messages were indeed sent shortly *after* she had been terminated by the Company.

Inconsistencies in evidence

88 However, the Defence pointed to various inconsistencies between the Complainant's evidence and that of the Prosecution witnesses. Some such inconsistencies were also noted by the DJ, and I deal with them in turn.

89 First, the Complainant's evidence was that PW4 had told her over a call that the Accused had asserted that he and the Complainant were having an affair.[104] PW4's evidence, by contrast, was that the Complainant had informed

[104] ROA at p 62, ln 19–27.

him that the Accused had asked her to lie and say that they were having an affair.[105]

90 In my judgment, whether the Accused had told PW4 that he was having an affair with the Complainant or whether it was the Complainant who had informed PW4 that the Accused had asked her to say that they were having an affair, was inconsequential and immaterial to the charges. Both the Complainant and PW4 were clear that the topic of the Accused and the Complainant allegedly having an affair had come up in a conversation between them. Either one of them might have forgotten the exact details of what had transpired during their conversation, but both were aware that an alleged "affair" was used to deflect any blame on the Accused's part for his misconduct. Also, *after* discussions about this alleged affair, the Complainant proceeded to make the report against the Accused, raising doubts as to the possibility of any such alleged affair. Importantly, what is clear is that neither considered such an "affair" to be legitimate, and this much was shown by PW4 through his incendiary messages to PW3 and the Accused after the Complainant's employment was terminated, during which he described her as a victim of a "molest case".

91 Second, the Complainant's evidence was that the dinner with PW4 and Rizal had taken place after the Third Incident, and one or two days before she made the police report.[106] On the other hand, PW4 had testified that the dinner took place "before 2019" (*ie,* before the Third Incident in January 2019).[107]

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105 ROA at p 160, ln 21–23.

106 ROA at p 57, ln 25 to p 58, ln 22.

107 ROA at p 143, ln 23–25.

92 However, whether or not the dinner happened before or after the Third Incident, both the Complainant and PW4 explained that during that dinner, PW4 had expressed support for the Complainant as he had formed the view that the incidents did in fact occur. In this regard, the exact timing of each incident was not of significance to PW4 – as he testified, he did not "ask so much where---how the molest take place, where he touch her" because such information was in his view "sensitive".[108] Hence, he readily conceded that he did not know the details about what had happened.

93 In the premises, the dinner simply served as a marker, being the first time PW4 informed the Complainant that he had found out about the incidents through Rizal and expressed support for her in that regard. Both their evidence was to that effect, and both were also clear that the police report was only made thereafter. The dinner thus formed the base for PW4 to then accompany the Complainant to make the report, and any inconsistencies as to the exact date of the dinner are immaterial, and more properly attributed to human fallibility. Given the insignificance of the date of the dinner as regards the charges, and as the Defence has not provided any credible reason for the Complainant to lie about the date of the said dinner, such an inconsistency certainly does not affect her credibility.

94 Third, the Complainant's testimony was that after the Third Incident, PW2 entered the cold room and asked why she looked so stressed and worried,[109] and she explained that the Accused had "started his nonsense again" and "tried to touch" her.[110] PW2's evidence, on the other hand, was that that she

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108 ROA at p 157, ln 31–32.

109 ROA at p 52, ln 15–18 and p 57, ln 1–4.

110 ROA at p 57, ln 3–6.

had told him that the Accused "had started his nonsense again" at the smoking area of the workplace. He also testified that on the day she told him about the Third Incident, he never saw her in the cold room with the Accused, nor did he see her coming out of the cold room.[111] During re-examination, he further stated that on the day of the incident, he did not remember the Complainant going to the cold room.[112]

95 Again, I do not see how the location where the Complainant had informed PW2 of the Third Incident is material to the charge. Both had testified that *after* the Company moved premises to [D] Road in early 2019, the Complainant had informed PW2 that the Accused "start[ed] his nonsense again". PW2 understood this to mean that the Accused "was trying to get another opportunity … to contact" or to try "to grope [the Complainant] again".[113] Viewed as such, it is clear that PW2 understood the incident of the Accused "starting his nonsense again" as following a sequence of events whereby the Accused had attempted to make previous inappropriate contact with the Complainant. This is the material fact, and whether or not the Complainant had informed him of such "nonsense" in the cold room or in the smoking area is immaterial to the elements of the charge relating to the Third Incident.

96 Indeed, due regard must be given to the passage of time, which could have affected PW2's recollection of how he came to learn of the Third Incident. As PW2 explained, he was in the cold room "[m]ost of the time", and he had

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111 ROA at p 113, ln 7–26.

112 ROA at p 122, ln 8–9.

113 ROA at p 113, ln 28 to p 114, ln 5.

also seen the Complainant and the Accused in the cold room together before.[114] As such, it was entirely plausible for the Complainant to have relayed the incident to PW2 in the cold room, where he was most of the time, although by the time of trial, PW2 could not remember seeing her go into the cold room. Strikingly, both the Complainant and PW2 described the incident as the Accused "starting his nonsense again", and in such circumstances, I do not see how any inconsistencies as regards the exact location in which such information was relayed goes towards impugning the Complainant's credibility.

97 In all, excessive weight was placed by the DJ and the Defence on these inconsistencies, which were immaterial details that the witnesses could not have been expected to recite with exactitude years after the incidents had taken place. Fundamentally, none of the above inconsistencies related to any elements of the four charges, and the evidence of the witnesses on material aspects remained the same. It bears remembering at this juncture that the Complainant had given a largely internally consistent testimony that was externally consistent and corroborated in material ways by PW2, PW3, and PW4. In this light, the above inconsistencies do little to discredit the corroborated version of events presented by the Prosecution's witness, and I do not accept that such inconsistencies are sufficient to cast a reasonable doubt on the Prosecution's case.

Summary of corroborative evidence

98 In summary, the testimonies and evidence of PW2, PW3, and PW4 were consistent with the Complainant's account of the incidents. In particular, PW2's version of events was corroborative as regards the three separate incidents, which accorded with the Complainant's account that she had relayed all three

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114 ROA at p 122, ln 2–20.

incidents to PW2. The timeframe of events provided by PW2, namely that the First Incident occurred before the Second Incident, and that the Third Incident occurred in January 2019, is also consistent with the Complainant's account of the events. Additional credit should also be given to PW2's account because the Complainant relayed each incident to him shortly or immediately after each incident. The First and Second Incidents were relayed to him after she ran out of the office crying immediately following the Second Incident (the First Incident having occurred within a month prior), while the Third Incident was relayed to him on the day it happened.[115] With respect, I was unable to agree with the DJ's assessment that PW2's account as to the sequence of the incidents was inconsistent (see GD at [28]–[29]). The DJ noted that during cross-examination, PW2 had answered that the Complainant did not tell him about the First Incident on the day that it had happened but on a later day. However, during re-examination, when asked whether the Complainant had informed him about the First Incident "on the same day it happened or some other day", PW2 replied that "[i]t was on the same day that she came out of the office". Based on these two exchanges, the DJ assessed that PW2 had been unsure of the First Incident and the sequence of the incidents. In my view, PW2's evidence given during cross-examination and re-examination was consistent. Read in the context of PW2's evidence as a whole, the "later day" which he referred to during cross-examination on which the Complainant had informed him about the First Incident was the day that he had seen her come out of the office crying following the Second Incident.[116]

