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

[2024] SGHC 109

Criminal Case No 26 of 2023

Between

Public Prosecutor

… *Prosecution*

And

CEO

… *Defendant*

GROUNDS OF DECISION

[Criminal Law — Offences — Rape]
[Criminal Law — Abetment]

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v
CEO

[2024] SGHC 109

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30 April 2024

Mavis Chionh Sze Chyi J:

Introduction

1 The accused is a 45-year-old married man.[1] One night sometime between 2010 and 2011, he found himself in an apartment belonging to a 42-year-old married man (who I will refer to as "T").[2] The accused had previously met T online on a website known as the Sammyboy Forum ("SBF"), where the accused had started a thread in April 2010 named "Wife Fantasy".[3] It was not disputed that on the night in question, prior to arriving at T's apartment, the accused had received a text message from T. The message stated that T's wife (whom I will refer to as "V") was drugged, and asked the accused to come over

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1 Notes of Evidence ("NEs") 24 August 2023 Page 3 Line 10; Agreed Statement of Facts ("ASOF") at para 1.

2 Prosecution's Bundle of Exhibits (Volume 4) ("PBOE4") at p 677.

3 ASOF at para 4; Prosecution's Bundle of Exhibits (Volume 2) ("PBOE 2") at p 190.

to the apartment.[4] In response, the accused drove over to T's apartment. T let the accused into the apartment and led him into the master bedroom. There, the accused saw V, who had earlier been drugged by T, lying motionless on the bed. After some time, the accused left T's apartment.

2 *Per* the Prosecution's case, T gave the accused access to his apartment on the night of the alleged offence because there was an agreement between them for the accused to rape V while she was unconscious from being drugged. Pursuant to this agreement, the accused engaged in non-consensual penile-vaginal intercourse with the unconscious V in the master bedroom before he left the apartment.[5]

3 The accused, on the other hand, claimed that there was never at any time a conspiracy between him and T to rape V: instead, he had gone to T's apartment out of concern for V after being told that she had been drugged. [6] According to the accused, he was at that time already in a consensual sexual relationship with V and thus had no reason to rape her. No sexual intercourse occurred at T's apartment that night; and the accused did not so much as even touch V.[7] Instead, according to the accused, the following series of events took place while he was in the master bedroom of T's apartment:[8]

(a) The accused sat down on the side of the bed where V was lying and had a conversation with T;

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4 ASOF at para 15; NEs 23 August 2023 Page 63 Lines 13–15.

5 Prosecution's End of Trial Closing Submissions dated 11 October 2023 ("PCS") at para 19.

6 Defence's Final Submissions dated 11 October 2023 ("DS") at para 54.

7 DS at para 226.

8 DS at para 227.

(b) T suggested that the accused touch V, but the accused rejected this suggestion;

(c) The accused then pretended to stimulate himself by stroking his private parts over his shorts, before signalling to T that he could not get an erection;

(d) T and the accused proceeded to the toilet of the master bedroom where they chatted before the accused left T's apartment without further incident.

4 The Prosecution charged the accused with one count of abetment by conspiracy with the co-accused T to commit rape under s 375(1)(*a*) (punishable under s 375(2)), read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") ("the Charge"). The accused also faced a further eight charges, seven of which related to offences under s 292(1)(*a*) of the Penal Code, with the remaining charge being an offence under s 30(2)(*a*) of the Films Act (Cap 107, 1998 Rev Ed). These last eight charges were stood down pending the trial of the Charge.

5 The Charge read:

> That you, … on or before an occasion between the year 2010 and 2011, in Singapore, did engage in a conspiracy with [T] to do a certain thing, namely, for you to rape one [V], a female … and the wife of the said [T], and in pursuance of that conspiracy and in order to the doing of that thing, sometime on the said occasion between the year 2010 and 2011, the said [T] gave you access to [T's apartment], where you penetrated the vagina of the said [V] with your penis, without her consent and in the presence of the said [T], which act was committed in consequence of your abetment, and you have thereby committed an offence under Section 375(1)(*a*) and punishable under Section 375(2) read with Section 109 of the Penal Code (Cap 224, 2008 Rev Ed).

6 Given the facts admitted by the accused in the agreed statement of facts, the following two issues were central to the determination of the accused's guilt:

(a) Why did the accused go to T's apartment on the night in question?

(b) What happened while the accused was at T's apartment?

7 At the end of the trial, I found that the Prosecution was able to prove its case against the accused beyond a reasonable doubt. On the evidence before me, I was satisfied that the accused went to T's apartment pursuant to an agreement between them to rape an unconscious V, and this agreement was carried to fruition by the accused engaging in non-consensual penile-vaginal penetration of V. I therefore convicted the accused of the Charge and sentenced him to 13 years' imprisonment and 12 strokes of the cane.

8 The accused having filed an appeal against both conviction and sentence, I now set out the reasons for my decision.

Background facts

9 The Prosecution and the Defence agreed on the following facts pursuant to s 267(1) of the Criminal Procedure Code 2010 (2020 Rev Ed).

The accused's online activity

10 On or about 16 April 2010, the accused created an online public message thread titled "Wife Fantasy" on SBF under the forum section "The Asian

Commercial Sex Scene".[9] He used the monikers "Sorros" and "UMIST" to post in this thread. Under the moniker "Sorros", he posted the following message:[10]

> "Hi folks, i believe a lot of us have fantasies about other's wife and of their wife being fantasize by others. So would like to see if anyone is interested in sharing stories or pictures and videos but on a more discreet basis. PM me if u have similar fantasy. cheers."

11 Sometime in the year 2010, the accused also communicated privately with T over Skype. T used the monikers "Sick Fark" and "tomwin25", while the accused used the names "Brad Chan", "Brad Chan Chan", and "Bradchan77".[11] In the course of their communications, T asked the accused to approach V and to ask her out. The precise details of this invitation were a matter of dispute as between the Prosecution and the Defence. However, it was not disputed that the accused agreed to approach V and that T gave him V's contact details.[12]

The accused's relationship with V

12 About a month after the accused started communicating with V online, they met in person for the first time for dinner at "Bliss Restaurant" at Punggol Park. After dinner, the accused sent V home. He dropped her off at the base of her block of flats and did not go up to the apartment where T and V were staying.[13]

13 On or about 2 September 2010, the accused met V again, this time at Sushi Tei restaurant at East Coast Parkway. They had lunch there in the

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9 ASOF at para 4.

10 ASOF at para 4.

11 ASOF at para 9.

12 ASOF at para 10.

13 ASOF at para 11.

afternoon before heading to Goldkist Beach Resort ("Goldkist") at East Coast Parkway. The accused booked a room at Goldkist, where he and V engaged in consensual penile-vaginal intercourse. Afterwards, the accused sent V home, again dropping her off at the base of her block of flats.[14] The accused continued to chat with V online for some time after this consensual sexual encounter[15], but did not inform T of his sexual activity with V.[16]

The night of the alleged rape

14 On a date in 2010 or 2011, T sent the accused a message saying that V had been drugged and asking if the accused wanted to come over to T's apartment. The accused proceeded to T's apartment.[17]

V's police report

15 On 2 January 2020, V lodged a police report after finding explicit photos of herself on T's handphone, including one which showed her lying unconscious with two penises over her face.[18]

16 On 3 January 2020, the police arrested T and seized, among other items, digital storage media containing photographs and videos of T and other men ("the co-accused") sexually assaulting V, as well as evidence of other offences.[19] On 17 January 2020, the accused was arrested.[20]

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14 ASOF at para 12.

15 ASOF at para 14.

16 ASOF at para 13.

17 ASOF at para 15.

18 ASOF at para 6.

19 ASOF at para 7.

20 ASOF at para 8.

17 The accused was examined by a psychiatrist who certified that he was not of unsound mind at the time of the alleged rape, and that he was fit to plead in a court of law.[21] At trial, the accused did not claim to have been suffering from any mental disorder at the time of the alleged rape.[22] The accused was also medically assessed not to be suffering from erectile dysfunction.[23]

The Prosecution's case

18 *Per* the Prosecution's case, the accused engaged in non-consensual penile-vaginal sex with an unconscious V in T's presence at T's apartment sometime on or about 14 March 2011.[24] The Prosecution contended that (a) there was an agreement between the accused and T for the former to rape V, and (b) that pursuant to this agreement the accused did have non-consensual penile-vaginal intercourse with V while she was unconscious from being drugged.[25] Further, the Prosecution submitted that no reasonable doubt had been raised by the Defence, and that on the contrary, the accused's credit should be impeached, and an adverse inference drawn against him for omitting to mention certain aspects of his defence in his Case for the Defence ("CFD") and in the cautioned statement recorded from him under s 23(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).[26]

19 Nine witnesses were called by the Prosecution to give evidence in support of its case. I briefly outline below the pertinent evidence.

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21 ASOF at para 20; Agreed Bundle ("AB") at pp 35-36.

22 ASOF at para 21.

23 ASOF at paras 22 and 23; AB at p 38.

24 PCS at para 1.

25 PCS at para 19.

26 PCS paras 20, 78-138.

V's evidence

20 V testified that she had previously chatted online over Skype with a user whose username included the word "Brad".[27] V identified the accused as the person behind that username.[28] This was sometime in 2010.[29] At that time, V's relationship with her husband T was not stable, as she had found out about T having an affair.[30] In response to T's affair,[31] she had an affair with the accused and met up with him on two occasions.

21 On the first occasion, V and the accused met for dinner at a café at Punggol Park. [32] On that night, V arrived home from dinner at the same time that T returned from work. T asked V whether she had allowed anyone else apart from T to hold her hand. V had the impression that a friend of T's must have seen her together with the accused.[33] V testified that she could have told the accused about T asking her whether anyone else had held her hand.[34]

22 On the second occasion, V met the accused for lunch at a Japanese restaurant at East Coast Parkway.[35] After lunch , the accused drove V to Goldkist where they engaged in consensual sex. V confirmed that two photographs produced by the Prosecution were photographs of her which had been taken at

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27 NEs 22 August 2023 Page 57 Line 27.

28 NEs 22 August 2023 Page 57 Line 14.

29 Statement of V dated 30 December 2021 at para 4 (AB at p 5).

30 NEs 22 August 2023 Page 72 Lines 2-6.

31 NEs 22 August 2023 Page 72 Lines 12-14.

32 Statement of V dated 30 December 2021 at paras 5 and 6 (AB at p 6).

33 Statement of V dated 30 December 2021 at para 5 (AB at p 6); NEs 22 August 2023 Page 87 Lines 14-16.

34 NEs 22 August 2023 Page 89 Line 13.

35 Statement of V dated 30 December 2021 at paras 5 and 6 (AB at p 6).

Goldkist.[36] She remembered that on that day, the accused had taken a photograph of her without her permission after they had sex. She had asked the accused to delete the photograph but did not know if he had in fact done so.[37]

23 V also testified that at one point, she had sent the accused a message saying that during sex with T, she would close her eyes and imagine that she was having sex with the accused instead.[38] According to V, T had never confronted her about this message.[39]

24 Sometime in October 2010, T and V went for a staycation at Marina Bay Sands ("MBS"). T did not confront V about her affair with the accused either during or after the staycation.[40] According to V, aside from having asked her whether anyone else had held her hand, T had never questioned her at any point about an alleged affair.[41] As for her communications with the accused, V did not recall having any conversation with the accused during the staycation about her menstrual cycle and/or plans to have sex for a second time.[42]

25 V testified that there was no second consensual sexual encounter between her and the accused.[43] At the end of 2010, she blocked the accused as

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36 Prosecution's Bundle of Exhibits Volume 3 ("PBOE3") at p 499; NEs 22 August 2023 Page 63 Lines 9-30.

37 NEs 22 August 2023 Page 64 Lines 13-22; Statement of V dated 30 December 2021 at para 6 (AB at p 6).

38 NEs 22 August 2023 Page 91 Lines 18-22.

39 NEs 22 August 2023 Page 91 Line 29.

40 NEs 22 August 2023 Page 76 Line 31 to Page 77 Line 5.

41 NEs 22 August 2023 Page 91 Lines 5-8.

42 NEs 22 August 2023 Page 77 Line 27.

43 NEs 22 August 2023 Page 81 Lines 25-26.

a Skype contact because the accused had tried on several occasions[44] to convince her to engage in a "threesome" with him and T,[45] which she understood to mean the three of them having sex together at the same time.[46] V stated that she was "not into" such things, and that a threesome would be the "last thing that [she could] ever think of".[47] She was able to remember that she blocked the accused in 2010 specifically because by 2011, her relationship with T had improved, and in the later part of 2011, she became pregnant with their third child.[48] V denied that she had met up with the accused on a third occasion and/or that he had driven her to Hougang Mall and then to Fragrance Hotel at Lavender.[49]

26 As for what happened on the night of her third wedding anniversary on 14 March 2011, V testified that she had no recollection of that night.[50]

27 V stated that she only told T about her affair with the accused sometime in 2020, by which time T was already in prison.[51] According to V, she would have told him either by writing him a letter or while visiting him in prison.[52]

T's evidence

28 T testified as a Prosecution witness. Prior to testifying at the trial, T had pleaded guilty on 4 May 2023 to six charges, including one under s 375(1)(*a*)

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44 NEs 22 August 2023 Page 65 Line 14.

45 NEs 22 August 2023 Page 58 Lines 25-26.

46 NEs 22 August 2023 Page 65 Line 23.

47 NEs 22 August 2023 Page 65 Lines 19-21.

48 NEs 22 August 2023 Page 65 Lines 1-6.

49 NEs 22 August 2023 Page 68 Line 14 to Page 69 Line 5.

50 NEs 22 August 2023 Page 69 Pages 16-20.

51 NEs 22 August 2023 Page 72 Lines 17-26.

52 NEs 22 August 2023 Page 72 Line 28.

p/u s 375(2) r/w s 109 of the Penal Code for abetment by conspiracy with the accused to rape V.[53] Another 11 charges were taken into consideration. He filed an appeal against sentence, which was pending at the time of the present trial (and which has since been heard and dismissed).[54]

T's initial communications with the accused

29 T recalled getting to know the accused during the period from 2009 to 2010.[55] At that time, T had two accounts on SBF under the names "Newbie2alltis" and "SGJuicyhotMILF", although the former eventually fell into disuse.[56] He knew the accused by the latter's online username "Brad".[57] The two of them first started chatting in SBF under the subject thread "Adult Discussion about Sex":[58] the accused had approached T after T posted an online thread about "test[ing] out [his] wife" (V) because he (T) suspected her of being unfaithful to him.[59] To show his eligibility as a candidate for "testing" V, the accused messaged T privately on SBF to volunteer information about his car, his job, and his marital status.[60] Based on this information, T selected the accused from amongst a pool of various individuals, for the purpose of "testing" V.[61]

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53 PBOE4 at pp 674-675.

54 NEs 16 August 2023 Page 111 Line 28 to Page 112 Line 3

55 NEs 16 August 2023 Page 7 Line 11.

56 NEs 16 August 2023 Page 7 Line 32 to Page 8 Line 11.

57 NEs 16 August 2023 Page 6 Line 32.

58 NEs 16 August 2023 Page 7 Lines 13-18, Page 8 Lines 21-22.

59 NEs 16 August 2023 Page 9 Line 15, Page 9 Lines 19-20; NEs 17 August 2023 Page 79 Line 22.

60 NEs 17 August 2023 Page 79 Line 25 to Page 81 Line 9.

61 NEs 17 August 2023 Page 92 Lines 11-18.

30 The accused and T chatted on SBF about "hot wifeing" and "threesome sex".[62] According to T, the term "hot wifeing" (which was used on SBF interchangeably with "hot-wifing") referred to a spouse being romantically involved with another person outside the marriage, with the other spouse's knowledge, [63] while the term "threesome sex" meant having sex with multiple sex partners at the same time.[64] T came to know that the accused was married, as the accused talked about having a wife whom he referred to as "*tua neh neh*"[65] – T understood this to mean "big breasts" in Hokkien dialect.[66]

31 From SBF, the accused and T migrated to communicating on MSN Messenger and Skype.[67] T recalled the accused asking him on Skype for photographs and videos of V so that the accused could masturbate.[68] The accused would also send T pictures of a woman's breasts or of a woman engaging in oral sex,[69] claiming that the woman shown in these images was his wife.[70] The accused would ask T to print out these pictures and to photograph himself masturbating to these pictures.[71]

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62 NEs 16 August 2023 Page 11 Line 17.

63 NEs 16 August 2023 Page 11 Lines 19-22.

64 NEs 16 August 2023 Page 11 Line 24, Page 12 Line 12.

65 NEs 16 August 2023 Page 12 Lines 27-28.

66 NEs 16 August 2023 Page 12 Line 30.

67 NEs 16 August 2023 Page 13 Lines 9-13.

68 NEs 16 August 2023 Page 13 Lines 17-26.

69 NEs 16 August 2023 Page 14 Lines 1-2.

70 NEs 16 August 2023 Page 13 Line 30.

71 NEs 16 August 2023 Page 14 Line 28 to Page 15 Line 6.

The accused's relationship with V

32 Some months after T started chatting with the accused,[72] T chose the accused to "test" V. According to T, the arrangement was that the accused would update T on what happened between him and V, and if at any point T felt uncomfortable, he reserved the right to stop this "testing".[73] T also insisted that at no point was the accused to influence V into breaking up the family.[74] T provided the accused with details of V's Facebook account and handphone number,[75] as well as additional details such as her former school, her preferred alcoholic drinks, and other preferences.[76] T did not set any boundaries for what the accused could or could not do with V in terms of sexual intimacy.[77]

33 The accused subsequently informed T that he and V had met up on at least one occasion in Punggol Park, where they had drunk wine, held hands, kissed and hugged.[78] This occurred sometime between February and October 2010.[79] When T heard that the accused had hugged and kissed V, he felt angry, hurt and sad: his "world collapsed".[80] However, T did not communicate any of this to the accused.[81] During the same period between February and October

72 NEs 16 August 2023 Page 17 Line 5.

73 NEs 16 August 2023 Page 16 Lines 3-10; NEs 17 August 2023 Page 93 Lines 12-22.

74 NEs 17 August 2023 Page 93 Lines 19-24.

75 NEs 16 August 2023 Page 17 Lines 10-17.

76 NEs 17 August 2023 Page 105 Line 30 to Page 106 Line 14.

77 NEs 17 August 2023 Page 94 Lines 1-15, Page 98 Line 29.

78 NEs 16 August 2023 Page 18 Lines 2-7.

79 NEs 16 August 2023 Page 18 Lines 23-25.

80 NEs 17 August 2023 Page 101 Line 3.

81 NEs 17 August 2023 Page 101 Line 7.

2010, T had also consulted friends before suggesting to the accused that he should bring V to Goldkist Resort at East Coast.[82]

34 T was certain that any affair between the accused and V had already ended by 14 March 2011, the date of T's third wedding anniversary with V and the day of the alleged rape.[83] First, T had logged in to V's MSN Messenger account before that date and found that V had deleted and blocked the accused's contact.[84] Second, T recalled having a "confrontation" with V sometime after October 2010,[85] during which he had told V[86] that "somebody in the neighbourhood" had seen her being intimate with another person.[87] This was in fact untrue. T recalled that this confrontation took place a few days after V's meeting with the accused at Punggol Park, as he had still been on guard duty in camp on the evening when V met up with the accused, and he would only have left camp the morning after.[88] Third, T recalled that the accused had asked him sometime between October 2010 and March 2011 why V had stopped contacting the accused.[89]

35 T also testified that when he logged in to V's MSN Messenger account, he saw two conversations between V and the accused which were "burned" into his memory.[90] The first conversation involved V and the accused making fun of

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82 NEs 16 August 2023 Page 18 Lines 8-14; 17 August 2023 Page 108 Lines 15-18.

83 NEs 16 August 2023 Page 19 Line 13.

84 NEs 16 August 2023 Page 19 Lines 18-19, Page 22 Lines 21-29, Page 23 Lines 1-8.

85 NEs 16 August 2023 Page 22 Line 7.

86 NEs 18 August 2023 Page 10 Lines 1-9.

87 NEs 16 August 2023 Page 20 Lines 2-5.

88 NEs 17 August 2023 Page 103 Line 13 to Page 104 Line 10.

89 NEs 16 August 2023 Page 22 Lines 16-17.

90 NEs 16 August 2023 Page 20 Lines 23-25.

T's reaction to seeing a BMW car on an occasion when he was out with V. T testified that he had a reaction to seeing the BMW car because his wife had slept with an ex-boyfriend who also drove a BMW car.[91] The second conversation involved V telling the accused that when T asked her for intimacy, she had initially been reluctant to respond but that she had subsequently had an orgasm after imagining T to be the accused while having sex with T.[92]

36 T also recounted seeing a third conversation between the accused and V in which the two of them talked about whether V's menstrual cycle had affected her ability to wear a bikini during her staycation with T at MBS.[93] The second and the third conversations led to T forming the suspicion that the accused and V had been sexually intimate: T was especially incredulous that V could have discussed her menstrual cycle with another man whom she was not intimate with.[94]

37 Up to this point, T had not planned with the accused to drug V so that the accused could have sex with her.[95] According to T, somewhere "along the way", he had actually told the accused that he was not comfortable and was going to "call off everything".[96] He felt betrayed by the accused[97] and tried to ask the accused whether he had been sexually intimate with V, but the latter did not reply.[98] After T "confronted" V, partial communications resumed between

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91 NEs 16 August 2023 Page 16 Lines 24-29, Page 20 Line 31 to Page 21 Line 3.

92 NEs 16 August 2023 Page 21 Lines 3-8.

93 NEs 16 August 2023 Page 22 Lines 1-4.

94 NEs 17 August 2023 Page 116 Lines 11-30.

95 NEs 18 August 2023 Page 38 Lines 18-25.

96 NEs 16 August 2023 Page 23 Lines 17-18, Page 23 Lines 28-32.

97 NEs 17 August 2023 Page 117 Line 24.

98 NEs 17 August 2023 Page 118 Line 23 to Page 119 Line 8.

the accused and T: the accused continued to keep mum on the subject of whether he had engaged in any sexual activity with V,[99] but would appear online randomly to ask T what he was doing, what he was planning with other co-accused persons, and what V was doing.[100]

The night of the alleged rape

38 In respect of the commission of the alleged rape, T gave evidence that it took place on his third wedding anniversary on 14 March 2011.[101] He remembered drinking wine with V at their apartment[102] and giving V Dormicum[103] – a drug which he knew would render her unconscious.[104] He did so by crushing the pills containing the drug and putting them in V's wine.[105] Next, he remembered V lying naked on the bed, blindfolded and unconscious.[106] T took a photograph of V while she was in this position,[107] but deleted the photograph sometime later, in order to avoid being found out by V.[108] He could recall that in this photograph, V was lying on her back on a purple bedsheet.[109] He also recalled that he was the person who had removed V's clothes.[110]

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99 NEs 17 August 2023 Page 120 Line 25 to Page 121 Line 1.

100 NEs 18 August 2023 Page 2 Lines 1-12, Page 4 Lines 5-7.

101 NEs 16 August 2023 Page 24 Lines 6-8.

102 NEs 16 August 2023 Page 24 Lines 14-19.

103 NEs 16 August 2023 Page 24 Line 32 to Page 25 Line 6.

104 NEs 16 August 2023 Page 25 Line 6.

105 NEs 16 August 2023 Page 26 Lines 8-10, Page 27 Lines 3-4.

106 NEs 16 August 2023 Page 24 Lines 25-27, Page 28 Line 13.

107 NEs 16 August 2023 Page 28 Lines 13-16.

108 NEs 16 August 2023 Page 42 Lines 4-7.

109 NEs 16 August 2023 Page 29 Lines 13-18.

110 NEs 16 August 2023 Page 28 Line 23.

39 T's evidence was that he could not remember the specifics of the communications between him and the accused prior to the latter coming to the apartment.[111] However, T affirmed that the two of them had talked online, and that he had likely told the accused about V having been drugged with Dormicum.[112] T believed that there would have been coordination between him and the accused on the night in question, although he could not recall the specific details of that coordination.[113] T also affirmed that the purpose of the accused coming to his apartment was to help T with "what [T] wanted to do to [his] wife" V,[114] which was for her to be raped[115] in retaliation for her having dishonoured him with her infidelity.[116] T explained that this was part of the agenda in his "operation",[117] as he was inspired by the lyrics of the military song "Purple Light". According to T, this was a song which included references to the protagonist's girlfriend being raped "with my buddy and my rifle and myself": in T's view, the accused was the "buddy" referred to in the song.[118] T's evidence was that the accused would have known of his purpose, because T had previously disclosed to the accused his discussions with his other co-accused about using drugs to sedate V.[119] The accused would also have known that V was unconscious on the night when he came over to T's apartment on 14 March

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111 NEs 16 August 2023 Page 29 Line 26; NEs 18 August 2023 Page 42 Lines 15-22.

112 NEs 16 August 2023 Page 29 Line 27 to Page 30 Line

113 NEs 17 August 2023 Page 120 Lines 1-10; NEs 18 August 2023 Page 42 Lines 21-22; NEs 22 August 2023 Page 40 Lines 28-31.

114 NEs 16 August 2023 Page 30 Lines 27-28.

115 NEs 16 August 2023 Page 30 Line 32; NEs 18 August 2023 Page 45 Line 28.

116 NEs 16 August 2023 Page 32 Lines 7-8; NEs 18 August 2023 Page 45 Lines 29-32.

117 NEs 16 August 2023 Page 31 Line 18.

118 NEs 16 August 2023 Page 32 Lines 3-5, Page 32 Line 18 to Page 33 Line 7.

119 NEs 16 August 2023 Page 33 Line 16 to Page 34 Line 14.

2011, because there was no other reason why the accused would have appeared at T's apartment that night.[120]

40 When the accused arrived at T's apartment, it was around midnight, and the flat was dark[121] when T opened the door to the accused.[122] The accused and T went straight away to the master bedroom,[123] which was illuminated.[124] T's children and helper were at home at that point in time, but in a separate bedroom.[125] Inside the master bedroom, V was lying naked and blindfolded on the bed.[126] She was unconscious throughout the time that the accused was in the apartment.[127]

41 T testified that he had several distinct memories of the events of that night, from the time when the accused was inside the master bedroom with T and V.

42 First, T remembered being inside the toilet in the master bedroom, looking out from the toilet while smoking[128], and seeing the accused on top of V[129] in the "missionary position".[130] This led him to believe that they were

120 NEs 17 August 2023 Page 3 Lines 16-23; 18 August 2023 Page 13 Lines 10-23.

121 NEs 18 August 2023 Page 13 Line 24 to Page 14 Line 1.

122 NEs 16 August 2023 Page 30 Lines 20-25.

123 NEs 16 August 2023 Page 34 Line 25.

124 NEs 18 August 2023 Page 15 Line 30.

125 NEs 16 August 2023 Page 34 Lines 17-19.

126 NEs 18 August 2023 Page 15 Line 32 to Page 16 Line 3.

127 NEs 16 August 2023 Page 38 Lines 11-17.

128 NEs 18 August 2023 Page 28 Lines 19-21.

129 NEs 16 August 2023 Page 36 Lines 27-28.

130 NEs 16 August 2023 Page 39 Lines 11-12.

having sex.[131] T experienced multiple emotions watching this. He felt anger at his wife for her affair,[132] thrill,[133] and arousal. This feeling of arousal, according to T, was not sexual:[134] rather, it was a sense of "relief of [his] pent-up frustration" against V as a result of having achieved "retaliation" against her.[135] At the end of the night, he also felt guilt for what he had done.[136]

43 Second, T remembered the accused asking him where to dispose of a condom and his telling the accused to flush it down the toilet.[137] This was a condom which the accused had brought along with him to the apartment. It was T who had told the accused that a condom would be needed to "carry out the operation"[138] because V was a hepatitis B carrier and also "very fertile".[139] In other words, T believed he had told the accused to use a condom when having sex with V that night.[140]

131 NEs 16 August 2023 Page 36 Line 2.

132 NEs 16 August 2023 Page 40 Lines 1-9.

133 NEs 16 August 2023 Page 40 Lines 1-4.

134 NEs 16 August 2023 Page 40 Line 23.

135 NEs 16 August 2023 Page 40 Lines 21-30; NEs 22 August 2023 Page 46 Lines 16-30.

136 NEs 16 August 2023 Page 40 Lines 18-20.

137 NEs 16 August 2023 Page 36 Lines 22-26.

138 NEs 17 August 2023 Page 4 Lines 6-8.

139 NEs 17 August 2023 Page 4 Lines 3-7.

140 NEs 17 August 2023 Page 4 Line 21; NEs 18 August 2023 Page 33 Lines 30-32.

44 Third, after the accused left T's apartment, T recalled holding the unconscious V,[141] cleaning her up so as to remove any trace of lubricant on her[142] and crying as he did so.[143]

T's communications with the accused after the night of the alleged rape

45 T testified that he and the accused continued to discuss the above events after 14 March 2011,[144] with the accused continuing to ask T to show him pictures of V. The accused would also "usually" ask T when he would be getting a "resupply" of Dormicum and other drugs such as clonazepam.[145] The latter was understood by T to be a sleeping medication[146] used to drug women so that other men could have sex with them.[147]

46 T was brought through the contents of his conversations with the accused over Skype. Where relevant, I set out below at [138]–[158] and [189]–[195] the details of these conversations.

T's meetings with the accused after the night of the alleged rape

47 T also testified that following the night of the alleged rape, he and the accused had met up near his workplace at Marina South Pier as the accused had

141 NEs 16 August 2023 Page 38 Lines 11-17.

142 NEs 16 August 2023 Page 38 Lines 18-23.

143 NEs 16 August 2023 Page 35 Lines 26-29.

144 NEs 16 August 2023 Page 41 Lines 16-23.

145 NEs 16 August 2023 Page 41 Lines 24-32.

146 NEs 16 August 2023 Page 52 Line 29.

147 NEs 16 August 2023 Page 53 Lines 2-6.

asked T to pass him some sleeping pills.[148] The last time T saw the accused again was when they were both in prison.[149]

T's communications with V after his arrest

48 As for his communications with V, T testified that sometime in 2020, while he was in prison,[150] V had written him a letter telling him about her previous consensual sexual encounter with the accused.[151]

T's statements to the police

49 The Prosecution applied under s 161 of the Evidence Act 1893 (2020 Rev Ed) ("EA") to refresh T's memory by showing him the recording of his video-recorded interview ("VRI") with the police on 14 January 2020.[152] Following this, T affirmed the following in court:

(a) After the accused revealed that V had stopped contacting him, T said that he would find a time for the accused to meet V; specifically, by "the drugging drugging way".[153] The purpose of such a meeting would be for the accused to have sex with V.[154] T believed that this purpose would have been discussed with the accused.[155]

148 NEs 17 August 2023 Page 5 Lines 2-19.

149 NEs 18 August 2023 Page 62 Line 29.

150 NEs 18 August 2023 Page 64 Line 8.

151 NEs 18 August 2023 Page 64 Lines 19-30.

152 NEs 17 August 2023 Page 8 Lines 16-21.

153 NEs 17 August 2023 Page 11 Lines 7-21.

154 NEs 17 August 2023 Page 11 Line 26.

155 NEs 17 August 2023 Page 11 Line 28.

(b) Before the accused's arrival at T's apartment on the night of the alleged offence, T had told him about drugging V[156] and had said to him that V was "out" (by which T meant that she was unconscious) and that she was "ready" (by which T meant that the accused could start having sex with her).[157]

50 The Prosecution also refreshed T's memory by showing T his VRI dated 8 January 2020.[158]

The Prosecution's cross-examination of T as to his previous statements

51 The Prosecution applied to cross-examine T under s 147(1) of the EA and to substitute part of his previous police statements as evidence under s 147(3) of the EA, on the basis that his testimony in court was inconsistent with the content of those statements.[159] In gist, the areas on which T was cross-examined were as follows:

(a) T had stated in court that he and the accused did not discuss wife sharing and drugging when they first chatted on SBF.[160] This was contrary to what he had told the police in his VRI statement.[161] Although T stuck with his account in court when confronted with the above

156 NEs 17 August 2023 Page 11 Lines 23-28.

157 NEs 17 August 2023 Page 18 Lines 1-8; NEs 22 August 2023 Page 41 Line 6 to Page 43 Line 5.

158 Exhibit P33.

159 NEs 17 August 2023 Page 1 Lines 3-16; PCS at para 24.

160 NEs 17 August 2023 Page 7 Lines 14-15.

161 Exhibit P32 Page 85 Lines 24-25, Page 85 Line 29, Page 87 Lines 1-6; Exhibit P34 Page 6 Lines 24-27.

inconsistency,[162] he conceded that the two of them did eventually progress to discussing both wife sharing (in the sense of a husband sharing his wife with another man for sexual purposes)[163] and drugging (in the sense of a husband drugging his wife with sedatives in order for another man to have sex with her unconscious body)[164] on SBF with the accused. These discussions were conducted through private messaging rather than in the public forum thread.[165] These private messages on SBF included discussion of hot-wifing, which involved a wife being romantically and sexually involved with another man with her husband's knowledge. The latter would include the husband watching the wife having sex with another man.[166]

(b) According to T in his evidence-in-chief, he had administered Dormicum to V by crushing it and putting it inside her wine.[167] In his statements to the police, on the other hand, he had mentioned drugging V by giving her Dormicum in the form of a pill without her knowing what the pill contained,[168] under the guise of administering medicine to her. When confronted with this inconsistency, T maintained the account given in court, as he said he had no recollection of having given V any medication on the night of the alleged offence.[169]

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162 NEs 17 August 2023 Page 31 Line 22.

163 NEs 17 August 2023 Page 34 Line 12.

164 NEs 17 August 2023 Page 34 Lines 16-21.

165 NEs 17 August 2023 Page 33 Line 10 to Page 35 Line 7.

166 NEs 17 August 2023 Page 34 Line 25 to Page 35 Line 1.

167 NEs 16 August 2023 Page 26 Lines 8-10.

168 Exhibit P32 Page 89 Lines 25-28; Exhibit P34 Page 36 Line 22 to Page 37 Line 7.

169 NEs 22 August 2023 Page 37 Lines 16-19, Page 47 Line 25.

(c) In court, T's evidence was that he had taken off V's clothes after drugging her,[170] whereas in his statements to the police he had said that it was the accused who had undressed V.[171] When confronted with this inconsistency, T maintained the account given in court as he could remember taking a picture of V in an undressed state prior to the accused's arrival at the apartment.[172] This memory was triggered by his recollection of a message sent by him to the accused during one of their online conversations, in which he had shown the accused this particular picture and asked the latter whether he could see it.[173]

52 In relation to (b) and (c), T's attention was also drawn to the Statement of Facts ("SOF") which he had admitted to in pleading guilty. This SOF stated that (a) on the night of the alleged rape, T had caused V to consume a sedative drug on the pretext of feeding her medication, and (b) that it was the accused who had undressed V when he came to the apartment.[174] Although T acknowledged the SOF was inconsistent with his account in court,[175] he maintained that his account in court was the correct one. T explained that the version of events stated in the SOF had been based on his statements to the police; and it was only after giving these statements to the police that he recalled the picture he had sent to the accused during their online conversation and thereby realised that the version given in his police statements was incorrect.[176]

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170 NEs 16 August 2023 Page 28 Line 23.

171 Exhibit P33 Page 37 Lines 18-26.

172 NEs 17 August 2023 Page 49 Lines 1-23, Page 55 Line 23.

173 NEs 17 August 2023 Page 59 Line 1 to Page 61 Line 8.

174 P31 at paras 10 and 11 (PBOE4 at pp 681-682).

175 NEs 17 August 2023 Page 66 Line 32, Page 67 Line 24

176 NEs 17 August 2023 Page 67 Lines 4-6, Lines 29-32.

53 After hearing T's explanation, the Prosecution decided not to apply to substitute as evidence those portions of his VRI statements which concerned the issues of how he had given V Dormicum and who had undressed V.[177] The Prosecution initially stated during the trial that it intended to substitute those portions of T's VRI statements relating to his discussions with the accused on SBF for his oral testimony.[178] Subsequently, however, in their closing submissions, they took the position that T's evidence on this issue did not involve any material discrepancy.[179] I deal with this issue at [92] below.

The Defence's impeachment of T

54 In cross-examination, the Defence applied to impeach T's credit in relation to his oral testimony about (a) how V was drugged, and (b) who undressed V.[180] T agreed that his testimony in relation to these two matters was inconsistent with his VRI statements but offered explanations for the inconsistencies.[181] I deal with this issue at [176]–[188] below.