99 The Complainant's account of the events that followed the Second Incident was further corroborated by PW3, who agreed that on the morning

115 ROA at p 121, ln 14–19.

116 ROA at p 116, ln 20–22.

when the Second Incident happened, the Complainant had informed him of the Accused's actions, although he took no action. Indeed, as per PW2's and the Complainant's evidence, the Complainant had approached PW3 at PW2's and Rizal's suggestion. In PW2's words, after he had heard about the Second Incident, he "just advised her to tell [PW3] to make the report".[117]

100 Apart from being consistent with the Complainant's evidence, PW3's account of other facts immaterial to the charges, such as the reason why the Complainant's employment was terminated, cohered with the reason provided by the Complainant (*ie,* her two-week absence). It was also entirely consistent with the objective evidence, namely PW4's stern messages to PW3 and the Accused shortly after he found out that the Complainant had been terminated, wherein PW4 reflected the injustice that he felt for the Complainant, who he described as a "victim" of a "molest issue" by one of the Company's directors. It is undisputed that there were only three directors in the Company, namely PW4, PW3, and the Accused.[118] No complaint has been made by the Complainant against PW3 and PW4, and so PW4's messages were clearly directed at the Accused's actions.

101 Furthermore, while PW4 did not know about the specificities of the incidents as he considered them to be too sensitive to ask, what is clear is that he had learned of the incidents from Rizal. This too was the Complainant's evidence. Both were also aligned as they relayed that it was at the dinner where PW4 first expressed support for the Complainant and told her he would accompany her to make a report if she decided to do so. Also, both testified that

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117 ROA at p 113, ln 14–15.

118 ROA at p 126, ln 7–18.

it was PW4 who accompanied the Complainant to make the police report against the Accused, and that PW4 asked her to take two weeks' unpaid leave thereafter.

102 To add, PW4's evidence is that sometime after he had dinner with the Complainant and Rizal, he confronted the Accused, and this culminated in the Important Conversation. Crucially, at the time of the confrontation, the Complainant had *not* made the police report against the Accused. Aside from the contents of that Important Conversation, it is also relevant to note that the Complainant had herself testified that sometime after her dinner with PW4, but *before* she made her report, the Accused had asked to speak to her. The contents of the conversation are set out at [45]–[46] above. In brief, during the conversation, the Accused had asked the Complainant if she had spoken to PW4, because PW4 had spoken to the Accused. The Complainant denied, and subsequently asked the Accused what he had told PW4; the Accused relayed that he denied that anything had occurred between himself and the Complainant, and this was one of the factors that contributed to the Complainant's eventual decision to make the report against the Accused, which she did shortly thereafter.

103 Their accounts of their *separate* confrontations with the Accused add weight to the version of events provided by the Complainant. Both confrontations happened shortly *before* the making of the police report, but *after* the dinner between PW4, the Complainant and Rizal. It would, in my view, have required a significant degree of co-ordination and pre-planning for the Complainant and PW4 to have concocted their version of events such that while they spoke of separate confrontations *vis-à-vis* the Accused, such events nonetheless cohered with the timeframe furnished by the Complainant, and with the objective evidence that cannot be shifted, such as the date that the police report was made.

104 Viewed holistically, the Complainant's version of events and account of the incidents were well corroborated by the witnesses, and they go towards buttressing her credibility by showing that her testimony in court was consistent with her previous statements, in particular her account of the events that were relayed to PW2 shortly after each incident.

105 Seen alongside the Complainant's unusually convincing testimony, I am satisfied that the evidence presented by the Prosecution is sufficient on its own to meet the standard of proof beyond a reasonable doubt for each of the four charges against the Accused.

"Issues" with the Prosecution's case

106 Faced with the entire gamut of evidence that presented a coherent and consistent story by a Complainant who had given an unusually convincing account that was also consistent with and well corroborated by other witnesses, the Accused elected to remain silent.

107 Instead, he resorted to pointing out alleged issues with the Prosecution's case to support his acquittal. Apart from the purported inconsistencies in evidence between the Complainant and the Prosecution witnesses' testimonies discussed above at [88]–[97], the DJ identified some further issues with the Prosecution's case before coming to the conclusion that the Complainant's evidence was not "unusually convincing". Having found as such, he only convicted the Accused on the Third Charge (pertaining to the Second Incident) because in his view, only the Second Incident was corroborated. I have explained in my judgment why, on a careful assessment of the evidence and testimonies proffered, the Complainant's testimony was not only unusually convincing, but also well corroborated. Nonetheless, I proceed to consider

whether any of the alleged issues suffice to cast a reasonable doubt on the Prosecution's case.

Belated amendments to the charges

108 First, the Defence submits that the Complainant's evidence was "rife with omissions and both internal and external consistencies".[119] This was allegedly because the Third Charge had been amended a few days before trial, while the First, Second and Fourth Charges were amended after the Prosecution's witnesses had each given their evidence. The insinuation was that the Complainant's testimony at trial differed from her evidence provided to the authorities before trial, which would have formed the basis of original pre-amendment charges. As such, the Complainant's evidence ought not to be regarded as credible.

109 As a preliminary point, I observe that the amendment of charges at the close of the Prosecution's case does not *per se* undermine a complainant's testimony. As the Court of Appeal observed in *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2018] 4 SLR 1315 ("*Tay Wee Kiat*") at [21], "[t]he fact that the amendments were made to the dates in the charges and the precise formulation of how the alleged incidents occurred does not by itself undermine the veracity or reliability of the victim's evidence". Indeed, there is often nothing insidious about the making of amendments to charges. As Kan Ting Chiu SJ observed in *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2017] SGHC 81 at [4], "[c]harges are usually revised to contain better particulars as more information become available".

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119 Accused's submissions in HC/MA 9146/2021 and HC/MA 9236/2022 ("AS MA 9146 & 9236") at para 14.

110 This is demonstrated in the case of *Lee Kwang Peng*. There, the offender, a taekwondo instructor, was alleged to have outraged the modesty of three of his male teenage students. However, the original charges were amended at the close of the Prosecution's case as "it was apparent that the charges framed against the appellant … did not correspond with evidence given by the Prosecution's witness" (at [2]). For instance, one of the dates in the charges concerning the first complainant was amended from February 1995 to June 1995, as it emerged during trial that he did not meet the offender before May 1995. The amended charge also amended the words "*touching* his penis" to "*fondling* his penis". Nonetheless, the district judge convicted the offender of all six amended charges, which conviction was upheld on appeal as the complainants' evidence had been found to be unusually convincing (at [75]–[76]).

111 Similarly, in *Tay Wee Kiat,* the Prosecution amended the charges before and during trial, but at the latest during the close of the Prosecution's case and before the Defence was called. The majority of such amendments involved replacing precise dates and times with a range of dates as well as amendments to the particulars of the assault, *eg,* from hitting the victim on the head with a cane to slapping her face. Notwithstanding the amendments, the court gave due regard to the passage of time and the fallibility of human memory and emphasised that the "critical issue is whether the totality of the evidence suggests that [the witnesses'] evidence in respect of the material elements of the charges is untrue or unreliable" (at [21]–[22]).