The accused's online activity

55 In addition to calling witnesses, the Prosecution adduced screenshots of the accused's various posts on SBF under the usernames "Sorros" and "UMIST", dating from 2010 to 2019.[182] The Prosecution also produced records of the accused's internet search history from 2018 and 2019 which featured

177 NEs 17 August 2023 Page 68 Lines 8-11.

178 NEs 17 August 2023 Page 68 Lines 27-30.

179 PCS at para 25.

180 NEs 22 August 2023 Page 35 Line 15 to Page 39 Line 7.

181 NEs 22 August 2023 Page 37 Line 19, Page 38 Line 20 to Page 39 Line 5.

182 Exhibits P19-P22 (Prosecution's Bundle of Exhibits Volume 2 ("PBOE2") at pp 138-458).

numerous pornographic websites.[183] The Defence did not object to the admission of this evidence.[184]

The accused's communications with T

56 The Prosecution also adduced evidence of the Skype messaging history between the accused and T, between the accused and V, and between T and other co-accused persons. The Defence did not object to the admission of this evidence.[185]

The accused's statements

57 The Prosecution tendered transcripts of several of the VRI statements given by the accused to the police. The accused was cross-examined on the contents of these statements, and the Prosecution applied to impeach the accused's credit on the basis of inconsistencies between his testimony in court and his VRI statements.

Other witnesses

58 In addition to the witnesses highlighted above, the Prosecution also called seven other witnesses in support of its case. Where relevant, I highlight their evidence below.

59 I next summarise the case put forward by the Defence at trial.

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183 Exhibits P18A, P 18B, P18C and P18D (Prosecution's Bundle of Exhibits Volume 1 ("PBOE1") at pp 114-122).

184 NEs 15 August 2023 Page 58 Lines 27 to Page 61 Line 19.

185 DS at para 336.

The Defence's case

60 The accused did not dispute having gone to T's apartment on the night of the alleged offence, although he insisted that this had happened in 2010 and not in 2011.[186] He denied having been party to a conspiracy with T to rape V, claiming that he had gone to the apartment on the night in question out of concern for V after being informed by T that she had been drugged.[187]

61 The accused did not call any other witnesses.

The accused's evidence

The accused's posts on SBF

62 It was not disputed that the accused had started the "Wife Fantasy" thread on SBF in April 2010 and that this thread was located within a section of SBF called "Asian Commercial Sex Scene"[188]. At trial, the accused claimed that he had started the "Wife Fantasy" thread in order to share "normal"[189] stories, pictures, and videos of other people's wives and girlfriends.[190] He claimed that these "normal" pictures of wives and girlfriends involved "no particular theme". According to the accused, these pictures "could be just a normal—they go travel and then they just take picture…et cetera, and then yah, it—just an example".[191] He admitted that there was "a possibility" that some people could have posted

186 NEs 18 August 2023 Page 43 Lines 15-17.

187 DS at para 54.

188 ASOF at para 4; NEs 24 August 2023 Page 23 Lines 29-31.

189 NEs 23 August 2023 Page 45 Lines 6-7.

190 NEs 23 August 2023 Page 44 Lines 25-33.

191 NEs 23 August 2023 Page 45 Lines 18-21.

sexual pictures within this thread,[192] but denied that the thread was intended to be about sexual fantasies.[193]

T's invitation for the accused to date V

63 Soon after the accused started the "Wife Fantasy" thread, T privately messaged him, following which the two of them engaged in "some banter talk" and "talking nonsense".[194] Out of the blue, T asked the accused whether he wanted to try to date T's wife, V. The accused, thinking that T had a "fetish" for people dating his wife, agreed.[195] T did not tell the accused of any conditions he would be subject to in dating V,[196] nor did T say anything about "testing" V.[197]

The accused's relationship with V

64 T provided the accused with V's Facebook account details, after which the accused started chatting to V on Facebook Messenger.[198] A week or two after they started chatting, they met up for a dinner date at a café near Punggol Park.[199] The accused informed T that he was meeting V, and told him about the meeting

192 NEs 23 August 2023 Page 45 Lines 23-27.

193 NEs 24 August 2023 Page 24 Line 30.

194 NEs 23 August 2023 Page 45 Line 30 to Page 46 Line 15.

195 NEs 23 August 2023 Page 46 Lines 18-21.

196 NEs 23 August 2023 Page 46 Line 30.

197 NEs 23 August 2023 Page 108 Line 18 to Page 109 Line 14.

198 NEs 23 August 2023 Page 47 Lines 1-5.

199 NEs 23 August 2023 Page 47 Lines 6-24.

time and place.[200] The accused claimed that during the date, he and V had "clicked quite well",[201] and they had kissed in the car before he sent her home.[202]

65 The evening after their date at Punggol Park, V messaged the accused to say that T's friend had seen V and the accused together, holding hands.[203] Around the same time, T also messaged the accused saying that his friend had seen V and the accused together, holding hands.[204] The accused testified that he replied to T to ask T what he was thinking, because he found it odd that T would confront him about the very thing T had invited him to do.[205] T responded that he had no choice but to confront the accused since his friend had already seen V and the accused together.[206] The accused could not recall whether, in the course of this exchange, he had told T about having hugged and kissed V during their date at Ponggol Park.[207]

66 According to the accused, he and V continued to chat over SMS, and on 2 September 2010,[208] they went on a second date at Sushi Tei East Coast.[209] The accused claimed that after lunch at Sushi Tei, he and V had gone to Goldkist,

200 NEs 23 August 2023 Page 47 Line 17 to Page 48 Line 4.

201 NEs 23 August 2023 Page 47 Line 30.

202 NEs 23 August 2023 Page 49 Lines 11-13.

203 NEs 23 August 2023 Page 49 Lines 18-29.

204 NEs 23 August 2023 Page 50 Lines 10-23, Page 51 Lines 7-19.

205 NEs 23 August 2023 Page 51 Lines 21-24.

206 NEs 23 August 2023 Page 51 Lines 25-27.

207 NEs 23 August 2023 Page 52 Lines 2-6.

208 NEs 23 August 2023 Page 54 Line 9.

209 NEs 23 August 2023 Page 53 Lines 6-15.

where they again engaged in consensual sex.[210] The accused did not tell T about this second meeting with V.[211]

67 The accused's evidence was that after this second consensual sexual encounter, he and V continued to engage in "some romantic talk", with V confiding in the accused about her family issues.[212] The accused distinctly remembered receiving a message from V in which she told him that she had just had sex with T, that she had been unsure about whether she really wanted sex with T, and that she had closed her eyes and pretended she was having sex with the accused instead.[213]

68 Several days or weeks after the above message, the accused received a Skype[214] message from T asking, "[d]id you have sex with my wife?", which the accused responded to with a denial.[215] T then sent the accused a screenshot of the above message from V (at [67] above), to which the accused responded by assuring T, "[t]here's nothing. It's just romantic talk".[216] Both T and the accused did not refer to the message from V again and instead continued to "talk nonsense".[217]

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210 NEs 23 August 2023 Page 53 Lines 15-18.

211 NEs 23 August 2023 Page 56 Lines 31-32.

212 NEs 23 August 2023 Page 55 Lines 11-14.

213 NEs 23 August 2023 Page 56 Lines 3-11.

214 NEs 23 August 2023 Page 58 Lines 4-6.

215 NEs 23 August 2023 Page 57 Lines 4-23.

216 NEs 23 August 2023 Page 58 Line 3.

217 NEs 23 August 2023 Page 58 Lines 12-15.

69 A few days later, T sent another message to the accused asking "[a]re you going to break up my family?".[218] The accused could not recall exactly how he responded to this message. However, he testified that he and T did not get into any argument, as T seemed to accept his assertion that he would not break up T's family.[219] The accused subsequently stopped communicating with T.[220]

The night of the alleged rape

70 In respect of the night of the alleged rape, the accused maintained that his visit to T's apartment took place sometime in 2010 and not on 14 March 2011. According to the accused, T's messages to him ("[d]id you have sex with my wife?" and "[a]re you going to break up my family?") should have been sent at the end of September 2010 at the latest;[221] and he would have visited T's apartment within two months of these two messages.

71 The accused testified that on the night in question, he had been home watching television when T – whom the accused had not met in person up till then[222]– suddenly messaged him on Skype something along the lines of "[V] is drugged. Want to come over?".[223] T also texted the accused his address.[224] At that point, the accused was wondering whether V was high on drugs – and whether she had even been drugged.[225] The accused thought that given the

218 NEs 23 August 2023 Page 58 Lines 24-25.

219 NEs 23 August 2023 Page 59 Lines 5-7.

220 NEs 23 August 2023 Page 59 Lines 8-23.

221 NEs 23 August 2023 Page 62 Line 15 to Page 63 Line 9.

222 NEs 23 August 2023 Page 67 Line 24.

223 NEs 23 August 2023 Page 63 Lines 13-18.

224 NEs 23 August 2023 Page 66 Lines 16-17.

225 NEs 24 August 2023 Page 54 Line 17.

previous messages from T (see [67]–[68] above), there was a good possibility that T wanted to confront both the accused and V about their affair.[226] According to the accused, he did not think there was anything sexual at all about the invitation.[227]

72 Within five minutes of receiving T's invitation and without asking T any further questions,[228] the accused told his wife he had to attend to business matters[229] and left his house for T's apartment. The accused's evidence was that he accepted T's invitation to go over to his apartment out of "curiosity and concern" for V.[230] He was curious because he did not know what was going to happen out of "so many permutation [*sic*] that could be happening". He was concerned because he knew that T was from "the military", and "if [T] really were to go crazy" over V's affair with the accused, T could "inflict damage" on V if he was not "controlled".[231] The accused therefore thought that he should go to T's apartment to "settle it" through a "conversational" and "amicable" resolution.[232]

73 When the accused reached T's apartment, T greeted him[233] and opened the door for him. The apartment was dark.[234] T wordlessly[235] led the accused into

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226 NEs 23 August 2023 Page 63 Line 20 to Page 64 Line 2.

227 NEs 25 August 2023 Page 2 Line 5.

228 NEs 23 August 2023 Page 65 Line 7.

229 NEs 24 August 2023 Page 56 Line 16.

230 NEs 23 August 2023 Page 64 Lines 5-15.

231 NEs 23 August 2023 Page 64 Lines 20-28.

232 NEs 23 August 2023 Page 64 Lines 27-32.

233 NEs 23 August 2023 Page 67 Lines 15-16.

234 NEs 23 August 2023 Page 67 Line 30 to Page 68 Line 1.

235 NEs 23 August 2023 Page 67 Lines 12-13; NEs 24 August 2023 Page 62 Line 3.

a room with an attached toilet, which the accused presumed was the master bedroom.[236] In this room, he saw "a body" lying on the bed covered with a duvet or some other object.[237] He assumed that this was V's body.[238] The accused was "freaking out" at this point.[239] He then sat on the side of the bed[240] sizing up the situation and focusing his attention on T, whom he chatted to about "normal things"[241] in an attempt to "diffuse [*sic*] the situation".[242] Both of them spoke softly because – in the accused's words – "maybe [V] is sleeping or what".[243]

74 T next suggested to the accused, "you want to touch [V]?". The accused did not reply.[244] At this juncture, the accused was thinking that he ought not to touch V.[245] At the same time, however, he felt that he could not show that he was indifferent or disinterested towards V[246] because in his view, this would have confirmed T's suspicion that he was having an affair with V.[247] According to the accused, he had to "try to get out of this situation" by "show[ing] [T] through body language [*sic*]", which he did by trying to "stroke" his "private

236 NEs 23 August 2023 Page 66 Lines 26-30, Page 67 Lines 6-18.

237 NEs 23 August 2023 Page 71 Lines 5-8.

238 NEs 23 August 2023 Page 68 Lines 1-2, Page 71 Lines 20-21.

239 NEs 23 August 2023 Page 68 Lines 6-7.

240 NEs 23 August 2023 Page 68 Line 17.

241 NEs 23 August 2023 Page 68 Lines 22-27.

242 NEs 23 August 2023 Page 69 Lines 17-18.

243 NEs 23 August 2023 Page 69 Lines 6-11.

244 NEs 23 August 2023 Page 72 Line 3.

245 NEs 23 August 2023 Page 69 Line 26 to Page 70 Line 11.

246 NEs 23 August 2023 Page 72 Lines 5-19.

247 NEs 23 August 2023 Page 72 Lines 22-25.

parts"[248] over his clothes[249], and then giving a "hand signal" (which he demonstrated in court by shaking both hands) to indicate that he could not get an erection.[250] The accused said he was unsure whether T actually saw these actions.[251]

75 Thereafter, T suggested that the two of them go for a "smoke break". Both T and the accused proceeded to the toilet of the master bedroom, where T smoked and the accused continued to talk with him about "normal stuff". The accused subsequently went home after telling T he had to leave.[252]

The accused's communications with T after the night of the alleged rape

76 Following the night of his visit to T's apartment, the accused continued to stay in touch with T, albeit infrequently, because he was concerned about V and wanted to "make sure everything is okay".[253] At trial, the accused was brought through his Skype messages with T after the night of the alleged rape: I deal with this evidence in more detail below at [138]–[158] and [189]–[195].

The accused's relationship with V after the night of the alleged rape

77 As for V, the accused claimed that he and V had re-established communications around the end of 2011 to early 2012,[254] but that they had decided to "stay low" about their relationship because they knew that T was

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248 NEs 23 August 2023 Page 72 Line 26 to Page 73 Line 9.

249 NEs 24 August 2023 Page 69 Lines 19-21.

250 NEs 23 August 2023 Page 73 Lines 1-21.

251 NEs 24 August 2023 Page 71 Line 19.

252 NEs 23 August 2023 Page 73 Line 23 to Page 74 Line 1.

253 NEs 23 August 2023 Page 82 Lines 4-9.

254 NEs 23 August 2023 Page 83 Lines 16-20.

emotionally unstable.[255] The accused also claimed that during this period, he and V had a second consensual sexual encounter which took place at Lavender Fragrance Hotel after a lunch at Hougang Mall.[256] The following day, the accused and V were messaging each other when the accused sent V a message stating "Thanks for the great time yesterday, it was great to have raw sex with you". Following this, V stopped replying to the accused's messages.[257] The accused maintained that he did not at any point ask V to join him and T in a sexual threesome.[258]

Screenshots from the accused's phone

78 The Defence sought to rely on three screenshots of T's profile page on Facebook which the accused had taken on his mobile phone but which were tendered only midway through the trial.[259] The Prosecution consented to these screenshots being admitted, while noting that these screenshots had been deleted from the accused's own mobile phone such that it was impossible to determine the date on which they had been taken.[260] These screenshots showed, respectively, T's Facebook profile picture, a post made by T on 15 March 2011, and a photograph of T and V at the Marina Bay Sands resort ("MBS") posted by T on 12 October 2010.

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255 NEs 23 August 2023 Page 82 Lines 15-16.

256 NEs 23 August 2023 Page 84 Lines 9-24.

257 NEs 23 August 2023 Page 86 Lines 5-21.

258 NEs 23 August 2023 Page 109 Lines 18-29.

259 Exhibits D5, D6 and D7.

260 NEs 22 August 2023 Page 29 Lines 9-15.

The applicable law

79 Having outlined the evidence adduced at trial, I next summarise the relevant legal principles.

The law on conspiracy

80 Under s 107(1)(*b*) of the Penal Code, a person abets the doing of a thing who engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing.

81 Proof of conspiracy may be founded on the surrounding circumstances and the conduct of parties before and after the alleged commission of the crime. This is generally a matter of inference, which would be drawn only if it is inexorable and irresistible, and accounts for all the facts of the case (*Er Joo Nguang and another v Public Prosecutor* [2000] 1 SLR(R) 756 ("*Er Joo Nguang*") at [35], *Nomura Taiji v Public Prosecutor* [1998] 1 SLR(R) 259 ("*Nomura Taiji*") at [106]).

82 The *mens rea* for abetment by conspiracy is that the accused must have "(a) intended to be a party to an agreement to do an unlawful act, and (b) known the general purpose of the common design, and the fact that the act agreed to be committed is unlawful" (*Ali bin Mohamad Bahashwan v Public Prosecutor* [2018] 1 SLR 610 ("*Bahashwan*") at [34], citing *Nomura Taiji* at [107]–[110]).

83 Although it is not necessary that all the conspirators are equally informed as to the details of the conspiracy, it is essential that there must be a "meeting of minds" so that they are all aware of the general purpose of the plot

(*Er Joo Nguang* at [34]). It is not necessary, however, that the abettor and the person abetted share the same *mens rea* (*Bahashwan* at [34]).

The applicability of the unusually convincing standard

84 Insofar as the evaluation of the evidence in this case was concerned, it was not disputed that leaving aside the accused and the unconscious V, T was the only eyewitness to the alleged rape. As such, one of the key questions which I had to consider was whether T's evidence was uncorroborated and formed the *sole* basis for a conviction (*Public Prosecutor v GCK* [2020] 1 SLR 486 ("*GCK*") at [89]) – in other words, whether no other evidence was available (*Public Prosecutor v Ridhaudin Ridhwan bin Bakri and others* [2019] SGHC 105 ("*Ridhaudin*") at [113]). In the absence of corroborative evidence, a conviction based solely on an T's evidence would be unsafe if his evidence were not unusually convincing (*AOF v Public Prosecutor* [2012] 3 SLR 34 at [173]; GCK at [87]).

85 The "overwhelming consideration" that triggers the application of the "unusually convincing" standard is the amount and availability of evidence (*GCK* at [90], citing *Kwan Peng Hong v Public Prosecutor* [2000] 2 SLR(R) 824 at [29]). This standard is a cognitive aid and does not change the ultimate standard of proof required of the Prosecution (*Ridhaudin* at [112], *XP v Public Prosecutor* [2008] 4 SLR(R) 686 at [31]; *Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 at [29]).

86 The corollary of the above principle is that where there is other evidence against an accused person which corroborates an eyewitness's testimony, this can obviate the need for the application of the "unusually convincing" standard. This evidence can take the form, *inter alia*, of an accused's own statements

(*Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749 ("*Yue Roger Jr*") at [74], *Ridhaudin* at [115] and [116], *Public Prosecutor v Yap Pow Foo* [2023] SGHC 11 ("*Yap Pow Foo*") at [56]), medical reports (*Public Prosecutor v Tan En Jie Norvan* [2022] SGHC 166 ("*Norvan Tan*") at [37]), psychiatric reports (*Yue Roger Jr* at [75]), other documentary evidence such as emails (*Xu Yuanchen v Public Prosecutor and another appeal* [2023] SGHC 123 at [108]), expert opinions (*Ridhaudin* at [115] and [116]), forensic evidence (*Norvan Tan* at [71], *Yap Pow Foo* at [56]), and CCTV footage (*Ng Kum Weng v Public Prosecutor* [2021] SGHC 100 at [44]).

Issues to be determined

87 On the evidence before me, while the Defence disagreed on the precise date, it was not disputed that there was an occasion on which the accused had gone to T's apartment at night. It was also not disputed that on that occasion T had brought the accused into the master bedroom of the apartment. Further, the accused did not dispute being aware that non-consensual penile-vaginal penetration of V in the manner alleged by the Prosecution would be unlawful if carried out.[261] For the purposes of his defence at trial, however, the accused denied having gone to T's apartment for a sexual purpose, and he also denied having carried out penile-vaginal penetration of V in the master bedroom on the night in question.

88 The following issues thus had to be determined by the court:

(a) Was there a conspiracy between the accused and T for the accused to rape V?

[261] NEs 29 August 2023 Page 53 Line 28.

(b) Pursuant to the conspiracy, did the accused penetrate V's vagina with his penis without V's consent?

Whether the accused was party to an agreement with T to rape V

The accused and T discussed "wife sharing" and "drugging" prior to the night of the alleged rape

89 In respect of the issue at (a) above (*ie*, the existence of a conspiracy between the accused and T for the former to rape V), I first considered evidence which showed that prior to the night of the alleged rape, the accused and T had discussed "wife-sharing" and "drugging". I should make it clear that the evidence of these discussions did not *per se* constitute direct evidence of an agreement between the accused and T for the former to rape V. Rather, I found that the evidence shed light on the understanding which the accused and T had when they talked about "wife sharing", and on the accused's understanding of what T meant when he messaged the accused on the night in question to say that V was "out" and that "it's ready". In other words, the evidence of these prior discussions was relevant pursuant to the following provisions in the EA: s 8 (previous conduct), s 9 (facts necessary to explain or introduce a fact in issue – in this case, the existence of an agreement for the accused to have sex with a drugged V in her husband's presence), and s 14 (knowledge).

90 The evidence of these discussions emanated from the following sources: T's testimony, T's VRI statement, the accused's VRI statements, and the accused's posts on the SBF forum.

T's testimony

91 T's initial account was that he and the accused had not spoken about "wife sharing" and "drugging" while chatting on SBF, and that they had only

started talking about these topics when they shifted to communicating on MSN Messenger.[262] After being cross-examined under s 147(1) of the EA (see [51(a)] above), T clarified that it was possible that he and the accused had discussed "wife sharing" (in the sense of a husband sharing his wife with another man for sexual purposes),[263] albeit *via* the private messaging function on the SBF site rather than in the public forum of SBF.[264] T also testified that he would have discussed the topic of "drugging" and "hot-wifing" with the accused on SBF as well. "Drugging" would refer to a husband rendering his wife unconscious with sedatives so that another man could have sex with her, while "hot-wifing" would refer to a wife getting romantically and sexually involved with another man while being watched by her husband.[265]

T's VRI statement

92 I agree with the Prosecution that T's testimony in court (*ie*, that he had discussed "wife sharing", "drugging", and "hot-wifing" with the accused *via* private messages on SBF) was not materially inconsistent with his VRI statements of 14 January 2020 and 26 May 2020, wherein he had stated that he was "chatting" on SBF with the accused about wife sharing and hot-wifing "initially", and that subsequently the conversation became "more and more suggestive towards…drugging".[266] Although in his VRI statement of 26 May 2020 T had mentioned talking with the accused "inside.. a thread" of SBF, rather than *via* private messaging on SBF,[267] I did not find this potential discrepancy

262 NEs 17 August 2023 Page 7 Lines 11-17.

263 NEs 17 August 2023 Page 34 Line 12.

264 NEs 17 August 2023 Page 34 Line 9.

265 NEs 17 August 2023 Page 34 Line 13 to Page 35 Line 1.

266 Exhibit P32 at p 85-87; Exhibit P34 at p 6.

267 Exhibit P34 at p 6.

to be material. I should also point out that the Defence failed to suggest any reason why the above evidence in T's VRI statement should not be believed.[268]

The accused's VRI statements

93 T's evidence that he and the accused had discussed "wife sharing", "hot wifing" and "drugging" prior to the night of the alleged rape was corroborated by evidence provided by the accused himself in his VRI statements.

94 In his VRI statement dated 17 January 2020, the accused stated that he and T had talked about "sexual stuff" and "fetish" "like wife sharing", when they first met on SBF.[269] Wife sharing, as explained by the accused, was the "sharing of wife and things like that, which…is usually see, see in the porn, porn movies".[270] It was a "concept", about which he and T would "just talk la but…execution might not be able to execute".[271] In fact, as the accused elaborated in his VRI statement dated 20 January 2020, wife sharing was the main topic that led to the accused and T becoming interested in engaging in private conversation with each other on SBF.[272]

95 It should be noted that despite having admitted in his VRI statement that he and T had talked about "wife sharing" on SBF, the accused sought in his later statement dated 20 January 2020 – and subsequently in court – to explain away this admission by claiming that "wife sharing" to him meant merely the sharing

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268 DS at para 114.

269 Exhibit P8 (AB at Page 51 Lines 18-29).

270 Exhibit P8 (AB at Page 52 Lines 5-7).

271 Exhibit P8 (AB at Page 52 Lines 29-30).

272 Exhibit P9 (AB at Page 120 Lines 11-18).

of pictures of wives,[273] and that these "could be normal picture[s]" of the wives.[274] This explanation was plainly untenable. In his VRI statement of 17 January 2020, the accused had already described wife-sharing as the sort of "things…usually see [*sic*] in…porn movies": [275] "normal" pictures would certainly not be the kind of material "usually" seen in "porn movies". Further, if wife sharing meant only the sharing of "normal" pictures of one's wife, there was no reason at all for the accused to have stated that the "execution" of this concept of wife sharing would be difficult for him and T to carry out. It should also be noted that even in his VRI statement of 20 January 2020, the accused described wife sharing as the sharing of pictures "*at the initial stage*"[276] – which indicated that the concept of wife sharing encompassed more than just the sharing of photographs.

96 In his VRI statements, the accused also volunteered the information that in addition to discussing wife sharing, he and T had talked about the use of drugs[277]; specifically, the use of sleeping pills.[278] Although the accused initially denied at trial that this portion of his VRI statement was true,[279] he was unable to offer any explanation for why he would have told the police such an untruth in his statement. Tellingly, the fact that the drugs in question were in the form of sleeping pills was disclosed by the accused himself without any prompting from the police officer recording his VRI statement. In cross-examination, the

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273 Exhibit P9 (AB at Page 122 Line 13 to Page 123 Line 4); NEs 24 August 2023 Page 26 Lines 15-17, Page 30 Lines 11-22.

274 NEs 24 August 2023 Page 25 Lines 19-26.

275 Exhibit P8 (AB at Page 52 Lines 5-7).

276 Exhibit P9 (AB at Page 122 Line 13 to Page 123 Line 32).

277 NEs 25 August 2023 Page 20 Lines 1-3.

278 Exhibit P8 (AB at Page 53 Lines 4-11); Exhibit P9 (AB at Page 174 Line 27).

279 NEs 25 August 2023 Page 11 Line 28 to Page 12 Line 25.

accused eventually conceded that he had indeed talked with T about the use of sleeping pills. I found it significant that the identity of the sedative drug was a fact volunteered by the accused independent of any question from the police officer recording his VRI statements;[280] and I saw no reason why the accused's account in his VRI statements should not be accepted.

97 The accused's admission that he and T had talked about the use of sleeping pills in the context of their chats about wife sharing was relevant in establishing the context for his understanding of T's message inviting him to come over to T's apartment on the night of the alleged rape.

The accused's posts on SBF

98 I next considered the accused's posts on SBF. At the outset, I should make it clear that I accepted the Defence's submission that the accused's posts on SBF could not amount *per se* to evidence of the existence of an agreement or understanding between the accused and T for the former to rape V. However, this did not mean that the accused's posts on SBF should be entirely ignored. Given the accused's insistence on explaining the references to "wife sharing" in his VRI statement as being merely references to the sharing by men of "normal" pictures of their wives, his posts on SBF – insofar as they spoke about wife sharing – were useful in elucidating his own understanding of the term. Having considered this evidence, I found the accused's attempt to describe "wife sharing" as being merely the sharing of "normal" pictures of wives to be highly disingenuous, given the nature of the discussions he himself had engaged in with other users on the SBF thread "Wife Fantasy".

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280 Exhibit P8 (AB at Page 53 Line 11).

99 As I noted earlier, "Wife Fantasy" was a thread started by the accused himself on SBF on 13 April 2010.[281] Within this thread, the accused identified himself as being part of a group of "folks" where "a lot of us have fantasies about other's wife and of their wife being fantasize by others".[282] He elaborated on this in subsequent posts in response to comments posted by other users in the thread.

100 For example, user "aston68" responded to the accused's post ("a lot of us have fantasies…") on 12 August 2010 to say: "Hi Sorros [the accused's username], I share the same likings for the past many years. One of my fantasies is being in the same room watching 2 to 3 bros doing it with wifey." User "aston68" then went on to describe in sexually-explicit terms how he would visualise his wife engaged in various sexual acts with different "bros" at the same time".[283] Another user, one "whitebull", responded to "aston68" on the same day stating that he would be "glad" to turn the latter's "fantasy into reality" provided the latter's wife agreed.[284] Other users then chimed in as well, with "geniusme28" stating: "I do fantasise about wife swapping, if she agrees".[285] The following day (13 April 2010), the accused responded to these comments with a post stating[286]:

> I guess most will be just in the fantasy mode as *when it comes to the real thing, it takes a big move, so I am thinking of just getting like minded ppl to chat* perhaps on a pm and *discreet basis and see how we can explore our fantasy further.*

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281 PBOE2 at p 190.

282 PBOE2 at p 190.

283 PBOE2 at p 191.

284 PBOE2 at p 192.

285 PBOE2 at p 192.

286 PBOE2 at p 192.

[emphasis added]

101 In another user's reply to the accused's post, the user stated they were looking for "other couples to soft swing" as they "have hotwife fantasies also and would like to see my current steady gf getting fucked".[287] On 4 October 2010, the accused also put up a post in the Wife Fantasy thread stating: "So any out there into hotwifing, perhaps we can share pics and videos for a start".[288]

102 From the accused's posts, therefore, it was clear that he considered himself part of a group of men who were interested in exploring the sharing of their wives – sexually – with other men. From the accused's posts, it was also clear that his conception of wife involved sharing pictures at the initial stage ("*for a start*"), before progressing to other ways to "explore [his] fantasy further". I noted, moreover, that as a matter of linguistics, the accused and other users in the "Wife Fantasy" thread used the term "hot-wifing" interchangeably with the term "wife sharing". It appeared to me highly implausible that the former term "hot-wifing" would have been used by the accused and the other users in the "Wife Fantasy" thread purely in the sense of sharing "normal" photographs of each other's wife. In court, the accused was unable to provide any evidence or to point to any portion of the SBF posts to substantiate his assertion that his comments about wife sharing on SBF were restricted to sharing "normal pictures".[289]

103 I pause here to reiterate that I referred to the evidence of the accused's posts on SBF for context, in terms of how the concept of "wife sharing" would have been understood by the accused. I did not consider these posts to be proof

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287 PBOE2 at p 201.

288 PBOE2 at p 208.

289 NEs 24 August 2023 Page 30 Lines 1-3.

per se either of the existence of a conspiracy between the accused and T, or of the actual commission of rape in furtherance of that conspiracy. The accused's posts on SBF did not specifically refer to V and did not expressly articulate how the "exploration" of "wife sharing" fantasies would be taken "further": as I noted above, the accused himself suggested to "like minded" users that to "explore [their] fantasy further", they should chat with him "on a pm and discreet basis".

104 The Prosecution also sought to rely on certain comments about "drugging" which were posted by the accused on SBF subsequent to the night of the alleged rape. On 16 February 2012, the accused posted on the Wife Fantasy thread on SBF:[290]

> Hi as we know most of our wives are usually not open to the concept of sharing, so always have this fantasy of drugging them and letting others play with her. So anyone with similar thoughts can pm me to chat out our fantasy

105 The accused also asked others in a thread titled "Mi Jian Drugged Rape" asking "Any have such fantasy? PM me to chat more" in 2015,[291] and started a separate thread on SBF with the title "Drugged Fantasy" in 2018.[292]

106 While it might be argued that such posts demonstrated familiarity on the accused's part with the *modus operandi* of rape alleged by the Prosecution, having regard to their content, I did not think that they carried any substantive probative weight in respect of the Charge against the accused. These posts could not be said to be probative of the accused's familiarity with the *modus operandi* of V's rape *at the time of the alleged offence.*

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290 PBOE2 at p 227.

291 PBOE2 at p 336.

292 PBOE2 at p 170.

107 In sum, I found that the accused and T did in fact talk about "wife sharing" during their initial private communications on SBF; further, that the accused understood "wife sharing" to mean a husband arranging for another man to "share" his wife in the sense of carrying out sexual acts with her. *Per* the accused's own account of his discussions with T, the two of them also talked about the use of sleeping pills in the context of "wife sharing". Against the backdrop of their communications on SBF, T's message to the accused on the night in question, stating that V was drugged (which message the accused did not dispute receiving), could only have been understood by the accused as referring to the drugging of V *in the context of wife sharing*.

The accused had an interest in wife sharing which involved V and T specifically

108 Next, I considered evidence which showed that the accused had an interest in wife sharing which involved T and his wife V specifically.

109 As a preliminary point, I noted that the accused had acknowledged in his VRI statements and at certain points in cross-examination that he had a wife sharing "fetish" in general.[293] It appeared to me, however, that the Prosecution, the police and the accused himself were using the label "fetish" in a rather loose sense, to mean something along the lines of a strong interest. I did not understand them to be using the term in the sense of a fetishistic disorder amounting to a recognised mental disorder. To avoid unnecessary confusion, for the purposes of the present grounds, I have not used the label "fetish" to describe a strong interest in wife sharing.

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293 Exhibit P8 (AB at Page 51 Lines 18-29); NEs 25 August 2023 Page 34 Line 3 to Page 35 Line 5.

110 I should make it clear as well that while in his VRI statements and in cross-examination, the accused did appear to acknowledge having a strong interest in wife sharing *in general*, this evidence was not *per se* probative of the existence of an agreement between the accused and T for the former to rape the latter's wife. All that such evidence showed at best was that the accused had certain sexual tastes which were not in accordance with conventional social norms and mores – which could not be relevant to proving the charge that he had conspired with T to rape V.

111 On the other hand, evidence that the accused had an interest in wife sharing specifically involving T and his wife would be relevant under s 8 and/or s 9 and/or s 11 EA, as such evidence would shed light on the accused's understanding of T's communications with him on the night of the alleged rape and his reason for making his way to T's apartment that night.

V's evidence

112 In this connection, V's evidence pointed to the accused displaying an interest in not just having sex with V, but in having sex with her in the presence of her husband T. V testified that she had blocked the accused on social media in 2010 because he had tried several times to ask her whether she could ask T to join in a sexual threesome with her and the accused.[294]

113 Having had the opportunity to observe V in the witness stand, I found V's evidence to be cogent and reliable. V was able to signpost the date on which she had blocked the accused by reference to events in her relationship with T, and significantly, the (undisputed) dates of birth of her children.[295] The Defence

294 NEs 22 August 2023 Page 65 Lines 14-16.

295 NEs 22 August 2023 Page 58 Lines 12-14, Page 65 Lines 1-3.

did not raise any objections to the internal consistency of V's account of events; and overall, I was satisfied that her account was internally consistent. There was no suggestion by the Defence either that she had any motive to lie.

114 As to the external consistency of V's evidence, the only argument put forward by the Defence concerned the question of a second consensual sexual encounter between V and the accused.[296] I did not find this argument to be of any assistance to the Defence's case. First, and in any event, I did not find the accused's assertion of a second consensual sexual encounter to be credible. His assertion was unsupported by any documentary evidence: as he himself conceded, the 2012 Citibank credit card statement he sought to rely on did not prove that there had been a second consensual sexual encounter at Fragrance Hotel in Lavender Street, because on his own evidence, he had used cash to pay for the hotel room. Based on his own evidence, all that the 2012 Citibank credit card statement showed was that he had used his Citibank credit card to pay for a meal at a Japanese restaurant in Hougang Mall: it did not support his assertion that V too had attended this lunch, much less that she had accompanied him to Fragrance Hotel thereafter for a sexual tryst. I also did not believe the accused's claim that he was only able to request the statements from Citibank at a late stage of the proceedings, after filing his Case for the Defence, because it only occurred to him to request these particular statements after he saw the 2011 Citibank statements produced by the Prosecution in the agreed bundle.[297] As the Prosecution pointed out in cross-examination, he alone would have been in a position to know if he had used his Citibank credit card at all in the course of the alleged second consensual sexual encounter:[298] there was no reason why he

296 DS at paras 282-291.

297 NEs 24 August 2023 Page 8 Lines 22-23.

298 NEs 24 August 2023 Page 7 Lines 24-26.

would have needed his memory jolted by the sight of the 2011 Citibank card statements in the Agreed Bundle.

115 Second, and more fundamentally, on the Defence's own case, the accused's claim about the second consensual sexual encounter was only of consequence in showing (purportedly) that V was wrong about the exact point in time when she cut off contact with the accused – the accused's position being that she had cut off contact with him at a later point in time than the date she gave in court. However, this point was ultimately irrelevant to the Charge against the accused. In attempting to discredit V's testimony as to when she cut off contact with the accused, the Defence appeared to have misapprehended the Prosecution's position. The Prosecution's case was *not* that the accused was incentivised to commit the alleged rape because he could not get V to consent to a threesome with T. Instead, *per* the Prosecution's case, the accused's suggestion to V of a threesome constituted evidence that he harboured a specific sexual fantasy involving sex with V in the presence of her husband T.[299] The real relevance of V's testimony about cutting off contact with the accused thus lay in the reason she gave for cutting off contact: namely, the accused's attempts to persuade her to agree to a threesome with him and T.[300] In this connection, even if V might have been mistaken about the exact date on which she blocked the accused, there could be no dispute that she *did* in fact block the accused. Although the accused denied that V blocked him because of his attempts to get her to agree to a threesome with him and T,[301] he was unable to suggest any plausible alternative reason for why she would have blocked him.

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299 PCS at para 52.

300 NEs 22 August 2023 Page 58 Lines 25-26, Page 65 Lines 7-28.

301 NEs 24 August 2023 Page 49 Line 11.

116 For completeness, I would add that I did not give any weight to the email notifications of the Facebook message put forward by the Defence during the trial.[302] Although the Defence tried to suggest that this email notification showed that V could only have blocked the accused on Facebook on 26 December 2014, they elected not to pursue this point in their closing and reply submissions. In any event, this evidence was not put to V when she was in the witness stand, despite her having denied knowing the email identities referred to in the email notification. The accused conceded, moreover, that the name used in the email address shown in this Facebook notification was not one which he had ever used to communicate with V. [303]

117 In sum, therefore, I accepted that there was evidence to show the accused had a specific sexual interest, not just in having sex with V, but specifically in doing so in the presence of her husband T.