112 Here, the dates and venue of the incidents were left unamended, and the only amendments pertained to the precise words used or nature of the touching (or lack thereof) by the Accused:

(a) The First Charge was amended so that the words allegedly uttered by the Accused to the Complainant changed from "*you see lah, I'm hard*" to saying that he had a "*hard-on*".

(b) The Second Charge was amended so that the words "by using your hand to pull her hand *to touch* your erected penis" were changed to "by using your hand to pull her *right* hand *towards* your erect penis".

(c) The original Third Charge stated that the Accused had used his "hand to *touch [the Complainant]* on her groin area twice", while the amended Third Charge stated that he had *swiped his hand* on her groin area twice.[120]

(d) The Fourth Charge was amended so that the words "*to touch her on her back and side of body*" became "*sliding your right hand along her back and up to the right side of her right breast*".

113 I do not see how these amendments, in and of themselves, impugn the credibility of the Complainant, such as to undermine the credibility of her (corroborated) evidence.

114 As the court observed in *Tay Wee Kiat* at [21], "the reality" is "that human observation and recollection can be fallible. Inconsistencies are inevitable since the victim … would not be able to pinpoint with exactitude the precise dates and times of the abuse, which occurred about four years before the trial". The same applies here – the incidents occurred for brief moments and took place about two years before the trial began in November 2020. There was no contemporaneous record of what had occurred during these occasions, save

120 AS MA 9146 & 9236 at para 18.

that the Complainant had messaged the Accused after the Second Incident. Even then, the Message did not detail the particulars of what had transpired. In the circumstances, it is only reasonable to expect that there would be certain differences between the Complainant's evidence before trial and on the stand. This notwithstanding, the timelines stated in the police report were entirely consistent with her testimony in court, even if she could not pinpoint precisely when the First and Third Incidents occurred. Also, regardless of whether the original or amended charges are referred to, it is clear that her evidence on matters of importance was clear and consistent – for example, while she clarified on the stand that her hand did not make contact with the Accused's penis during the First Incident, her evidence was that he insinuated that he was having an erection, and he followed this by pulling her hand in the direction of his erect penis. This is consistent with both the original and amended charges in respect of the First Incident. I do not see how the immaterial changes to her description of the incidents serve to undermine her credibility or the consistency of her evidence – as held in *Public Prosecutor v Singh Kalpanath* [1995] 3 SLR(R) 158 at [60], "[n]o one can describe the same thing exactly in the same way over and over again". Differences in accounts are bound to arise. The question is whether such differences are material. In this case, they are not.

115 More crucially, "the amendments to the charges by the Prosecution did not prejudice the [Accused] in the conduct of [his] defence": *Tay Wee Kiat* at [22]. As in *Tay Wee Kiat,* the charges here were amended at the latest by the close of the Prosecution's case. The Defence was then offered the opportunity to recall the witnesses after the amended charges had been read to the Accused but declined to do so.[121] The Accused also elected not to take the stand to give his version of events. As such, any prejudice suffered was not caused by the

[121] PS MA 9146 at para 97; ROA at p 171, ln 28–29.

amendments to the charges, but by the choices made by the Defence, first in choosing not to recall the witnesses, and second by the Accused's election not to give evidence.

116 Following from this point, if the amendments to the charges were indeed key to impugning the Complainant's credibility, this ought to have been put to her so she could have provided her explanation for the differences between the charges. Her fallibility in remembering precisely what had been done could have been a reason proffered, or she *may* have admitted that she had exaggerated the Accused's infringements pre-trial, only to dilute her account on the stand and while on oath. But she was not given any such opportunity. In my view, "[t]his point was of such a nature and of such importance that, pursuant to the rule in *Browne v Dunn* (1893) 6 R 67, it should have been put to the [Complainant] to give [her] the opportunity to address it before it was made as a submission": see *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 ("*Muhammad Nabill*") at [134].

117 Accordingly, I do not consider that the amendments to the charges serve to impugn the Complainant's credibility or give rise to any reasonable doubt in the Prosecution's case.

No conspiracy or motive to frame the Accused

118 I agree with the DJ's finding that there was no evidence to support any conspiracy or motive to frame the Accused (GD at [38]). In *GCK*, the court observed at [102] that where an accused person suggests a motive for a false allegation, it is incumbent upon the Defence to first establish sufficient evidence of such a motive. Importantly, general assertions without more would not ordinarily suffice.

119 The Defence suggested to the Complainant that she was afraid that the Accused would terminate her employment because she kept making mistakes and as such, she concocted the allegations against the Accused to have a "hold over" him. However, the Complainant disagreed.[122] She testified that she did not have a poor working relationship with the Accused, and while disagreements arose and the Accused would sometimes reprimand her, she considered such conduct to be normal.[123] She also testified that she had "no reason" to falsely implicate the Accused, and that there was nothing for her to gain from doing so.[124]

120 PW3 testified that her work was good and that she had done her job according to her work scope.[125] Similarly, PW4 was clear that he had no reason to "fix up" the Accused,[126] and it is worth noting that PW4, as the majority shareholder in the Company, stood to lose financially by supporting the Complainant in making a complaint against the Accused, a director in the Company.

121 Hence, the Prosecution's witnesses clearly rejected any assertion of a plausible motive to frame the Accused. I note as well that the Complainant in fact lost her job shortly after making the report against the Accused, albeit this was purportedly attributed to her taking of 14 days of unapproved unpaid leave. Considering her evidence that she needed a job, which was supported by PW4's incendiary messages to PW3 and the Accused about her plight after she was

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122 ROA at p 78, ln 24 to p 79, ln 1.

123 ROA at p 72, ln 12–23.

124 ROA at p 66, ln 12–16.

125 ROA at p 127, ln 18–21.

126 ROA at p 152, 22–24.

terminated from her employment, I accept that the Complainant had no reason to falsely implicate the Accused. To the contrary, she stood to lose her job, and did in fact lose her job subsequently.

122 Against all of the above, the Accused did not give any evidence, or call any witnesses in his defence. As such, there is not one iota of evidence pointing towards any plausible motive or collusion by the Complainant and other persons to frame the Accused.

Non-disclosure of employment by PW4

123 The Defence also highlighted the Complainant's failure to disclose the fact that she had worked for PW4 after her employment was terminated by the Company. The Complainant testified during re-examination that she had worked odd jobs as a babysitter and gave private tuition, as well as did administrative tasks for a construction company before it closed down.[127] However, she omitted to mention that PW4 had employed her for a few months.[128]

124 After the DJ gave his verdict on conviction, the Complainant tendered a Victim Impact Statement ("VIS"), in which she alleged that she was "jobless for about 8 months" and did "not have any financial support" after the Company terminated her employment.[129] She was then cross-examined on this, and she conceded that she had worked with PW4 for two months, and that it was misleading to tell the court that she had been jobless for eight months.[130]

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127 ROA at p 97, ln 11–20.