T communicated to the accused that V was drugged

118 As the next building block in its case on the existence of a conspiracy, the Prosecution relied on the evidence that T had, on the night of the alleged rape, informed the accused about V having been drugged. The Defence did not dispute that on the night in question, the accused did in fact receive a message from T stating that V had been drugged and inviting the accused to come over to T's apartment.[304]

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302 Exhibit D8.

303 NEs 24 August 2023 Page 13 Lines 20-30.

304 ASOF at para 15.

T's evidence

119 In relation to what he told the accused on the night of the alleged rape, T affirmed the following after having his memory refreshed by reference to his VRI statement dated 14 January 2020:[305]

(a) After the accused stopped meeting up with V, T told the accused that he would arrange for the latter to meet up with her by "the drugging, drugging way".[306]

(b) T told the accused that he was "testing out" the use of sedative drugs on V.[307]

(c) The purpose of arranging for the accused to meet V was so that the accused could rape her while she was drugged and unconscious;[308] and this purpose was discussed with the accused.[309]

(d) On the night in question, the accused was aware that T had drugged V.[310]

(e) Upon reaching the location of T's block of flats on the night in question, the accused texted T, whereupon T told the accused that he could come up to T's apartment.[311]

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305 Exhibit P32.

306 NEs 17 August 20-23 Page 11 Lines 7-21.

307 NEs 16 August 2023 Page 34 Lines 13-14.

308 NEs 17 August Page 11 Lines 22-26.

309 NEs 16 August Page 33 Lines 12-32; 17 August Page 11 Lines 22-28.

310 NEs 17 August 2023 Page 17 Line 23 to Page 18 Line 11.

311 NEs 17 August 2023 Page 17 Line 23 to Page 18 Line 11.

120 In court, T testified that on the night of the alleged rape, after V became unconscious, he told the accused that "she was out and it's ready": by "out", T meant that V was unconscious; and by "ready", he meant that the accused could start having sex with her.[312] T also told the accused about his discussions with other co-accused persons in which they had spoken about using drugs to sedate V.[313]

121 The Defence argued that T's testimony could not be relied on as evidence of a "pre-arrangement" between him and T prior to the alleged rape. For one, according to the Defence, the above testimony was inconsistent with certain portions of T's VRI statements to the police.[314] I found this argument misconceived because those portions of the statements relied on by the Defence for this argument were taken out of context. T's statement[315] that he did not plan to drug V so that the accused could have sex with her actually related to the point in time when T first found out about the accused's consensual sexual encounter with V from reading the chats between the two of them[316]: this was obviously at a point of time prior to the night of the alleged rape. The Defence conceded as much in court.[317]

122 The Defence also argued that the portions of T's statements relied on by the Prosecution should be "discounted" because they were based on leading questions by the recording officer; T's responses were by way of non-verbal

312 NEs 17 August 2023 Lines 4–8.

313 NEs 16 August 2023 Page 33 Line 16 to Page 34 Line 14.

314 DS at para 124.

315 Exhibit P33.

316 Exhibit P33 at p 45.

317 NEs 18 August 2023 Page 40 Lines 1-11.

cues (nodding), and T was not subjected to cross-examination during the VRI statement-recording.[318] I did not find any merit in this argument. Clearly, T was willing to affirm the relevant portions of the statements in court during examination-in-chief (see [49] above): he elaborated on the answers given in his VRI statement, including the non-verbal responses, and his evidence in court was subjected to cross-examination by the Defence.

123 I also rejected the Defence's argument that T's inability to remember the exact details of his invitation to the accused on the night of the alleged rape rendered his evidence unreliable.[319] For the Prosecution to prove the charge of conspiracy against the accused, it was not necessary that they be able to prove every single detail of the communications between the accused and T on the night in question: it sufficed for the Prosecution to establish that the communications from T to the accused contained enough information to enable the latter to know the "general purpose of the plot" (*Nomura Taiji* at [110]) and to form the intention to be party to an agreement with T to have sex with V while she was unconscious. In this connection, as seen at [49], [51], [91] and [119], T gave evidence that prior to the night of the alleged offence, he and the accused had discussed wife-sharing and the use of sleeping pills; he had told the accused that he would be "testing out" the use of these sedative drugs on V; and he had also told the accused that he would arrange for the latter to meet with V by the "drugging way". T also testified that on the night in question, he told the accused that V was "out", meaning that she was unconscious, and that "it's ready", meaning that the accused could start having sex with her.

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318 DS at para 124.

319 DS at para 206.

The accused's VRI statements

124 T's testimony was corroborated by evidence provided by the accused himself in his own VRI statements. In his VRI statements, the accused admitted on multiple occasions that he thought T had invited him to his apartment because he wanted the accused "to have a sexual relationship with [V]", specifically to have sex with V in T's presence.[320] He also knew at the time he went to T's apartment that T had used some kind of sleeping pill to drug V.[321]

125 In court, the accused initially affirmed these statements,[322] but later disavowed them. He claimed that at the point when T invited him to come over to the apartment, he did not know "whether it's for something sexual"; and it was only after he arrived at the apartment that he realised that "maybe" T expected "sexual things" to happen, because T asked him if he wanted to touch V.[323] He also claimed that he did not actually remember if T had told him about using sleeping pills.[324]

126 In my view, the accused's attempted disavowal of the admissions in his VRI statements was clearly a disingenuous afterthought. The accused took issue with these admissions only in cross-examination: no attempt was made in the Case for the Defence or in the accused's own evidence-in-chief to disavow or qualify these admissions. The very context and content of the accused's admissions in the VRI statement contradicted his belated assertion that he

320 AB Page 75 Lines 32-20; AB Page 170 Line 27 to Page 171 Line 3.

321 AB Page 75 Line 22 to Page 76 Line 31.

322 NEs 25 August 2023 Page 24 Lines 1-23, Page 25 Line 17 to Page 28 Line 6, Page 34 Lines 1-17.

323 NEs 25 August 2023 Page 24 Lines 25-28.

324 NEs 25 August 2023 Page 42 Line 29 to Page 43 Line 1, Page 46 Lines 9-27.

"might have been confused" about the point of time at which he became aware of the purpose of T's invitation.[325] There was no reason why he would have said in his VRI statements that T "ask [him] to go over so that… maybe [sexual] things could happen"[326] if he only became aware of T's intention *after arriving at the apartment*.

127 In similar vein, the accused was specifically asked in his VRI statement when he knew that T had used sleeping pills, and he affirmed that he knew this during the conversations he had with T *before* going over to T's apartment.[327] There was no reason for the accused to affirm this in his VRI statement if he had in fact been uncertain all along whether V was drugged at the time.

128 Belatedly, the accused proffered two explanations in cross-examination as to why he had admitted in his VRI statement to knowing that T had drugged V with sleeping pills. First, the accused claimed that his thinking was "clouded" by T talking about his "drug fantasy" and sleeping pills *after* the night of the alleged rape.[328] I found this explanation to be completely untenable. The accused's account was that he had only visited T's apartment on just one occasion. Given the singularity of that occasion, it would have been a substantively different experience from his experience of the various online interactions with T. I found it unbelievable that the accused would have confused the experience of talking online with T about a "drug fantasy" (which the accused claimed was the extent of his actions) with the real-world experience of going to T's apartment knowing T had drugged V.

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325 NEs 25 August 2023 Page 28 Lines 15-27.

326 AB Page 74 Lines 14-15.

327 AB Page 75 Line 28 to Page 79 Line 27.

328 NEs 25 August 2023 Page 36 Line 30 to Page 37 Line 1.

129 Second, the accused also sought to explain away the admissions by bringing up an incident which he claimed had occurred when he was being transported by the police to Police Cantonment Complex for the recording of his statement: according to the accused, inside the police car, Superintendent Burhanudeen Haji Hussainar ("Supt Burhan") had remarked to him that he was "better looking than the others". When asked to clarify how this alleged remark by Supt Burhan had led him to tell the police in his VRI statement that he knew about V having been drugged before he went over T's apartment, the accused visibly floundered. He was unable to give any coherent explanation beyond repeating that the reference to "others" led him to think that other people were "involved" and that T "could have done something".[329]

130 Asked to clarify his "explanation", the accused's evidence – regrettably – descended into further incoherence. He claimed that before he gave his VRI statement the investigation officer, then-Assistant Superintendent Ker Boon Tat ("IO Ker"), had told him that he was facing "rape charge". According to the accused, this led him to think that T's "drug fantasy…might have really come true for him", and that T "might have really done it". This obviously did not explain why the accused himself should then have told the police that *he* knew about T drugging V with sleeping pills when he accepted T's invitation to go over to the apartment – especially since, according to the accused, he could not actually remember if T had told him anything about drugging V before he went to the apartment.

131 Aside from the absence of any rational connection between the accused's allegations about the police and the admissions in his VRI, I should make it clear that I did not believe the accused's story about the things said to

329 NEs 25 August Page 40 Line 30 to Page 41 Line 6.

him by Supt Burhan and IO Ker. Given that the accused had yet to give a statement at the relevant point in time, I found it unbelievable that Supt Burhan would have chatted to the accused about "others" being involved in the case with T and/or that IO Ker would have told the accused he was facing "rape charge". Further, and in any event, even if I were to assume for the sake of argument that the accused's story about Supt Burhan and IO Ker was true, it still did not explain why he would tell the police – falsely or at the very least, incorrectly – that he knew about V having been drugged before he arrived at T's apartment.

132 I make one final point on this issue. In the Case for the Defence filed on 31 March 2022, it was stated that the accused had received a message from T asking the accused "to come down to [T's] house *as [T] had drugged [V]*". The accused's testimony in cross-examination that T had never spoken to him about drugging until "way after" the night of the alleged rape – and his later testimony that he could not actually remember T telling him about drugging V before he went to T's apartment – thus contradicted the unequivocal statement in his Case for the Defence. Indeed, it should also be pointed out that from the words highlighted in italics above, it was plain that the Case for the Defence assumed a connection between the drugging of V and the reason for T's invitation to the accused to come over.

133 For the reasons set out above, I was satisfied that the accused's admissions in his VRI statement corroborated T's evidence about his having told the accused that V was "out" (meaning she was unconscious) and that "it's ready" (meaning, the accused could start having sex with her), prior to the accused arriving at the apartment on the night in question. I therefore rejected the accused's submission that there was no evidence of any "pre-arrangement" between him and T prior to the alleged rape.

The accused felt thrill and curiosity at the prospect of going to T's apartment

134 A further building block in the Prosecution's case as to the existence of a conspiracy between the accused and T was the accused's own evidence in his VRI statements that he had gone to T's apartment on the night of the alleged rape out of "thrill" and "curiosity" in response to T telling him that V had been drugged[330].

The accused's VRI statements

135 At trial, the accused affirmed the evidence given in his VRI statements.[331] However, he sought to explain that the "thrill" he referred to was due to his thinking that V could be "high" on drugs, as he had never seen someone "high" before.[332] According to the accused, he thought that V "could be high on drugs" because V had previously told him about being "incarcerated for drug offences". He did not mention this piece of information to the officer recording his VRI statement because he did not want to bring up V's "not so glorious past and lend [*sic*] further damage to her".[333] He added that he had felt curious as well because he did not know what to expect.[334]

136 I did not find any merit in the accused's attempt to explain away his statements about having gone to T's apartment out of "thrill" and "curiosity". The explanations he proffered in cross-examination were never mentioned in his Case for the Defence or his evidence-in-chief. Further, his claims about

330 AB Page 72 Lines 7-8.

331 NEs 25 August 2023 Page 23 Lines 2-17.

332 NEs 25 August 2023 Page 51 Lines 1-28.

333 NEs 25 August 2023 Page 51 Lines 8-9.

334 NEs 25 August 2023 Page 52 Lines 24-27.

having felt "a slight thrill element"[335] at the supposed prospect of seeing V "high" on drugs simply could not be believed, given his own admissions in his VRI statements that he knew T had drugged V with *sleeping pills*.[336] The allegation that V had told him about being incarcerated previously for drug offences was equally unbelievable: this allegation was never mentioned in his Case for the Defence or his evidence-in-chief, nor was it put to V in cross-examination – despite the obvious relevance of this piece of "information" in explaining his state of mind upon learning that V had been drugged on the night in question. In any event, this piece of "information" – even if true – added nothing to the accused's case, given that he himself was able to tell the police in his VRI statement that it was T who had "drugged his wife" using "some sleeping pill".[337]

137 For the reasons set out above, I agreed with the Prosecution that the most likely reason why the accused felt "thrilled" and "curious" about seeing a drugged V on the night in question was because he was aware of the prospect of having sex with her while she was in that drugged state.[338]

The messages exchanged between the accused and T subsequent to the night of the alleged rape shed light on the accused's state of mind when he went to T's apartment on that night

138 The Prosecution's case as to the existence of a conspiracy between the accused and T was further bolstered by the objective evidence of the text messages exchanged between the two men subsequent to the night of the alleged

335 NEs 25 August 2023 Page 51 Line 3.

336 Exhibit P8 (AB at Page 53 Line 11; Page 76 Line 31).

337 Exhibit P8 (AB at Page 76 Line 31).

338 PCS at para 54.

rape. These messages were relevant, firstly, under s 8(*b*) of the EA, as evidence of conduct on the accused's part which was subsequent to – and influenced by – the alleged rape on the night of 14 March 2011; secondly, under s 11(*b*) of the EA, as evidence which – in connection with other evidence adduced by the Prosecution – made the existence of the alleged agreement between the accused and T for the former to rape the drugged V highly probable; and thirdly, under s 14 of the EA, in demonstrating the accused's awareness of the understanding which existed between him and T on the night when he went over to T's apartment. As the High Court pointed out in *Er Joo Nguang* (at [35]), conspiracy is generally a matter of inference, to be drawn *inter alia* from the conduct of the parties after the alleged commission of the crime. These messages corroborated T's evidence that on the night in question, the accused had come to the apartment knowing that T had drugged V so that the accused could have sex with her while she was unconscious.

139 I set out below four such sets of messages.

(1) 22 March 2014

140 In this series of messages, T showed the accused a photograph of V naked and blindfolded. They also had the following exchange:[339]

Accused:	i wanna spray cum on [V] man
	can i?
	…
	u got share screen?
T:	can?
	…
T:	can see this?

339 PBOE3 at pp 576-578.

Accused:	Ya
	Blindfold for who?
T:	this was when u came over and fuck [V]
	that time
Accused:	Nice when she still slim yah aha
T:	now also still ok

141 In the same series of message on 22 March 2014, the accused also messaged T to ask "U try drug [V] lah n I can play with her".[340] In his testimony at trial, T stated that he understood the accused to be referring to "Operation V", in which V would be drugged with sleep medication in order for the accused to have sex with her.[341] The accused's message was followed by discussions between the two men about the accused's availability, and whether he could come over to T's apartment.[342]

(2) 8 July 2014

142 On 8 July 2014, the accused messaged T asking, "Got operation [V]?".[343] T testified that as he was "a military guy",[344] he understood the accused to be asking him "whether is there any operation carried out on [V], which is my wife. And the operation is referring to whether am I drugging my wife for the purpose to get other people to rape her."[345]

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340 PBOE3 at p 583.

341 NEs 16 August 2023 Page 78 Lines 2-10.

342 PBOE3 at pp 583-584.

343 PBOE1 at p 11.

344 NEs 16 August 2023 Page 48 at Line 20.

345 NEs 16 August 2023 Page 48 Lines 20-23.

143 The accused followed up with further messages to T asking "When u planning? Weekday bah but must wait for her to be sick right… Jus ask her drink wine loh".[346]

(3) 9 July 2014

144 The following day (9 July 2014), the accused and T exchanged further messages in which they discussed the possibility of putting sedative drugs in V's cough medication and the likely "timing" of the "operation". *Inter alia*, the accused asked T to "keep [him] posted", adding that T should "get [his] kids sleep early" by telling them that V was sick and needed to sleep early. The accused subsequently asked T again in the course of the same conversation "[s]o wat are chances of operation".

145 On the same day (9 July 2014), while discussing the likelihood of the "operation" taking place that evening, the accused also made the following comments to T:[347]

> Accused: have u tot wat u will do if get caught?
> …
> must have backup plan
> maybe she suspect and she pretend she gone
> u know things like tat
> if caught then wats yr gameplan
> …
> the guy is there how to deny bro
> haha
> Like dat is no return liao

346 PBOE1 at p 12.

347 PBOE1 at pp 23-26.

…

jus say u have a fetish loh

haha

make sure all records deleted

if she make police report all die

(4) 30 March 2015

146 In a series of messages on 30 March 2015, T made yet another express reference to the accused having engaged in sexual intercourse with V on the night of 14 March 2011. In this series of messages, the accused asked T about T's plans for his anniversary,[348] after which they had the following exchange of messages:[349]

Accused:	So when yr anniversary?
T:	14/3
Accused:	Oh finish already loh
	So no action tat day?
T:	After that time u fuck her on my anniversary
	I had been missing the feeling
Accused:	Lol
	U crazy haha
	Tat was hw long
T:	4 yr back?
Accused:	Nt sure man
	So no action tat day?
T:	No
Accused:	Boring man

348 PBOE3 at p 639.

349 PBOE3 at pp 641-642.

147 T explained in court that when the accused asked him if there had been "action" on his wedding anniversary, he understood the accused to be asking whether he had carried out "Operation V" on the day of his wedding anniversary.[350] T's reply ("after that time you fuck her on my anniversary, I had been missing the feeling") referred to his missing the feeling of "thrill" he had experienced when the accused had sex with V on 14 March 2011.[351] Tellingly, the accused did not refute or challenge T's express comment about his having had sex with V on her wedding anniversary. Indeed, the accused's reply ("Tat was hw long") acknowledged the fact that the incident in question had taken place some time prior to 30 March 2015; and this was affirmed by T in his response ("4 yr back?").

148 T's reference on 22 March 2014 to "that time" when the accused "came over and fuck [V]" was clearly a reference to the latter having engaged in sexual intercourse with V. This statement also clearly could not be construed as a reference to the prior consensual sexual encounter between V and the accused: T's use of the words "came over" was consistent with a reference to the sexual act having occurred at his (T's) apartment. Indisputably, there was no prior consensual sexual encounter between V and the accused *at T's apartment*. Moreover, on the accused's own evidence, he had never revealed to T his prior consensual sexual encounter with V;[352] while V herself testified that she only told T about the consensual sexual encounter with the accused during T's remand at Changi Prison in 2020.[353] T's reference on 30 March 2015 to "that time" when the accused "fuck [V] on [T's] anniversary" also clearly could not

350 NEs 16 August 2023 Page 90 Line 22 to Page 91 Line 1.

351 NEs 16 August 2023 Page 91 Lines 2-8.

352 NEs 23 August 2023 Page 56 Line 23 to Page 57 Line 3.

353 NEs 22 August 2023 Page 72 Line 17 to Page 73 Line 1.

be a reference to the prior consensual sexual encounter between V and the accused, because neither the accused nor V gave evidence of any consensual sexual encounter on the occasion of T's and V's wedding anniversary. In the circumstances, the necessary inference to be drawn was that T was referring to the occasion of his third wedding anniversary, when the accused came over to his apartment and had sex with an unconscious V.

149 From the messages, it will be seen that T's express references to the previous occasion when the accused "came over and fuck [V]" and when the accused "fuck her on [T's] anniversary" were met with apparent calm and tacit acceptance by the accused. Both men were evidently very comfortable discussing this previous occasion when the accused "fuck [V] on [T's] anniversary". When shown a photograph of V naked and blindfolded on that occasion, the accused was even able to make a jocular comment on the physical changes in her figure ("Nice when she still slim yah aha") – to which T responded affably with the remark that she was "now still ok". It must be remembered that the previous sexual encounter two of them were talking about in these messages was one which had taken place between the accused and T's wife, V, on T's wedding anniversary. From the candid – even chummy – terms in which both men were able to discuss what one would have expected to be an extremely awkward subject (to say the least), I inferred that both knew what had happened in that previous sexual encounter – and each was unworried about the other's knowledge. This could only be the case if the previous sexual encounter had come about pursuant to a common understanding between the two of them. The tone and the content of their communications about the previous sexual encounter between the accused and V on T's wedding anniversary thus corroborated T's evidence that this sexual encounter came about pursuant to an understanding between him and the accused; further, that this understanding

was for the accused to come over to T's apartment to have sex with V after she had been drugged.

150 It should also be noted that in the series of messages exchanged on 22 March 2014, alongside the references to the previous occasion when the accused "came over and fuck [V]", the accused unabashedly suggested to T that he should drug V so that the accused could "play with her". These discussions about drugging V for the accused's sexual purposes carried on in subsequent messages. The familiarity and the lack of restraint with which the accused and T discussed arrangements to drug V for the accused's sexual purposes in the period post 14 March 2011 were, in my view, clearly influenced by their having previously come to such an arrangement on the night of T's wedding anniversary on 14 March 2011. This was why the accused appeared so much at ease in discussing the possibility of carrying out "Operation [V]" and even had no compunctions about making specific suggestions on how T should administer the sedatives to V ("Jus ask her drink wine loh" – 8 July 2014). Again, this corroborated T's evidence that on the previous occasion of the accused's visit to T's apartment on 14 March 2011, both he and the accused had shared the understanding that the latter was to rape V while she was "out" from being drugged.

151 In his testimony at trial, the accused tried to explain away these messages as being mere "fantasy talk". The accused sought to suggest that in these messages, he and T had merely been engaging in verbalizing their sexual fantasy by pretending to discuss plans to rape an unconscious V. In its closing submissions, the Defence also argued that the messages amounted to inadmissible similar fact evidence.

152 Regrettably, apart from repeating the accused's explanation about these messages being "fantasy talk", the Defence did not proffer any cogent explanation as to why the messages in question should be treated as "inadmissible similar fact evidence". I rejected the Defence's argument. In the first place, the post 14 March 2011 messages could not properly be described as "similar fact evidence", since they did not constitute evidence of *past misconduct* on the accused's part. By way of illustration, in the case of *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 cited by the Defence, where the appellant was charged with trafficking diamorphine found in a bag which he was in possession of and where he sought to argue that he had believed the bag to contain money, the similar fact evidence in question was the evidence of the appellant's *previous* drug trafficking activities. In the present case, the message set out above at [140]–[150] involved, firstly, references by T and the accused to the sexual encounter between the accused and V on the night of T's wedding anniversary – *ie* the very incident which formed the subject-matter of the Charge; and secondly, discussions between T and the accused about arranging for further such sexual encounters – *ie* drugging V in order for the accused to have sex with her while she was a drugged state.

153 In any event, I found the accused's explanation about the messages being "fantasy talk" to be completely unbelievable. If the accused's narrative at trial were to be believed, he had arrived at T's apartment on the night of the alleged offence with no inkling of any sexual purpose to T's invitation to him to come over; and he had "freaked out" when he saw the motionless body in the master bedroom and when T invited him to touch the body.[354] Indeed, he had been so "freaked out" that he had not even been able to check whether the

[354] NEs 24 August 2023 Page 65 Line 16; Page 66 Lines 15-24.

motionless body was V's. On the accused's own evidence at trial, moreover, his main concerns in visiting T's apartment had been to fend off any potential attempt by T to confront him and V over their "affair" and to check on V's well-being. Given these concerns and given his alleged alarm at T's behaviour in the master bedroom that night, I found it completely unbelievable that the accused should subsequently have gone on to engage in "fantasy talk" with T on multiple occasions about having sex with a drugged V.

154 Further, as seen from the messages on 9 July 2014 (at [144] and [145] above), the accused's own message to T in the same period revealed that he had actually given thought to the risk of getting "caught" and the need for a "backup plan". According to T, the accused's remark that "if she make police report all die" demonstrated his (the accused's) knowledge that he and the other co-accused had engaged in sexual intercourse with an unconscious V without her knowledge and that this was conduct that would get them into trouble with the law. I accepted T's evidence. The accused's use of the expression "*all* die" [emphasis added] was revealing, as it suggested that he was not only aware of the existence of other co-accused who had engaged in sex with an unconscious V, but also that he counted himself among their number. It should be noted that these messages were sent by the accused within the same conversation in which he and T had been discussing the possibility of carrying out "Operation [V]" that evening; indeed, just a few minutes after the accused had pressed T to confirm "wat are chances of operation".[355] In other words, the accused's expression of concern about "police report" was not motivated by some abstract concern for T and the other co-accused, but by the awareness that he too could be at risk. Tellingly, when T responded to the accused's concerns with a show

355 PBOE1 at p 20.

of nonchalance ("How to get caught…[c]os she won't [remember] anything"),[356] the accused persisted, even advising that he should "make sure all records deleted"[357] and that if "caught" by V, he should "just say [he] have such a fetish loh".[358]

155 In my view, the accused's concerns about having a "backup plan" in the event of getting "caught" were completely at odds with his attempt to portray the messages about "Operation [V]" as being no more than "fantasy talk". If he and T had simply been indulging in "fantasy talk" in these messages, there would have been no need at all for him to worry about a "police report" and to warn T to "make sure all records deleted".

156 I noted that the Defence also appeared to take the position that the post 14 March 2011 messages ought to be disregarded because their probative value was outweighed by their prejudicial effect.[359] Regrettably again, however, the Defence did not proffer any cogent explanation as to the legal basis for this proposition. It was not clear to me whether the Defence was making a submission based on the courts' inherent power to exclude evidence where its prejudicial effect outweighs it probative value, along the line of the CA's reasoning in *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar*"): in its closing submissions, the Defence did not cite *Kadar* or any other relevant authorities. In any event, even if I were to accept the Defence's position at face value, the element of "prejudice" still had to be clearly identified. In *Kadar*, for example, the prejudice to the accused Ismil arising from

356 PBOE1 at pp 23-24.

357 PBOE1 at p 26.

358 PBOE1 at pp 24-26.

359 DCS at para 337.

the admission of certain statements recorded from him was identified as the flagrant violations by the police of a number of procedural requirements. In the present case, the Defence failed entirely to articulate the alleged "prejudice" in issue. Against this stark absence of evidence as to the alleged "prejudice" being complained of, it should be noted that there was firstly no dispute as to the provenance of the messages and the accuracy of their contents. That the messages emanated from the accused himself meant that little doubt could arise as to the cogency of the evidence (*Public Prosecutor v Dinesh Pillai a/l Raja Retnam* [2011] SGHC 95 at [13]). As to the relevance of the evidence of these messages, I have dealt with this issue at [138] above. I would also reiterate that these messages concerned, firstly, express references by T and the accused to a previous sexual encounter between the accused and V, in which the accused "fuck her on [T's] anniversary", which I have explained were clearly references to the incident alleged in the Charge; and secondly, discussions between the two of them about arranging for further incidents whereby V would be drugged in order for the accused to have sex with her. These were not general discussions about "drugged rape" of the ilk seen in some of the accused's posts on SBF (see [99]–[105] above).

157 For the reasons set out in [137]–[155] above, I found that the messages highlighted at [140]–[146] shed light on the accused's state of mind in going to T's apartment on the night of 14 March 2011 and corroborated T's testimony about the agreement they had for the accused to rape V that night.

158 For completeness, I should make it clear that there were a number of post 14 March 2011 messages which the Prosecution sought to rely on as evidence of the alleged conspiracy but which I did not find to be of any real probative value. For example, the Prosecution sought to rely on a series of messages between the accused and T on 22 March 2014, in which the accused

requested T to show him pictures of another of the accused's co-accused (one "L") having sex with an unconscious V.[360] In my view, it would be a stretch to say that these messages were somehow probative of the accused's state of mind and his understanding with T when he went to T's apartment on the night of 14 March 2011.

The accused brought a condom to the unit

159 As a further building block in its case on the existence of a conspiracy between the accused and T, the Prosecution pointed to T's evidence that the accused already had a condom with him when he turned up at T's apartment on the night of the alleged rape.[361]

T's evidence

160 T testified that the accused had brought his own condom to T's apartment, and that after sexual intercourse with V, he had asked T where to dispose of this condom.[362] In cross-examination, T also testified that the only reason for the accused to bring a condom would be to have sex with V: in T's words, "there's no way that is impromptu kind of thing".[363]

161 I found T's account to be credible. T explained that he would generally tell all his co-accused – "be it [the accused] or the rest of the co-accused persons" – to "put on a condom" for two reasons: firstly, because V was "very fertile"; and secondly, because she was a Hepatitis B carrier. [364] T was also able

360 PBOE3 at p 580.

361 PCS at para 58.

362 NEs 16 August 2023 Page 36 Lines 21-30.

363 NEs 18 August 2023 Page 33 Lines 30-32.

364 NEs 16 August 2023 Page 37 Lines 1-8.

to recall that when the accused asked him where he could dispose of the used condom, he had told the accused to "flush" it "in the toilet", but the accused had chosen not to do so and had instead disposed of the condom "elsewhere outside" T's residence.[365]

On the existence of a conspiracy between the accused and T to rape V: Summary of findings

162 To sum up: on the issue of the existence of a conspiracy between the accused and T for the former to rape V, I have highlighted the multiple pieces of evidence that corroborated T's account of his arrangement with the accused on the night in question. Given the corroborative evidence available, I was satisfied that the "unusually convincing" standard did not apply to T's testimony. On the evidence adduced, I found that the Prosecution was able to prove the following:

(a) Prior to the night of the alleged rape, the accused and T had on various occasions discussed wife sharing and the use of sleeping pills for such purposes;

(b) The accused understood wife sharing to involve sex with a woman with her husband's knowing consent;

(c) The accused had an interest in wife sharing specifically involving T and his wife V;

(d) Before going to T's apartment on the night of the alleged rape, the accused was told by T that V had been drugged with sleeping pills,

365 NEs 16 August 2023 Page 36 Lines 22-26.

and he understood that T's invitation to him to come over was for the purposes of his engaging in sexual intercourse with a drugged V;

(e) The accused felt thrill and curiosity at the prospect of having sex with a drugged V;

(f) The accused brought a condom to T's apartment in anticipation of having sex with a drugged V;

(g) Subsequent to the night of the alleged rape, the accused and T exchanged various messages in which they freely discussed the possibility of carrying out "Operation V" (which both men understood to refer to V being drugged for the accused's sexual purposes). Both men had also talked about a previous occasion ("that time") when the accused "came over and fuck [V]".

163 The above findings pointed to the inexorable and inevitable inference that the accused's purpose in coming over to T's apartment was pursuant to an agreement with T for him to have sex with an unconscious V.

164 For completeness, I should add that I rejected the Defence's argument that a conspiracy between T and the accused for the former to rape V would only be proved if T's invitation stated *explicitly* that V was unconscious *and that T wanted the accused to have sex with her while she was unconscious*.[366] This argument was plainly contradictory to the principles established in authorities such as *Nomura Taiji* (see [82] and [123] above). For the Prosecution to prove the existence of the conspiracy, it sufficed that T's invitation to the accused communicated that the latter would be having sex with V, and that she

366 DS at para 207.

had been drugged for that purpose. I reiterate that having regard to the evidence examined earlier at [89] to [161], I found that the Prosecution was able to prove these matters.

Whether the accused engaged in penile-vaginal penetration of V

165 I next considered the issue of whether, pursuant to the conspiracy between the accused and T, the accused did in fact commit penile-vaginal penetration of V without her consent on the night of the alleged rape.

166 The Defence did not dispute that the accused and T were in the master bedroom of T's apartment on the night of the alleged rape. What the Defence disputed was whether this occurred in 2010 or 2011, and more fundamentally, what exactly happened in the master bedroom that night.

The accused was at T's apartment on 14 March 2011

T's evidence

167 As to the first issue, T's evidence was that the accused came over to his apartment in 2011.[367] T recalled specifically that this was on 14 March 2011, the date of T's and V's third wedding anniversary.[368]

The accused's evidence

168 The Defence, on the other hand, contended that the accused did not visit T's apartment in 2011 and that he only did so in late 2010.[369] According to the accused, he was sure that his visit took place in late 2010 based on his estimation

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367 NEs 18 August 2023 Page 43 Line 21.

368 NEs 16 August 2023 Page 24 Lines 6-8.

369 DS at para 154.

of the time which elapsed between events occurring after his consensual sexual encounter with V on 2 September 2010.[370]

169 The Defence argued that it was "illogical" that the alleged rape should have taken place on the date of T's wedding anniversary because this would have been an important date to T, and it was unlikely that on this important occasion, he would have conceived and executed a plan to drug V on the "spur of the moment". Furthermore, such a plan would have had a huge impact on T himself as well, as it would have been the first time that T arranged for V to be raped.[371]

Messages between T and the accused

170 I accepted T's evidence that the events of the alleged rape took place on the night of 14 March 2011, the date of his and V's third wedding anniversary. T's evidence was corroborated by subsequent messages between him and the accused – in particular T's express references in these messages to the accused having had sex with V on T's third wedding anniversary, and the lack of any denial by the accused in response. I examine these messages in greater detail at [189]–[195] below.

171 As for the Defence's submission that it was "illogical" for T to have arranged for V's rape on their wedding anniversary date, I found no merit in this submission. T did not give evidence that he acted "on the spur of the moment" on the night in question; and he was not cross-examined by the Defence as to when exactly he formed the intention for V to be raped. Further, purely as a matter of "logic", if T were the kind of person to drug his own wife and to

370 DS at para 155; NEs 23 August 2023 Page 62 Line 19 to Page 64 Line 10.

371 DS at para 156.

arrange for her to be raped, there was no reason why he would have been deterred by the date in question coinciding with his wedding anniversary. As for the Defence's argument that such an event would surely have had an impact on T, the evidence from T showed that having arranged for the rape of his wife, he did subsequently experience some degree of emotional impact following the commission of the rape: in his testimony in court, T stated that after the accused left his apartment that night, he recalled holding V, crying and asking himself what he had done. [372]

The accused had penile-vaginal sexual intercourse with V on the night of 14 March 2011

V's condition when the accused arrived at T's apartment

172 As to the second issue in dispute (*ie* whether the accused committed penile-vaginal penetration of V without her consent pursuant to the conspiracy between him and T), it was not seriously disputed that by the time the accused entered the master bedroom on the night of the alleged rape, V appeared sedated and was lying on the bed. In the Case for the Defence, for example, while it was denied that the accused had even touched V at the apartment that night, the Defence conceded that the accused "believed" it was V who was lying on the bed when he entered the master bedroom.[373]

173 The Defence also did not dispute that if the accused had in fact engaged in sexual intercourse with V while she was drugged and unconscious, there would have been a lack of consent from V to such sexual intercourse.

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372 NEs 16 August 2023 Page 40 Lines 18-20.

373 Case for the Defence ("CFD") at paras 13 and 14.

T's evidence on what happened in the master bedroom

174 As to whether sexual intercourse did in fact take place, as I noted earlier at [40]–[44], T gave evidence that he recalled seeing the accused on top of V in a missionary position and that he believed the accused was then having sex with V in this position. V was naked, unconscious and blindfolded while this was happening.[374] In cross-examination, T maintained that he was able to see the details narrated in his evidence because the bedroom was illuminated.[375] T felt anger, thrill, and arousal: the latter emotion derived from the "relief" he obtained from the accused facilitating his "retaliation" against V for her unfaithfulness.[376] T also recalled the accused asking where he could dispose of the condom that he had brought to the apartment and his telling the accused to "flush" it in the toilet. The accused did not do so and instead disposed of the condom elsewhere outside the apartment.[377] After the accused left the apartment that night, T recalled holding an unconscious V and cleaning her up so as to remove any trace of lubricant.[378]

175 T had earlier pleaded guilty to a corresponding charge for his role in conspiring with the accused to rape V. In pleading guilty, he admitted to a Statement of Facts. The details in the SOF were congruent with T's testimony in court. In gist, the SOF stated that (a) T had drugged V with a sedative and invited the accused to his apartment to have sex with an unconscious V, (b) he had given the accused access to his apartment pursuant to this invitation, and

374 NEs 16 August 2023 Page 37 Lines 19-32.

375 NEs 18 August 2023 Page 15 Line 29 to Page 16 Line 4.

376 NEs 16 August 2023 Page 40 Lines 21-30; NEs 22 August 2023 Page 46 Lines 16-30.

377 NEs 16 August 2023 Page 36 Lines 22-26.

378 NEs 16 August 2023 Page 38 Lines 13-23.

(c) he had watched the accused rape the unconscious V by penetrating her vagina with his (the accused's) penis.[379]

(1) The Defence's challenges to T's evidence

176 The Defence sought to impeach T's credit on the basis of alleged material inconsistencies between his testimony and his VRI statements[380]. These inconsistencies related to the manner in which V was drugged and the identity of the person who undressed her.