128 ROA at p 161, ln 20–23.

129 Exhibit P4, ROA at p 265, para 5.

130 ROA at p 205, ln 3 to p 207, ln 15.

125 Having reviewed the transcript, I accept that the Complainant exaggerated the gravity of her financial circumstances after she had been terminated by the Company. During re-examination, she attempted to explain that in her view, being "jobless" meant that she was receiving a lesser salary compared to her salary at the Company. Aside from being at odds with the plain meaning of being "jobless", she also admitted that she was "receiving the same amount" while she was in PW4's employ.[131] In other words, even going by her definition, she was not "jobless" while working for PW4. Furthermore, it was clearly untrue that she did not have any financial support after she was terminated, because as she admitted on cross-examination, it was simply that she was not earning as much as she had earned with the Company.[132] However, while this might have an impact on the harm caused by the Accused's actions and thus impact the sentence to be imposed, such an exaggerated account in her VIS tendered after the trial does not affect any elements of the charges. What is of concern in assessing whether the Prosecution's case had been proven beyond reasonable doubt is the veracity of the Complainant's evidence in relation to incidents *before* the Complainant made the police report and her employment was terminated. As regards this timeframe, I have found that her evidence was markedly consistent and well corroborated by other witnesses.

Delayed reporting by the Complainant

126 Another central tenet in the Defence's submissions is that the Complainant filed the police report belatedly.[133] To recapitulate, while the First Incident allegedly happened in August 2018, the Complainant did not make the report until January 2019.

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131 ROA at p 210, ln 21 to p 211, ln 3.

132 ROA at p 212, ln 13–19.

133 AS MA 9146 & 9236 at para 34.

127 The Defence does not dispute that the mere fact of a delay in reporting does not harm the Complainant's credibility.[134] As observed in *Mohd Ariffan* at [66], "a delay in reporting by a complainant is not, on its own, reason to disbelieve the complainant and his or her allegations against an accused person". Instead, "the explanation for any such delay in reporting is to be considered and assessed by the court on a case-by-case basis" (*Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749 at [30]), with "due regard to the likely thought-processes and behaviour of sexual assault victims", such as "empirically-supported psychological reasons for delayed reporting, including feelings of shame and fear" (*Mohd Ariffan* at [65]–[66]).

128 However, the Defence places weight on the fact that the Complainant continued to accept car rides from the Accused after the Second Incident, and in so doing "willingly placed herself in circumstances where she would be alone and in close proximity with the Accused, though alternatives were available".[135] The Accused also submits that it was questionable that the Complainant failed to confide about the incidents with any of her close friends or family members.[136]

129 In my judgment, there were good reasons for the Complainant's delay in reporting the Accused. First, she was afraid to lose her job, which she really needed as she was allegedly a single mother with two children.[137] Second, after the Second Incident, she had been urged by PW2 and Rizal to confront the Accused, which she did by way of the Message. This was followed by an

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134 AS MA 9146 & 9236 at para 33.

135 AS MA 9146 & 9236 at para 54.

136 AS MA 9146 & 9236 at para 68.

137 ROA at p 201, ln 29–30.

apology from the Accused, which she accepted, and she thus thought that "things would go back to normal".[138]

130 Viewed collectively, the Complainant simply elected to accept the Accused's apology, with the hope that he would stop his inappropriate actions given her need to retain a job to support her family. Consistent with this intention to "go back to normal", she continued to accept car rides from him. This, the DJ surmised, was at odds with the First and Second Incidents having occurred, as "a reasonable person would not take the risk of being alone with the Accused" (GD at [34]). Yet, in the same judgment, he then concluded that the Second Incident was corroborated, and convicted the Accused of the Third Charge pertaining to that incident. Aside from these inconsistent findings, it is worth reiterating, as the DJ himself observed, that "victims of sexual crimes cannot be straightjacketed in the expectation that they must act or react in a certain manner": *GBR* at [20]. It is well within the realm of possibilities that the Complainant, having confronted her superior (the Accused) about the earlier incidents and received an apology, would continue to accept car rides from him, especially since she wished to retain her job and to return to a normal working relationship with him. Indeed, to reject his offers for a car ride could have soured relations under circumstances where it was nigh impossible to avoid him as the Company was a small setup with few employees. Crucially, after the First Incident, the Complainant told the Accused to stop, and he apparently ceased his inappropriate behaviour. Accordingly, she would have had reason to believe that he knew that she did not consent to him behaving in such a manner towards her and it would therefore be alright for her to continue accepting car rides from him. For the car rides that occurred after the Second Incident, she testified that the Accused had apologised and as such she assumed that he would not do

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138 ROA at p 52, ln 2–3.

anything to her again. Thus, with the intention that things would "go back to normal", she continued to accept car rides from him. Indeed, the Accused had desisted from any inappropriate behaviour for a relatively long period of time between the Second and Third Incidents. Importantly, the Complainant did not accept any car rides *after* the Third Incident in January 2019, when she knew for certain that the Accused had not changed his ways.

131 It was only at this juncture, some months later after the Third Incident which showed that the Accused's apology was a hollow one and he would not cease his offending conduct, that the Complainant decided to make the report with the encouragement of PW4. Seen alongside her lack of motive to falsely implicate the Accused, I see no reason to disbelieve her account.

132 For completeness, I note that there is some doubt about whether the Complainant was a single mother at the material time. Certain text messages sent by the Complainant to the Accused in January 2019 show that she was referring to an unidentified person as her "husband".[139] PW4 also testified that her husband was working with the Company at the time.[140] However, this chatlog was admitted as "P3" during the course of the Complainant's examination-in-chief,[141] wherein she had stated that she was a "single mom of 2 kids".[142] Yet, no question was put to her pertaining to her having a "husband", as suggested by Exhibit P3. The Defence also declined to recall her after the charges were amended. Without having had an opportunity to address this point, and absent further information about this "husband", it is not possible to view

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139 Exhibit P3, ROA at pp 261–262.

140 ROA at p 149, ln 10–11.

141 ROA at p 49, ln 16–26.

142 ROA at p 39, ln 28.

this inconsistency, raised only in submissions, as being sufficient to discredit her corroborated testimony.

133 For the same reason, I do not give regard to the Accused's submission that the Complainant's failure to confide with her family and close friends somehow discredits her. This was a point of such importance that it ought to have been put to her pursuant to the rule in *Browne v Dunn* before it was raised in submissions: *Muhammad Nabill* at [134].

The Complainant's failure to scream

134 I turn finally to the DJ's finding that her failure to scream during any of the incidents impugned her credibility. As the DJ explained in his GD at [36]:

> … there was no explanation given as to why the [Complainant] did not scream for help. Moreover, as a mature adult, there was no reason for her not to shout for help.

135 With respect, this was an improper finding to make, especially given the DJ's own recognition that victims of sexual crimes cannot be straightjacketed into reacting or behaving a certain way. Indeed, in *GCK* at [111], the court observed that academic literature shows that at the moment of sexual assault, "a substantial number of victims may experience 'tonic immobility', which is an involuntary temporary state of inhibition". It was simply not a question of whether the Complainant was "a mature adult" or not. The fact of the matter is that victims to sexual assault *regardless* of age, level of maturity or even gender cannot be expected to react in a uniform way. Moreover, this point about her alleged failure to scream was never raised during the course of the Complainant's cross-examination, and hence no reason could have been given by her for why she failed to "shout for help".

136 Furthermore, as the Prosecution submits, a scream in the circumstances of the brief contact between the Accused and Complainant would have achieved little since the Accused could have simply retracted his hand during each incident, leaving no trace of his intrusion.[143]

137 For all of the reasons given in this section, I find the alleged gaps raised by the Defence to be insufficient to cast a reasonable doubt on the Prosecution's case. My finding of the Accused's guilt is strengthened by his election to remain silent, which is a point to which I now turn.

The Accused's election to remain silent

138 The following propositions on adverse inferences were distilled in *Public Prosecutor v Kong Hoo (Pte) Ltd and another appeal* [2017] 4 SLR 421 at [53]:

> …
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> (a) An adverse inference would properly be drawn where the "facts clearly call for an explanation which the accused ought to be in a position to give" …
>
> (b) An adverse inference may justifiably be drawn where the circumstantial evidence is such as to demand that the accused proffer some explanation, even if the objective evidence does not itself establish guilt …
>
> (c) In appropriate cases, the proper inference to be drawn is that of guilt itself (see the decision of the Singapore Court of Appeal in *Took Leng How v PP* [2006] 2 SLR(R) 70 ("*Took Leng How*") at [42]). In other cases, an adverse inference is an "additional factor to consider in assessing whether the appellant's guilt had been established beyond reasonable doubt" which can lend weight to an assessment of the accused's culpability and, when

143 PS MA 9146 at para 141.

> considered cumulatively with the other evidence, be sufficient to establish guilt (see *Oh Laye Koh* at [17]).
>
> (d) An adverse inference cannot be drawn solely for the purpose of bolstering a weak case; there must be basis for a drawing of an inference and it "cannot fill in any gaps in the prosecution's case; it cannot be used as a make-weight (see *Took Leng How* at [43], citing the decision of the High Court of Australia in *Weissensteiner v R* (1993) 178 CLR 217).
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> …

139 To add, the Court of Appeal has observed that "[w]here evidence which has been given calls for an explanation which the accused alone can give, then silence on his part may lead to an inference that none is available and that the evidence is probably true": *Took Leng How v Public Prosecutor* [2006] 2 SLR(R) 70 at [43], citing *Weissensteiner v R* (1993) 178 CLR 217.

140 As I have explained in detail above, the Accused was faced with an internally and externally consistent testimony by the Complainant which detailed all aspects of the three incidents. This testimony was corroborated by the three other witnesses called by the Prosecution, although none of them were present to witness any of the incidents first-hand. Such mounting evidence spoke with one voice, *ie,* that the incidents occurred in the way the Complainant described, as recounted to several other persons, most importantly PW2.

141 Such an account plainly called for an explanation from the Accused, who was the only other person aside from the Complainant who could have been present during the incidents. Thus, *only the Accused could give an alternate account of what transpired*, or if his evidence was that nothing occurred, to give evidence as such. He elected instead to not give his evidence. In fact, the Accused also failed to respond to any of PW4's incendiary messages wherein PW4 had described him as having molested the Complainant. Also, during the Important Conversation, the Accused did not outrightly deny having touched

the Complainant even though PW4 had suggested as such (see [79] above). There is thus *no* evidence from the Accused or otherwise that contradicts the corroborated account of the Complainant, which lends to the inference that the Complainant accurately accounted for all material aspects of the incidents. Put simply, his election to remain silent against the weight of the evidence strengthens the finding of guilt against him.

142 Given all of the above, I find that the DJ erred in acquitting the Accused of three of the four charges. Instead, I find that the Prosecution has proven its case in respect of each of the four charges beyond a reasonable doubt. Faced with the unusually convincing and corroborated testimony of the Complainant, the Accused's election to remain silent fortifies such a finding of guilt. Accordingly, I set aside the acquittal on the three charges, while upholding the conviction on the Third Charge. The Accused is thus convicted of all four charges set out at [9] above.

143 I now turn to consider the appropriate sentence for the four charges.

Sentencing considerations for the Second, Third and Fourth Charges

144 I begin by analysing the sentencing considerations for the Second, Third and Fourth Charges which all concern offences under s 354(1) of the Penal Code. It is undisputed that the applicable sentencing framework is that laid down in *Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580 ("*Kunasekaran*"), which involves the following stages:

(a) First, the court should consider the following offence-specific factors (at [45(a)]):

(i) The degree of sexual exploitation. This includes considerations of the part of the victim's body the accused

touched, how the accused touched the victim, and the duration of the outrage of modesty.

(ii) The circumstances of the offence. These include considerations of:

(A) the presence of premeditation;

(B) the use of force or violence;

(C) the abuse of a position of trust;

(D) the use of deception;

(E) the presence of other aggravating acts accompanying the outrage of modesty; and

(F) the exploitation of a vulnerable victim.

(iii) The harm caused to the victim, whether physical or psychological, which would usually be set out in a victim impact statement.

(b) Second, after considering the factors above, the court should ascertain the gravity of the offence and then place it within the appropriate band of imprisonment (at [45(b)] and [49]):

(i) Band 1: This includes cases that do not present any, or at most one, of the offence-specific factors, and typically involves cases that involve a fleeting touch or no skin-to-skin contact, and no intrusion into the victim's private parts. This would attract a sentence of less than five months' imprisonment.

(ii) Band 2: This includes cases where two or more of the offence-specific factors present themselves. The lower end of the band involves cases where the private parts of the victim are

intruded, but there is no skin-to-skin contact. The higher end of the band involves cases where there is skin-to-skin contact with the victim's private parts. It would also involve cases where there was the use of deception. This would attract a sentence of five to 15 months' imprisonment.

(iii) Band 3: This includes cases where numerous offence-specific factors present themselves, especially factors such as the exploitation of a particularly vulnerable victim, a serious abuse of a position of trust, and/or the use of violence or force on the victim. This would attract a sentence of 15 to 24 months' imprisonment.

(c) Finally, the court should consider the offender-specific aggravating and mitigating factors, such as the number of charges taken into consideration, the lack of remorse, relevant antecedents demonstrating recalcitrance, a timeous plea of guilt, or the presence of a mental disorder or intellectual disability on the part of the accused that relates to the offence (at [45(c)]).

145 As there are a number of common offence-specific and offender-specific aggravating factors applicable to the Second, Third and Fourth Charges, I will begin by discussing them.