177 At trial, T testified that he gave V Dormicum[381] by crushing it and putting it inside her wine.[382] He then took off her clothes.[383] He remembered V lying naked on the bed, blindfolded and unconscious.[384] In his VRI statements, however, T said that he administered the Dormicum to V in the form of a pill under the guise of giving her medication.[385] He also stated that it was the accused who undressed V.[386]

178 On the issue of how Dormicum was administered, T explained that the inconsistency between his testimony and his VRI statement came about because he had utilised two methods of administering the drug to V – by giving V Dormicum in the form of a pill, and alternatively, by crushing the Dormicum

379 Exhibit P31 at paras 10 and 11 (PBOE4 at p 681-682).

380 NEs 22 August 2023 Page 35 Line 15 to Page 39 Line 7; DS at para 167

381 NEs 16 August 2023 Page 24 Line 32 to Page 25 Line 6.

382 NEs 16 August 2023 Page 26 Lines 8-10, Page 27 Lines 3-4.

383 NEs 16 August 2023 Page 28 Line 23.

384 NEs 16 August 2023 Page 24 Lines 25-27, Page 28 Line 13.

385 Exhibit P33 Page 36 Line 22 to Page 37 Line 10.

386 Exhibit P33 Page 37 Lines 17-21.

before putting it into her wine – and he had gotten mixed up as between these two methods.[387] T maintained that on the night of the alleged offence, he had administered Dormicum to V by putting it into her wine. This was based on his recollection that V had not been sick on the day in question.[388]

179 On the issue of who undressed V, T maintained that he was the one who had undressed V[389]. T explained that he only recalled this after having had sight of the chats between himself and the accused.[390] He was able to identify the specific message which triggered this recollection[391]: his own message to the accused asking "can see this?", which reminded him that he had sent the accused a photograph of V unconscious and blindfolded prior to the accused's arrival at the apartment. T explained that he had subsequently deleted this photograph.[392] It should be pointed out that T's explanation was consistent with the objective evidence, as the message identified by him ("can see this?") was in fact only extracted on 26 April 2021,[393] after the recording of the 2020 VRI statements in which he had stated that it was the accused who undressed V.

180 The Defence argued that I should not believe T's evidence about recalling how he had taken a photograph of V unconscious and blindfolded on the night of the alleged rape because – according to the Defence – T did not in fact take any such photograph.[394] To make this argument, the Defence pointed

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387 NEs 17 August 2023 Page 38 Line 27 to Page 39 Line 2, Page 45 Lines 8-10.

388 NEs 17 August 2023 Page 37 Lines 7-11.

389 NEs 17 August 2023 Page 55 Lines 23-29.

390 NEs 17 August 2023 Page 55 Lines 23-29, Page 59 Line 23 to Page 61 Line 8.

391 NEs 17 August 2023 Page 61 Lines 2-8; PBOE3 at p 577 at S/N 112.

392 NEs 16 August 2023 Page 42 Lines 1-3.

393 PBOE3 at p 469.

394 DS at paras 175-197.

to the fact that the other offences for which T was convicted or which were taken into consideration in his sentencing featured photographs and videos of sexual acts committed with other co-accused persons: this, according to the Defence, showed that T did not have the practice of deleting incriminating photographic evidence of his offences. His explanation that he had subsequently deleted the photograph of V unconscious and blindfolded should therefore be disbelieved, and the Prosecution's inability to produce the said photograph was proof that no such photograph had ever existed.

181 I did not accept the Defence's argument. First, the fact that there existed photographs and videos of T's offences with other co-accused persons did not mean that it was *T* who had retained evidence of them. Nothing was said in the SOF about the provenance of these photographs and videos. It was thus equally plausible that they were retained by other co-accused persons. Second, the Defence did not cross-examine T on his general practice with regard to retaining photographs or videos of his offences, nor was anything put to T in this regard. Third, there was evidence that T had in fact engaged in the deletion of incriminating evidence, such as his Skype chats with the accused.[395] Fourth, both T and the accused made express reference to this particular photograph of V in their post-offence chats on 22 March 2014:[396]

Accused:	i wanna spray cum on [V] man
	can i?
	…
	u got share screen?
T:	can?
	…

395 Exhibit P13A (PBOE1 at pp 11-35).

396 PBOE3 at pp 577-578.

T:	***can see this***?
Accused:	***Ya***
	Blindfold for who?
T:	***this was when u came over and fuck [V]***
	that time
Accused:	***Nice when she still slim*** yah aha
T:	now also still ok
	[emphasis added]

182 T testified that the sender of the last message "I wanna spray cum on [V] man" was the accused.[397] This evidence was not disputed by the Defence. T explained that at the time of the above exchange, he was showing the accused the photograph he had taken of V on the night of the alleged rape, which showed her naked and blindfolded on the bed,[398] and his statement "this was when you came over and fuck [V]" was a reference to the night of the alleged rape.[399] In his testimony in court, the accused conceded that when T sent him the message "can see this?", T had shown him a photograph of a blindfolded woman, and that T had done so by changing his profile picture on Skype[400] (although the accused claimed that the woman depicted in the photograph was clothed). Taken together, T's reference to a previous occasion when the accused "came over and fuck [V]", the accused's acknowledgement of this statement, and the accused's references to V being "slim" and blindfolded in the photograph, all constituted cogent evidence that T had in fact possessed a photograph of V naked and

397 NEs 16 August 2023 Page 72 Line 5.

398 NEs 16 August 2023 Page 72 Lines 22-27.

399 NEs 16 August 2023 Page 73 Line 3.

400 NEs 23 August 2023 Page 116 Lines 4-15.

blindfolded on the night of the alleged rape, which he had later shown to the accused in 2014.

183 For the reasons explained, and taking into account moreover the passage of time and the consequent effect on witnesses' recollection of events, I was satisfied that T was able to provide adequate explanations for the inconsistencies in his evidence, and that his explanations were not inconsistent with other available evidence. In any event, neither of the inconsistencies pointed out by the Defence impinged on T's evidence that V was naked and unconscious while the accused was in T's apartment. Tellingly, while the accused claimed at one point in his testimony that he had only seen a "body" lying motionless on the bed and that he had not checked whether it was V's "body", in its closing submissions the Defence did not seriously dispute the Prosecution's assertion that V was naked and unconscious at the time the accused went to the master bedroom.

184 In respect of T's evidence that the accused had brought a condom along to the apartment and that he had used it during sex with V, the Defence argued that this evidence was a fabrication.[401] The Defence claimed that T's account was inconsistent with the SOF which he had admitted to in pleading guilty, because – according to the Defence – the SOF showed that T and his other co-accused did not use condoms in the other offences committed by them.

185 I did not find any merit in the above argument. First, T was not cross-examined about his and the other co-accused's practice or habits when it came to using condoms during the commission of their offences; and it was not put to him that his testimony about the accused's usage of a condom was inconsistent

401 DS at para 254; DRS at para 48(c).

with the practice which he and his co-accused (purportedly) had of not using condoms. Second, contrary to the Defence's submission, the SOF did not show that T had a strict rule about the non-usage of condoms: there were in fact instances when condoms were used.[402]

186 The Defence also argued that T could not be believed when he testified about having cried while cleaning up V's body in the wake of the rape. According to the Defence[403], T could not have felt such emotional upheaval on the night of the alleged offence because in a Facebook post he made the following day (15 March 2011), he had made a flippant comment about "praying for the porn stars in Japan"[404]. The Defence argued that T would not have posted such a flippant comment if he had genuinely been feeling guilty about what he did to V.

187 Again, I did not find any merit in the Defence's argument. There was no reason why T – who had purportedly arranged for the rape of his unconscious wife – should have been incapable of posting a flippant comment on social media while privately experiencing guilt or shame about his actions. T himself testified that he viewed the action of making such a comment as being severable from the emotions he was experiencing at the material time.[405]

188 In sum, I found T's evidence as to the events inside the master bedroom on the night of the alleged offence to be internally consistent in all material aspects. His testimony that he saw the accused having sex with an unconscious

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402 PBOE4 at p 687 at para 25.

403 DS at paras 264-271.

404 Exhibit D6.

405 NEs 22 August 2023 Page 33 Lines 25-28.

V remained unshaken throughout cross-examination. To the extent that there were inconsistencies, I accepted the explanations provided by him.

T's conversations with the accused

189 Importantly, T's account of the events of the night of 14 March 2011 was corroborated by the objective evidence of messages subsequently exchanged between him and the accused. These messages were relevant, firstly under s 8 of the EA, as evidence of conduct on the accused's part which was subsequent to, and influenced by, the events of the night of 14 March 2011 (specifically, the occurrence of sexual intercourse on that night) ; and secondly, under s 11(*b*) of the EA, being evidence which – in connection with the other facts established by the Prosecution – made it highly probable that penile-vaginal penetration of V by the accused did take place on that night.

190 I refer in particular to the series of messages on 22 March 2014 (reproduced earlier at [140]), in which T showed the accused a photograph of V naked and blindfolded, and reminded the accused that "this was when u came over and fuck [V] that time".[406] I have earlier explained at [148]–[155]) why I found that the statement that the accused "came over and fuck [V]" could not be construed either as a reference to the prior consensual sexual encounter between V and the accused or as an attempt at "fantasy talk" (as the accused claimed). T's use of the words "you came over and fuck her" was consistent with sexual intercourse having occurred between the accused and V at T's apartment.

406 PBOE3 at pp 576-578.

191 In the series of messages on 30 March 2015,[407] T made yet another express reference to the accused having engaged in sexual intercourse with V on the night of T's wedding anniversary (14 March 2011). The messages are reproduced at [146] above. Significantly, the accused did not refute or challenge T's express comment about his having had sex with V on her wedding anniversary. Instead, as I noted earlier, the accused's response ("Tat was hw long") acknowledged the fact that the incident in question had taken place some time prior to 30 March 2015; and this was affirmed by T in his response ("4 yr back?").

192 For completeness, insofar as the Defence sought to argue that the above messages should be disregarded because their prejudicial effect far outweighed their probative value, I reiterate the reasoning and the findings set out in [156] above. In particular, given that these messages involved express references to sexual intercourse between the accused and V on the night of 14 March 2011, their probative value could not be gainsaid; whereas insofar as the element of prejudice was concerned, the Defence failed entirely to articulate or to demonstrate the prejudice allegedly caused to the accused by their admission.

T's conversations with other co-accused persons

193 Apart from T's messages with the accused, T's online conversations with his other co-accused further corroborated his evidence that the accused had engaged in penile-vaginal sex with V on the night of the alleged rape.

194 As noted by T when commenting in court on his Skype communications with the co-accused "S" on 30 July 2013, the accused was one of four men who

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407 PBOE3 at pp 641-642.

had previously engaged in penetrative penile-vaginal[408] sex with V.[409] T described these four men in his Skype messages as being "three raw, one cap"[410]: T explained that "three raw" referred to three of the men having had sex with V without using a condom, while the "one cap" referred to the accused having used a condom when having sex with V on the night of the alleged rape.[411] That the accused was one of the four men who had engaged in sexual penetration of V was also alluded to by T in the same conversation with S: in telling S about the four men, T remarked, "Got one is the guy I set up to court her" – obviously a reference to his having previously given the accused V's contact details for the purpose of "testing" her. T went on to tell S, "I got him to fuck her on our 3-year anniversary…on [our] matrimonial bed"[412] – which was a reference to the accused having had sex with V in the master bedroom on 14 March 2011.[413]

195 The above evidence by T was not challenged by the Defence in cross-examination. These messages from T to S on 30 July 2013 thus supported an inference that the accused had engaged in penile-vaginal sexual intercourse with V on the night of 14 March 2011, and that the accused had used a condom in the course of this sexual intercourse.

The lack of photographic or videographic evidence

196 Here again, the Defence argued that since other offences committed by T with his other co-accused involved photographs or videos being taken of the

408 NEs 16 August 2023 Page 44 Line 30.

409 PBOE1 at p 81; NEs 16 August 2023 Page

410 NEs 16 August 2023 Page 45 Line 12; PBOE1 at p 86.

411 NEs 16 August 2023 Page 45 Lines 13-17.

412 PBOE1 at pp 88 and 89.

413 NEs 16 August 2023 Page 47 Lines 18-27.

sexual activity, the absence of such photographs and videos in the accused's case must mean that the accused did not rape V.[414] Regrettably, as I noted earlier at [181], the Defence failed to cross-examine T on his practice with regard to the retention of photographs and videos: it was not put to T that he had a general practice of retaining photographs and videos of all the illicit sexual activity and /or that the absence of such images in the accused's case must mean the latter was never involved in any illicit sexual activity. In the circumstances, therefore, I rejected the Defence's argument.

On whether penile-vaginal penetration took place on the night of the alleged rape: Summary of findings

197 To sum up, therefore: I found that the Prosecution was able to prove that penile-vaginal penetration of V by the accused did take place on the night of 14 March 2011. T was able to testify that on the night of the alleged offence:

(a) he saw the accused lying on top of V in a missionary position; and he believed the accused was having sex with V in this position;

(b) the accused asked T thereafter where he could dispose of his used condom;

(c) after the accused left the apartment, T cleaned lubricant from V's body. T also recalled crying as he held the unconscious V and asking himself what he had done.

198 The "unusually convincing" standard did not apply to T's testimony because *per* my findings as set out in [189]–[195] above, T's evidence about the accused having had sex with the unconscious V was corroborated by other

414 DS at paras 248-252.

evidence. This included evidence of T's communications with the accused in which the latter was shown acknowledging without demur T's express references to his having had sex with V on her third wedding anniversary.

Whether the Defence's case raised any reasonable doubt

199 I next address the question of whether the accused was able to raise a reasonable doubt on the Prosecution's case.

The accused was not a credible witness

200 I first address the credibility of the accused. In general, I found the accused to be a disingenuous and evasive witness. His explanations on various issues struck me as being glib afterthoughts which were at odds with the available evidence. I have already dealt with several examples at [95], [128]–[131], [136], and [153] above.

The accused's account in court was inconsistent with his VRI statements

201 In addition to the accused's various explanations in court clearly being convenient afterthoughts, several portions of his testimony were inconsistent with evidence he had previously given in his VRI statements. At trial, the Prosecution applied to impeach his credit under s 157(*c*) of the EA, in respect of inconsistencies between his oral testimony and three areas of his evidence in VRI statements dated 17 and 20 January 2020. These three areas related to: (a) the accused's purported belief that in going to T's apartment on the night of the alleged offence, he had been headed for a confrontation, (b) the accused's claim that he had tried to stroke his penis in the master bedroom of T's apartment that

night, and (c) the accused's claim about a second consensual sexual encounter with V.[415]

202 In respect of the accused's purported belief that he had been headed for a confrontation with T on the night of the alleged offence, I agreed with the Prosecution that the reason for the accused going to T's apartment was a material aspect of his testimony, as it went towards the issue of his understanding and arrangement with T that night. In his oral testimony, the accused claimed that he had gone to T's apartment because there was a "good possibility that [T] might want to confront [the accused and V]"[416]: he was both "curious" because he "didn't know what would happen", and "concerned" because T, being "from the military", could "inflict damage" on V if he was not controlled.[417] The accused expressly ruled out any other reason why he would have gone to T's apartment that night.[418] However, this account of events was inconsistent with the explanation given in his VRI statements,[419] which was that T had invited him so that "things could happen", specifically for the accused to have sex with V in T's presence (see [124] above). In his VRI statements, the accused did not mention that he had anticipated a confrontation or that he had gone over out of concern for V.[420]

203 In cross-examination, the accused tried to explain away the discrepancies by claiming that his memory of having gone to T's apartment in

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415 NEs 25 August 2023 Page 62 Lines 1-19.

416 NEs 23 August 2023 Page 63 Line 19 to Page 64 Line 2; DS at para 209.

417 NEs 23 August 2023 Page 64 Line 4 to Page 65 Line 7.

418 NEs 23 August 2023 Page 66 Lines 12-14.

419 Exhibit P8 (AB at p 74); Exhibit P9 (AB at pp 170-171).

420 Exhibit P8 (AB at p 65).

anticipation of a confrontation was only triggered during the period of his remand in Changi Prison, when he witnessed T (who was then also in remand) shouting on one occasion at Changi Medical Centre.[421] Regrettably, however, this allegation about T shouting at Changi Medical Centre was never put to T in cross-examination, which meant that T had no opportunity to give his own version of events. This alleged incident was also not mentioned either in the Case for the Defence or in the accused's evidence-in-chief. In the circumstances, I gave no weight to this purported explanation.

204 The Defence also argued that the above inconsistency could be explained by the fact that the accused was facing a charge of rape at the point he gave his VRI statement – and not the eventual charge of conspiracy to commit rape.[422] I also rejected this argument. The Defence was unable to explain why facing a charge of rape instead of one of conspiracy to rape would have affected the accused's ability to recall his reason for going to T's apartment on the night of the alleged rape. After all, either charge would have involved the accused having to explain the reason for his presence in T's apartment on the night in question.

205 The Defence argued, in addition, that I should accept the accused's testimony about having believed he was going to T's apartment for a confrontation because it was "logical". According to the Defence, T had sent the accused two messages asking whether he had had sex with V, and whether he was going to break up T's family (see [69] above).[423] Regrettably, however, these messages were not produced in evidence by the Defence, nor were they

421 NEs 25 August 2023 Page 66 Line 23 to Page 69 Line 14.

422 DS at paras 306-308.

423 DS at paras 133-138

ever raised in the accused's earlier statements to the police on 17 and 20 January 2020. I therefore decided no weight should be given to this argument.

206 For the reasons set out above, I found that in respect of the reason for the accused's visit to T's apartment on the night of the alleged offence, there were unexplained material inconsistencies between the accused's testimony and the evidence in his VRI statements. Even after allowing for the passage of time and its impact on witnesses' recollection, I found it unbelievable that the accused would have confused going to T's apartment for a "confrontation" with going there for a sexual purpose.

207 In respect of the accused's claim about having tried to stroke his penis while he was in T's master bedroom, I also found material discrepancies between the accused's oral testimony (in which he said he had merely *pretended* to stroke his penis over his clothes),[424] and the account given in his VRI statement (which involved him *trying* to stroke his penis so as to get an erection).[425] His explanation that he was only pretending to stroke his penis was also inconsistent with the account of events provided by him to the IMH psychiatrist,[426] in which he stated that he had been *unable* to attain an erection. The accused failed to give any coherent explanation for these discrepancies.[427]

208 In sum, I found that having regard to the above two areas of material inconsistency, the accused's credit should be impeached.

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424 NEs 24 August 2023 Page 69 Lines 19-21.

425 AB Page 89 Lines 3-5, Page 100 Lines 27-30.

426 AB at pp 35-36.

427 NEs 25 August 2023 Page 74 Line 30 to Page 78 Line 13.

209 For completeness, I noted that in respect of the issue of the alleged second consensual sexual encounter with V, the Prosecution did not seek in its closing submissions to pursue this as a ground for impeachment; and I saw no reason to impeach the accused's credit in respect of this issue.