Abuse of position of trust

146 Both parties are in agreement that the main common aggravating factor amongst the charges is the Accused's abuse of position as the Complainant's

superior at work, having committed the offences in the workplace environment during office hours.[144]

147 The Accused submits that when assessing the factor of abuse of position, the question of *degree* is crucial. In this regard, he submits that the abuse of position in the present case is less aggravating than that in *Public Prosecutor v Mohd Taufik bin Abu Bakar and anor appeal* [2019] SGHC 90 ("*Mohd Taufik*") cited by the DJ, where the victim was a national serviceman with little mobility and choice in his workplace and superiors.[145] I make two observations. First, in my view, *Mohd Taufik* did not go so far as to establish that this factor would be particularly aggravating where the victim in question has little mobility and choice in his or her workplace and superiors. The High Court merely highlighted that deterrence was particularly apposite in such situations contributing to the reason for finding that the offender's abuse of position was an aggravating factor. Second, while not a national serviceman like the victim in *Mohd Taufik*, the Complainant was financially dependent on her job as a source of income and understandably fearful of losing it. Indeed, the Complainant did in fact delay lodging a police report against the Accused for this very reason (see [129]–[130] above).[146] In *Mohd Taufik*, the High Court observed that the abuse of the offender's position of trust should be regarded as an aggravating factor given the "difficulty of detection of such offences committed in the workplace, where the subordinates may be wary of speaking out against such untoward conduct of their superior" (at [101]). This reason is similarly apposite in the

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144 Prosecution's sentencing submissions in HC/MA 9146/2021 and HC/MA 9236/2022 ("PS Sentencing MA 9146 & 9236") at para 43; Accused's sentencing submissions in HC/MA 9146/2021 and HC/MA 9236/2022 ("AS Sentencing MA 9146 & 9236") at para 13.

145 AS Sentencing MA 9146 & 9236 at para 13.

146 ROA at p 201, ln 29–30.

present case. I thus agree with the Prosecution that this attracted considerations of deterrence.

Psychological harm

148 Another common offence-specific aggravating factor is the harm suffered by the Complainant arising out of the offences. As identified at [125], in assessing the extent of harm suffered by the Complainant, the weight to be attributed to the Complainant's VIS needs to be determined. In particular, the Complainant highlighted in her VIS that the offences had taken an emotional and psychological toll on her. She was still able to "vividly recall the way [the Accused spoke to her] in disgusting manner [*sic*] and [when] it progressed to inappropriate touches".[147] She stated that since reporting the offences, she had lost about 5kg and would have doubts over the sincerity of adults who approached her.[148] She also noted that she had suffered direct financial loss as her employment was terminated after she returned from unpaid leave following the police report, and she was thus left jobless for about eight months without any financial support.[149]

149 The Accused submits that the Complainant's VIS should not be given much weight, as her claims of emotional and psychological harm are but bare assertions.[150] He also submits that in the absence of "especially serious physical or emotional harm", harm caused to victims should not be regarded as an offence-specific aggravating factor as to do so would give this factor double

147 Exhibit P4, ROA at p 266, para 7.

148 Exhibit P4, ROA at p 266, para 6.

149 Exhibit P4, ROA at p 265, para 5.

150 AS Sentencing MA 9146 & 9236 at para 14.

weight, given that the emotional effect of an offence is already reflected in the seriousness of the offence.[151]

150 To the extent that there has been corroborating evidence, I do find that the Complainant's VIS does exaggerate the gravity of her financial circumstances (see [125] above). There is also doubt as to whether the Complainant was a single mother at the material time (see [132] above). Unlike in *Kunasekaran* at [59], the Complainant's evidence in her VIS was not substantially corroborated by other witnesses. I thus find that the VIS is not helpful in relation to the impact on the Complainant's financial situation. I nevertheless accept that there was some psychological and emotional harm suffered by the Complainant as reflected in the VIS. Such harm was consistent with the evidence given by the Complainant in court that she was "really scared" and "very upset" such that she started crying after the Second Incident.[152] This was also corroborated by PW2's evidence (see [67] above).

Persistence of offending conduct

151 The Accused's persistent course of sexual misconduct against the Complainant is also an offence-specific aggravating factor underlying all the charges. His conduct demonstrated a clear pattern of workplace sexual harassment displayed through his repeated predatory actions towards his subordinate. After the First Incident, the Accused outraged the Complainant's modesty another time less than a month later, and then yet another time four months later, showing that his repeated offending should be taken into account as an aggravating factor. In addition, his persistence was also evident when

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151 AS Sentencing MA 9146 & 9236 at para 14.

152 ROA at p 44, ln 2–3.

considering the circumstances surrounding some of the charges, which I discuss in greater detail below.

Lack of remorse

152 I now turn to discuss the Accused's lack of remorse as a common offender-specific aggravating factor.

153 Over the course of cross-examination of the Complainant, counsel for the Accused made several assertions about the Complainant's conduct. It was put to the Complainant that she had concocted the allegation that she was molested in order to have a hold over the Accused in the event her employment was terminated.[153] Further, the Accused asserted in closing submissions that the Complainant and PW4 had conspired to frame the Accused after meeting for dinner in 2018.[154] On appeal, the Accused characterises the Complainant as having a "willingness and propensity to bend facts to fit her agenda".[155]

154 In my judgment, while these assertions were not ultimately backed up by evidence, such submissions do not rise to the level of being exceptional contempt for the proceedings at trial: *Zeng Guoyuan v Public Prosecutor* [1997] 2 SLR(R) 556 ("*Zeng Guoyuan*") at [37]. In *Terence Ng*, the Court of Appeal observed at [64(c)] that an evident lack of remorse could be drawn where the offender had conducted his defence in an extravagant and unnecessary manner, and particularly where scandalous allegations are made in respect of the victim. I accept the Accused's submission that the present proceedings could be distinguished from *Zeng Guoyuan* and the situation

153 ROA at p 78, ln 28–32.

154 Accused's Closing Submissions dated 10 May 2021 at para 61.

155 AS MA 9146 & 9236 at para 67.

contemplated by the court in *Terence Ng*. In *Zeng Guoyuan*, the court found that the appellant seemed "almost tenacious in his determination to humiliate the complainant". For instance, he had badgered the complainant so relentlessly that she cried on two occasions. Such egregious conduct was not present in this case. Further, it is necessary for the Accused to be given some degree of latitude in the manner in which he wishes to conduct his defence: *Zeng Guoyuan* at [37].

155 Nonetheless, a distinct consideration from the conduct of the Accused's defence is the lack of remorse showed by the Accused when confronted by the Complainant and PW4. As noted above, after the Second Incident, the Complainant sent the Message to the Accused to tell him that she did not feel comfortable with what he was doing, and that he should stop. The Accused then called her to tell her that he was sorry. He also asked her to delete the Message (see [33]–[34] above). This demonstrated both a lack of remorse by the Accused and an intention to conceal evidence of his wrongdoing (which he would later repeat). Further, as highlighted at [79], when confronted by PW4 after the Third Incident, the Accused sought to downplay his actions as him "just joking", and implied that it was the Complainant's fault for dressing in a "sexy and seducing" way. He later alleged an affair between him and the Complainant to deflect any blame for his misconduct (see [90] above). This victim-blaming and manipulative behaviour shows that the Accused consistently demonstrated no remorse for his offending.

The sentence for the Second Charge

156 For the Second Charge, the Prosecution submits that a sentence of three months' imprisonment should be imposed. On the other hand, the Accused submits that a sentence of not more than three weeks' imprisonment is appropriate.

157 In applying the first stage of the *Kunasekaran* framework in relation to the Second Charge, I consider first the degree of sexual exploitation. I accept the Prosecution's submission that the Accused's act of pulling a hand towards his erect penis, particularly in the context of the remarks made by him, was clearly sexually exploitative in nature. However, the degree of sexual exploitation is not high, given the lack of direct contact between the Complainant's hand and the Accused's private part. The Complainant also testified that the Accused did not use much force when he grabbed her wrist.[156]

158 As canvassed at [146], the main aggravating factor as to the circumstances of the offence involves the abuse of a position of trust as the Complainant's superior at work. This would elevate the importance of deterrence as a sentencing consideration. I also consider that there was some degree of psychological and emotional harm to the victim, as set out in the VIS.

159 In addition, the Accused's offending conduct was persistent as evidenced by the fact that he had grabbed the Complainant's wrist twice, even after the Complainant resisted at the first instance (see [27] above).[157]

160 In determining the sentence for this charge, I do not have regard to the case of *Public Prosecutor v L* [2003] SGDC 244 ("*PP v L*") cited by the Accused. It is worth noting that *PP v L* pre-dates the sentencing framework in *Kunasekaran* and is thus of limited assistance.

161 Taking the above factors into account, in my view, the Second Charge falls within the low range of Band 1 of the *Kunasekaran* framework. The

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156 ROA at p 38, ln 18–21.

157 ROA at p 35, ln 32 to p 36, ln 3 and p 36, ln 4–15.

indicative sentence for this would be a range of one to two months' imprisonment.

162 The main offender-specific aggravating factor for the Second Charge is the lack of remorse shown by the Accused. There are no significant mitigating factors of note. Accordingly, I find it appropriate to impose a sentence of three months' imprisonment.

The sentence for the Third Charge

163 In the court below, the DJ imposed a sentence of five months' imprisonment for the Third Charge. In this appeal, the Accused submits that this sentence is manifestly excessive. Instead, the appropriate sentence should be not more than two months' imprisonment, on the basis that there is ambiguity as to whether the Accused did touch the Complainant's body. To this end, the Accused argues that the Complainant merely testified that the contact she had felt was the tugging of fabric against her body caused by the swiping.[158]

164 I do not agree that there is any such ambiguity as to the content of the Complainant's testimony. In convicting the Accused on the Third Charge, I accepted that the Accused had swiped his hand on the Complainant's groin area twice albeit without making skin-to-skin contact (see [30] above).

165 Nevertheless, it is relevant in determining the degree of sexual exploitation to consider where exactly the Complainant had been touched. I agree with the Defence that it was not clear that the Complainant's private parts had been touched by the Accused. The evidence led by the Prosecution merely showed that contact had been made with her groin area, as stated in the charge.

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158 AS Sentencing MA 9146 & 9236 at para 44.

As set out in *Kunasekaran* at [55], the finding that a victim's groin area was touched does not in itself mean that her private parts have been intruded upon. This was recognised in the finding of the DJ, who considered that the Complainant had been molested in "an area proximate to the private parts" (GD (Sentencing) at [26]).

166 Looking to the circumstances of the offence, the same aggravating factors of abuse of a position of trust and a persistent pattern of offending apply equally to the Third Charge. The psychological and emotional harm caused to the Complainant was similarly a relevant consideration, as evidenced by her leaving the office and crying immediately after the commission of the offence.[159]

167 Yet another aggravating factor specific to the Third Charge was the presence of other acts committed by the Accused accompanying his act of molestation. Immediately before swiping her groin area, the Accused had gone up to the Complainant and remarked that she was wearing a dress that was "so short". Seen in the context of the Accused's actions, these comments were clearly intended to sexualise the Complainant. Contrary to the Accused's submissions, this is in my view is a relevant consideration to the extent that it would have affected the level of psychological trauma experienced by the Complainant by making her feel singled out, sexualised and objectified, quite apart from the harm caused by the offence itself.

168 Having regard to the degree of sexual exploitation, abuse of position of trust, persistent nature of the Accused's offending and the aggravating acts accompanying the commission of the offence, I find it appropriate to place the Third Charge at the lower end of Band 2 of the *Kunasekaran* framework.

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159 ROA at p 44, ln 2–3.

Similar to the facts of *Kunasekaran*, the degree of sexual exploitation was not the most egregious due to the lack of skin-to-skin contact with the Complainant's groan area. This lends itself to an indicative starting point of five to six months' imprisonment.

169 As above, the Accused's lack of remorse is a relevant offender-specific aggravating factor. As mentioned at [155], specifically in relation to the Third Charge, the Accused had asked the Complainant to delete the Message in an attempt to conceal his offending. This attempt at evading detection was clear evidence of a lack of remorse.

170 Finally, there are no significant mitigating factors. In the circumstances, the imprisonment term of five months imposed by the DJ was not manifestly excessive. This is also consistent with the sentence in *Kunasekaran*. In *Kunasekaran*, the victim was a 14-year-old schoolgirl, who had been touched in the groin area by the offender while on a public bus. The offender was sentenced to eight months' imprisonment. The greater vulnerability of the young victim, coupled with the offence taking place on public transport, warranted a higher imprisonment term than for the Third Charge.

171 For completeness, I do not consider the case of *Public Prosecutor v Goh Eng Chin* [2018] SGMC 17 ("*Goh Eng Chin*") cited by the Prosecution to be particularly helpful. In *Goh Eng Chin*, the offender was convicted on four counts of outrage of modesty under s 354(1) of the Penal Code and one count of insulting the modesty of a woman under s 509 of the Penal Code. All these offences were committed by the offender against his tenant, a 24-year-old Korean student. In particular, the Prosecution highlighted the facts pertaining to one of the s 354(1) of the Penal Code charges, where the offender removed all his clothing except for his underwear and touched her thigh, hugged her, and

used his head to touch her pubic region and sniffed that region of her body. For this charge, the offender was sentenced to 11 months' imprisonment and three strokes of the cane. In my view, this set of facts was far more aggravated than the Third Charge and is not useful in calibrating the sentence in the present case.

The sentence for the Fourth Charge

172 For the Fourth Charge, the Prosecution submits that a sentence of nine months' imprisonment should be imposed. Against this, the Accused submits that a sentence of not more than five months' imprisonment is appropriate.

173 The degree of sexual exploitation for the Fourth Charge was the highest of all the charges. The Accused had used his right hand to rub the middle of the Complainant's back, then in one continuous motion, he moved his hand towards her right breast area, moving it up and down. It was not contested by the Accused that there was contact with the private parts of the Complainant.

174 As to the persistence of the offending by the Accused, I find that it is aggravating that the Accused committed this offence not long after he had previously outraged the modesty of the very same victim and had apologised to her for this. I also consider that there was emotional and psychological harm to the Complainant. Coupled with the abuse of his position of trust, this would point towards the offence falling within the lower end of Band 2.

175 The post-*Kunasekaran* case of *Public Prosecutor v Thompson, Matthew* [2018] 5 SLR 1108 ("*Matthew Thompson*") cited by the Accused is instructive. In that case, the offender was a passenger on a commercial flight. He was charged for using his left hand to touch the victim, an air stewardess, at her right hip over her stomach until her lower breast in one motion. On appeal, the offender was sentenced to six months' imprisonment. Similar to the present

case, there was no skin-to-skin contact, the psychological harm suffered by the victim was not inconsequential, and the offender was untraced. See Kee Oon J found that the most significant aggravating factor in relation to the circumstances of the offence was that it had been committed onboard an aircraft, against an air transportation worker. He noted that the offence being committed on board an aircraft would be more aggravating than if committed on other types of public transport: *Matthew Thompson* at [45]. Based on these facts, See J determined that the starting point ought to be pegged at eight months' imprisonment.

176 The Accused submits that in view of the absence of such a factor, *Matthew Thompson* supports the imposition of a sentence of not more than five months' imprisonment for the Accused for the Fourth Charge.[160] I do not accept this submission. First, despite the present case not involving an offence against an air transportation worker in the course of duty, there were several other offence-specific aggravating factors present, including the abuse of the Accused's position of trust and the persistence of his offending conduct. Second, in arriving at a final sentence of six months' imprisonment in *Matthew Thompson*, See J had accorded some mitigating weight to the offender's good character and work credentials as supporting a high potential for rehabilitation and a lesser need for specific deterrence (at [73]). No such mitigating factors are relevant in the present case such as to warrant a departure from a sentence in the lower end of Band 2. In my judgment, the offence-specific aggravating factors point towards a starting point of eight months' imprisonment, if not more.

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160 AS Sentencing MA 9146 & 9236 at para 72.

177 As above, there are no significant mitigating factors. Conversely, the main offender-specific sentencing consideration is the lack of remorse of the Accused, which was aggravating. Having considered the factors in the round, I consider a sentence of nine months' imprisonment to be appropriate.

The sentence for the First Charge

178 I now turn to consider the appropriate sentence in respect of the First Charge. The maximum sentence for an offence under s 509 of the Penal Code is one year's imprisonment and/or a fine.

179 The Accused submits that the starting point for such an offence should be a fine of between $1,000 to $2,000, relying on commentary in *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) at p 606. Given the varied ways in which offences under s 509 PC can manifest, I am not convinced that this should necessarily apply in the present case. In particular, I note the data from the Sentencing Information and Research Repository adduced by the Prosecution.[161] It shows that out of 2,876 charges from 22 October 2001 to 12 December 2022, 2,460 resulted in a term of imprisonment. Only 94 of the remaining cases resulted in fines.

180 I do not find the cases of *GCO v Public Prosecutor* [2019] 3 SLR 1402 ("*GCO*"), *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 ("*Liton*") and *Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 ("*Chong Hou En*") cited by the Accused to be helpful. These cases involved factual patterns of voyeurism that were quite distinguishable from the present offence.

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161 PS Sentencing MA 9146 & 9236 at para 44.

181 I thus turn my attention to the relevant aggravating and mitigating factors that are specific to the offence.

182 The Prosecution submits that the Accused's remark that the Complainant's hair "smelled nice" should be considered an aggravating factor.[162] I am unable to agree. Even if I were to assume that the context of the remark could potentially be sexual, this remark in itself does not significantly add to the provocative character of the Accused's comment about his "hard-on" which is the subject matter of the charge.

183 There is good reason for the custodial threshold to be crossed given the abuse of position of trust of the Accused, the non-negligible psychological harm caused to the Complainant, and the lack of remorse shown by the Accused. Further, there are no mitigating factors present which warrant my consideration. I thus impose a sentence of one week's imprisonment in respect of the First Charge.

The appropriate global sentence

184 The framework for sentencing where there are multiple offences is set out in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen Balakrishnan*") at [98], which I summarise as follows:

(a) The first stage of the sentencing analysis is for the court to consider the appropriate sentence for each offence.

(b) The second stage of the sentencing analysis is to determine how the individual sentences should run. As a general rule, sentences for unrelated offences should run consecutively, while sentences for

[162] PS Sentencing MA 9146 & 9236 at para 43(b).

offences that form part of a single transaction should run concurrently, subject to the requirement in s 307(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"). If there is a mix of related and unrelated offences, the sentences for those offences that are unrelated should generally run consecutively with one of the sentences for the related offences. The general rule may be departed from if appropriate, and the sentencing court should explain its reasons for doing so.

(c) The third stage of the sentencing analysis is to apply the totality principle and take a "last look" at all the facts and circumstances to ensure that the aggregate sentence is sufficient and proportionate to the offender's overall criminality. The court should consider both: (i) whether the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences committed; and (ii) whether the effect of the sentence on the offender is crushing and not in keeping with his past record and future prospects. While it is within the court's power to select sentences other than the longest individual sentence to run consecutively, the aggregate of such sentences must exceed the longest individual sentence.

(d) Across all stages of the analysis, the sentencing court should be careful not to offend the rule against double counting. The central concern of this rule is that a sentencing factor should be given only its due weight in the sentencing analysis and nothing more.

185 Having landed on the individual sentences for the charges, I consider how the individual sentences should run. This in turn hinges on the determination of whether the different charges the Accused faces involve "related" offences. As discussed in *Raveen Balakrishnan* at [69], this is a similar

inquiry to whether the offences are part of a single transaction. The inquiry flows from a rule of fairness resting on the notion that an offender should not be doubly punished for what is essentially the same conduct, even though that conduct might disclose several distinct offences at law. This judgment should also be arrived at with due sensitivity to the facts, and a healthy dose of common sense, taking into account indicators such as proximity of time, purpose, and the location of the offences, as well as continuity of design and unity: *Raveen Balakrishnan* at [70].

186 Applying the above logic, I find that the First and Second Charges are related and form part of a single transaction, having happened in quick succession during the First Incident. The Third and Fourth Charges, however, are not proximate in time to each other, nor to the First Incident. They should thus be conceptualised as separate transactions from the charges during the First Incident, even though they involve the invasion of the same legal interest against the same victim. It would thus be appropriate to run at least two of the sentences for the charges forming each of the three separate transactions consecutively with each other. This would also accord with the requirement in s 307(1) of the CPC. As to which sentences should be run consecutively, I find that the sentences for the Second and Fourth Charges should run consecutively, as these represent the first and last offences of outrage of modesty committed by the Accused and are thus the furthest apart in time. Doing so would also give a more accurate picture of the overall pattern and time period of offending, reflecting the totality of the appellant's conduct.

187 To my mind, the resulting sentence of 12 months' imprisonment would not be crushing on the Accused and is not substantially above the normal level of sentences for offences under s 354 of the Penal Code.

Conclusion

188 I thus affirm the Accused's conviction in respect of the Third Charge and find that the sentence of five months' imprisonment imposed by the DJ was not manifestly excessive. Further, I convict the Accused on the First, Second, and Fourth Charges, and sentence the Accused to imprisonment sentences of one week, three months, and nine months respectively. The imprisonment terms for the Second and Fourth Charges are to run consecutively resulting in a global sentence of 12 months' imprisonment.

Vincent Hoong
Judge of the High Court

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