An adverse inference should be drawn from the accused's omissions in his Case for the Defence

210 In addition to its application to impeach the accused's credit based on inconsistencies between his testimony and his VRI statement, the Prosecution argued that an adverse inference should be drawn against the accused for (a) failing to state his defences in his cautioned statement under s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), and (b) running a case at trial which was inconsistent with the Case for the Defence ("CFD").[428]

211 In respect of his cautioned statement, the accused offered two explanations as to why he had declined to state any defence to the charge of rape which was being levelled against him at that point in time. First, the accused felt he had said enough in his first statement. Second, the accused felt the police were not neutral towards him at the time they recorded his cautioned statement.[429] He claimed that he formed this view because of two statements made to him by police officers during the recording of his VRI statement on 17 January 2020. This was the VRI statement recorded prior to the recording of his cautioned statement on the same day.[430] The accused claimed that before the VRI statement-recording, the assisting interview officer Inspector Ang Tian Ling Kimberley ("Insp Ang"), had told him, "[y]ou just be remorseful and

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428 PCS at para 129.

429 NEs 25 August 2023 Page 91 Line 25.

430 NEs 25 August 2023 Page 92 Line 23.

confess";[431] and that following the completion of the VRI statement, Supt Burhan had told him, "[t]his is not the way you should be giving a statement".[432]

212 As to the second explanation offered by the accused, I rejected the accused's account as I found his allegations about the conduct of the police officers to be entirely untrue. These allegations were put forward only at a very belated stage of the trial. Prior to the accused coming up with the above allegations during cross-examination, these allegations were not put to Supt Burhan when he first testified in court, nor did the Defence ask for Insp Ang to be produced for cross-examination.

213 Both officers were recalled to the witness stand, and both firmly denied having spoken to the accused in the manner alleged. Both officers struck me as being honest and reliable witnesses. Insp Ang pointed out that as a recording officer, she would not tell an accused person to "be remorseful", as she knew this would amount to "trying to affect the way he gives his evidence during the VRI".[433] As for Supt Burhan, he pointed out that he was never present in the VRI room when the accused's statement was recorded, and he had no knowledge of the contents of that VRI statement at the time he escorted the accused back to the lock-up after the statement-recording. Indeed, Supt Burhan scrupulously disclosed that there was a possibility that he could have discussed the case with Insp Ang *after* escorting the accused back to the lock-up. He was very sure, however, that there was no such discussion prior to the completion of his escort duties. Insp Ang's and Supt Burhan's evidence remained unshaken in cross-examination; and I was satisfied that both were telling the truth – as

431 NEs 25 August 2023 Page 91 Line 7.

432 NEs 25 August 2023 Page 92 Lines 15-17.

433 NEs 29 August 2023 Page 78 Lines 13-16.

opposed to the accused, whose penchant for making up stories on the fly was underscored by the attempts to put *new* allegations to both officers when they were recalled.[434]

214 As to the accused's first explanation for not having disclosed his defences in his cautioned statement, on the other hand, I noted that the cautioned statement was recorded from him at 10.32pm on 17 January 2020,[435] while the recording of his VRI statement on the same day started at 7.33pm and lasted for 45 minutes.[436] In the circumstances, while I rejected the accused's allegations against the police, having regard to the amount of detail provided in the VRI statement recorded shortly before the cautioned statement, I did not find it appropriate to draw an adverse inference against him in respect of the omission to mention his defences in the cautioned statement.

215 In respect of the alleged inconsistencies with the accused's CFD, I agreed with the Prosecution that the accused's oral testimony was inconsistent with certain portions of his CFD. In particular, the accused's CFD failed to mention:

(a) that he had gone to T's apartment believing there would be a confrontation with T;

(b) that he had merely *pretended* to stroke his penis over his clothes while he was in the master bedroom;

(c) that he had gone to T's apartment out of "thrill".

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434 NEs 29 August 2023 Page 76 Lines 4-22; Page 82 Line 18 to Page 83 Line 13.

435 AB at p 23.

436 AB at p 40.

216 These were material aspects of the account of events which the accused sought to put forward at trial; and the Defence was unable to provide any cogent reasons for the omission to mention them in the CFD. In the circumstances, I found that an adverse inference against the accused was warranted.

The accused's account is inherently incredible

217 I would add that even if I were to ignore the material inconsistencies in the accused's evidence vis-à-vis his earlier statements, the credibility of his defence was still fatally undermined by the inherent inconsistencies in his story.

The accused's explanation for his references to "Operation V" was illogical

218 First, the accused's testimony in court about his understanding of the meaning of "Operation V" was bereft of logic. He claimed that the term referred to T getting other men to go to the pub where V worked and to chat her up.[437] This was utterly irreconcilable with the contents of the online conversations between T and the accused (reproduced at [138]–[158] above), which featured explicit references to drugging V and having sex with her while she was drugged. It made no sense at all that T and the accused should have to discuss obtaining drug supplies if all T had in mind was simply getting other men to chat V up at her workplace.[438]

The accused's claim that he anticipated a confrontation was inconsistent with his behaviour

219 Second, the accused's story about having anticipated a confrontation with T when he went to T's apartment on the night of the alleged rape was

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437 NEs 29 August 2023 Page 22 Lines 20-29.

438 NEs 29 August 2023 Page 40 Lines 1-2.

inconsistent with the undisputed evidence of his own behaviour. Despite purportedly having been worried about T's ability as a "military" man to "inflict damage", the accused took no precautions at all for his own safety,[439] and instead unquestioningly followed T into a dark apartment[440] without even first having a conversation with T about what was happening.[441]

220 Further, the accused's allegation that he believed T wanted to confront *both* him (the accused) *and V*[442] was inconsistent with T's behaviour in drugging V.[443] According to the accused, T probably wanted explanations from both V and the accused about whether they were having an affair. Based on the accused's own narrative, T's behaviour in rendering V unconscious before any confrontation could be had simply did not make sense. In cross examination, the accused was unable to explain this inherent inconsistency.[444] In this connection, I found it telling that in the reply submissions filed by his counsel, the accused resiled from the account of events given in court, and instead sought to hedge his position by claiming that even though he had believed T to be capable of inflicting damage, he had not actually thought that T would "resort to such extreme measures".[445] This attempt to reframe his evidence after having already had days to give his account of events in the witness stand was disingenuous, to say the least; and I had no hesitation in rejecting it.

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439 NEs 24 August 2023 Page 57 Lines 23-26.

440 NEs 23 August 2023 Page 67 Line 30 to Page 68 Line 1.

441 NEs 23 August 2023 Page 67 Lines 12-13; NEs 24 August 2023 Page 62 Line 3.

442 NEs 23 August 2023 Page 63 Line 19 to Page 64 Line 2.

443 PCS at para 90.

444 NEs 24 August 2023 Page 54 Line 7-30.

445 DRS at para 74.

The accused's claim to be concerned for V's welfare was inconsistent with his behaviour

221 Third, the accused's claim about gone to the apartment partly out of concern for V[446] was completely undercut by his own evidence as to his behaviour that night . In court, he affirmed the following:

(a) he did not contact V before going to the apartment,[447] despite supposedly being worried that T could "inflict damage" on her;

(b) upon seeing what he presumed was V's motionless body under a duvet in the master bedroom, he did not try to wake her up or to check if she was alright;[448]

(c) despite V remaining motionless and silent throughout the whole episode in the master bedroom, he did not take any steps to check if she was conscious or to find out what condition she was in;[449]

(d) despite V remaining motionless and silent throughout the whole episode in the master bedroom, he did not contact either the police or the emergency services;[450] and

(e) despite the fact that V was still motionless when he left the apartment, he did not contact either V or T the following day to check whether V was ok.[451]

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446 NEs 23 August 2023 Page 64 Line 4 to Page 65 Line 7; DS at para 54.

447 NEs 24 August 2023 Page 58 Line 1.

448 NEs 24 August 2023 Page 63 Line 20.

449 NEs 24 August 2023 Page 63 Line 26.

450 NEs 24 August 2023 Page 72 Lines 18-21.

451 NEs 24 August 2023 Page 72 Lines 22-25.

222 In cross-examination, the accused claimed that he did not do any of the above because he thought at the time that V was sleeping.[452] This explanation was completely without any evidential basis, contradicted by his own account of events (in which he had never asked why V was silent and motionless), and also flew in the face of his own testimony that T had told him V was drugged.

Pretending to stroke one's penis is not a logical way to avoid confrontation

223 Fourth, as a matter of common sense, I found it unbelievable that the accused's response to being confronted about his affair with an acquaintance's wife would be to *pretend to masturbate* in the presence of that acquaintance and next to the motionless body of the wife. Here again, the accused's explanation that he had to do so "to try and get out of this situation" and to show that he was "indifferent" to V made no sense.[453]

The accused's post-offence behaviour and interactions with T are inconsistent with his version of events

224 Fifth, in the light of the accused's account of events on the night of the alleged rape, his post-incident interactions with T were frankly anomalous by any measure. *Per* the accused's account, he had been "freaked out" by the incident in the master bedroom, and he also knew that what T had sought to do was against the law.[454] Yet, according to him, not only did he fail to report the matter to the police, he continued to associate with T and to engage in sexually explicit "fantasy talk" with T, knowing full well that T was prepared to take drastic actions to realise these fantasies in real life.[455] He even met up with T

452 NEs 24 August 2023 Page 73 Line 26.

453 NEs 23 August Page 72 Lines 3-20.

454 AB at p 100; NEs 23 August 2023 Page 69 Lines 26-29.

455 AB at p 99.

again in real life in 2011 or 2012, on an occasion when T gave him sleeping pills.[456] Based on his own evidence, in short, the accused's post-incident conduct was simply not the conduct of a man who had been "freaked out" by T's illicit conduct on the night in question and who was painfully aware of T's willingness to take more extreme actions.

The accused's claim that his post-offence communications with T were merely fantastical was unbelievable

225 Sixth, as I noted earlier, insofar as the accused's online conversations with T featured discussions of "Operation V" (drugging V and having sex with her) and also references to a previous occasion when the accused "came over and fuck" V, the Defence contended that these amounted merely to "fantasy talk".[457] While it was true that some comments within the conversations were clearly made in jest (such as the accused's joke about having fathered V's child[458]), the comments made in jest were plainly and readily distinguishable from the discussions about drugging V for sexual purposes and about the previous occasion when the accused had sex with her at T's apartment. I have explained earlier why I rejected the accused's contention that these discussions were mere "fantasy talk" (see [151]–[155] above).

226 In the Defence's closing submissions, it was argued that many of the comments by T in their online chats were made by him in the hope of extracting an admission from the accused about his previous affair with V.[459] In this connection, although T did testify that he had posed certain questions in an

456 NEs 29 August 2023 Page 58 Line 9 to Page 59 Line 8.

457 DS at paras 340-360.

458 DS at para 344; PBOE3 at p 645.

459 DS at paras 349-351.

attempt to "fish for information" as to what had happened between the accused and V,[460] T was clear that his references to the accused "[coming] over and fuck [V]" and having sex with V on his third wedding anniversary were references to a previous incident which had actually taken place at his apartment on 14 March 2011.[461] In any event, if the accused had genuinely believed that T was trying to extract an admission from him about his affair with V, then it was anomalous that he never once refuted or protested T's remarks about his previously having had sex with V.

227 For completeness, I noted that although in cross-examination the Defence pursued a line of questioning centred on the lyrics to a military song ("Purple Light") cited by T,[462] this was not pursued in closing submissions.

The accused's relationship with V

228 Much of the Defence's case centred on the prior relationship between V and the accused. The key aspects of the accused's position were as follows:

(a) T did not set any rules or parameters for the accused when inviting him to ask V out and to "test" her.[463] In fact, T appeared to have expected that the accused would engage in intimate sexual activity with V,[464] although T never actually articulated this expectation to the

460 NEs 16 August 2023 Page 98 Lines 14-27.

461 NEs 16 August 2023 Page 72 Line 31 to Page 73 Line 3.

462 NEs 18 August 2023 Page 48 Line 13 to Page 49 Line 18.

463 DS at para 76.

464 DS at para 82.

accused.[465] T then became angry with – and jealous of – the accused after finding out that V preferred the accused sexually.[466]

(b) Despite feeling hurt and betrayed after learning that T had hugged V on their first date, T did not put an end to the "testing" of V by the accused.[467] This supported the accused's contention that T had never set any conditions on the accused's "testing" of V.[468]

(c) T's failure to confront V despite feeling betrayed was illogical.[469]

(d) The fact that the accused had kept T in the dark about his consensual sexual encounter with V showed that there could not have been any discussion between them about exploring wife sharing.[470]

(e) The accused had a second consensual sexual encounter with V after the night of the alleged rape. This showed that he had no reason to rape her because he was already in a consensual sexual relationship with her at the material time.[471]

The relevance of the accused's relationship with V

229 To begin with, the accused's account of his relationship with V appeared to me to be internally inconsistent. For example, the accused claimed that T

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465 DS at para 76.

466 DS at para 275.

467 DS at paras 31-37.

468 DS at paras 78-80.

469 DS at para 132.

470 DS at paras 88-90.

471 DS at para 54; DRS at para 37.

never set any conditions or limitations on what the accused could do with V while he was dating her.[472] According to the Defence, T even expected some form of sexual intimacy to develop between the accused and V. At the same time, however, the accused claimed that T felt angry at him for betraying T's trust by having a covert affair with V.[473] These two positions were logically inconsistent: if T had indeed given the accused *carte blanche* to do whatever he wanted with V, there would have been no boundaries for the accused to overstep and thus no issue as to any betrayal of T's trust.

230 More fundamentally, however, even if I accepted the accused's account of his relationship with V, this would not change my finding that the accused's arrival at T's apartment on the night of 14 March 2011 was pursuant to an agreement between the two men for the accused to rape the unconscious V. I say this for three reasons:

(a) First, as I noted earlier (at [83]), the general law on abetment does not require an abettor and the person abetted to "share the same *mens rea*" (*Bahashwan* at [34]). As such, for the purposes of proving the Charge against the accused, the Prosecution was not required to prove that the accused and T shared the same *mens rea*, so long as both of them were aware that their general purpose was for the accused to have sex with V while she was unconscious from being drugged. In this connection, I have explained at [89]–[162] my reasons for finding that both men were aware of this general purpose.

472 DS at para 76.

473 DS at paras 275-276.

(b) Second, even if the accused was in a consensual sexual relationship with V at the time of the alleged rape and even if they did have a second consensual sexual encounter (which allegations I have rejected for the reasons set out at [114] above), it did not follow as a matter of inevitable logic that the accused would have no "incentive" or "motive" to rape V. In this connection I have explained at [108]–[117] my reasons for finding that the accused showed an interest in wife sharing which specifically involved T together with T's wife V.

(c) Third, as the Prosecution pointed out, it was not their case that T and the accused had engaged in a conspiracy *to explore wife sharing* from the outset of their relationship.[474] What the Charge required them to prove was that at the point when the accused accepted T's invitation to come over to his apartment, there existed a conspiracy between the two of them for the accused to have sex with an unconscious V. It was not necessary for the Prosecution to prove that T and the accused had an agreement from the outset of their relationship to explore wife sharing.

The alleged implausibility of T's motives for inviting the accused to rape V

231 With the above in mind, I did not find the arguments about the alleged implausibility of T's personal motives for inviting the accused to rape V to be of any real assistance to the Defence's case. The Defence argued, in particular, that it was "illogical" that T should have sought to punish V for her affair with the accused by inviting the accused to rape her while she was unconscious. As I pointed out earlier, however, the accused did not dispute that T had informed him about V being drugged when T invited him to come over to the apartment;

474 PRS at para 9.

and in his VRI statements, the accused also admitted to being aware that T was inviting him over for a sexual purpose. I have also earlier explained why I rejected the accused's attempts to disavow these admissions during cross-examination. Given these circumstances, T's personal motives were simply irrelevant to my consideration of the Charge against the accused.

232 For the avoidance of doubt, I did not in any event see why T's behaviour in this respect should be regarded as "illogical". T's evidence was that he had for some time suspected V of being unfaithful even before she came into contact with the accused.[475] From his evidence, it was apparent that he harboured a degree of resentment against V – or at the very least, some measure of angst – for her perceived unfaithfulness. The SOF he admitted to in pleading guilty showed how V was made to suffer the humiliation of being raped and sexually assaulted on multiple occasions when she was drugged and unconscious. From T's own evidence and from other evidence such as his chats with his co-accused S, it was evident that T gloated to a certain extent over V's humiliation and sexual degradation. At one point for example, when showing the accused a picture of another co-accused L having sex with the unconscious V, T commented gloatingly that V's facial expression looked "like she enjoying".[476] In other words, while it was not necessary for me to make any conclusive finding on T's personal motives, it appeared to me that T did in fact derive a certain degree of perverse satisfaction from seeing V violated while she was in a sedated and helpless state.

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475 NEs 17 August 2023 Page 74 Line 3 to Page 75 Line 5.

476 PBOE3 at p 581.

T's alleged motive for framing the accused

233 Finally, I should also make it clear that I rejected the Defence's argument that T had a motive to fabricate evidence to frame the accused. According to the Defence, this motive to frame the accused came about because T felt angry at the latter for betraying his trust by having an affair with V, and also because T felt jealous after discovering that V preferred him sexually over T.

234 I have earlier pointed out (at [229]) the internal inconsistency and lack of logic in the accused's narrative about T's alleged anger at his "betrayal of trust". More importantly, however, the Defence's arguments were undercut by the objective evidence of the friendly communications between the accused and T which stretched over a good number of years post 14 March 2011. In these communications, the accused and T clearly felt more than comfortable sharing sexual images of each other's wife and freely discussing the two women in sexually explicit terms. Given the duration, the tone and the content of their communications, the Defence's suggestion that T must have been harbouring a grudge against the accused over the years struck me as being contrived and untenable. I concluded that the accused was unable to adduce sufficient evidence of a motive on T's part to fabricate evidence against him so as to raise a reasonable doubt in the Prosecution's case.

Conclusion on conviction

235 In sum, having regard to the findings and the reasoning set out at [89]–[234], I found that the Prosecution was successful in proving the Charge of conspiracy to rape against the accused, and I convicted him accordingly of this charge.

236 I next address the sentencing-related issues.

Parties' submissions on sentence

The applicable sentencing framework

237 Parties were agreed that the framework in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") should apply in the present case. There are two stages to this framework.

238 In the first stage, the court should identify which sentencing band the offence in question falls under, having regard to offence-specific factors (factors which relate to the manner and mode by which the offence was committed as well as the harm caused to the victim). These factors include, for example, premeditation, abuse of position and breach of trust, and the use of violence in the commission of the offence. (*Terence Ng* at [44]). Once the sentencing band has been identified, the court should determine precisely where within the applicable range the offence at hand falls into, so as to derive an "indicative starting point" which reflects the intrinsic seriousness of the offending act. (*Terence Ng* at [39(a)]).

239 In the second stage, the court should have regard to the aggravating and mitigating factors which relate to the offender's particular personal circumstances, in order to calibrate the appropriate sentence for that offender. In exceptional circumstances, the court is entitled to move outside of the prescribed range for that band if, in its view, the case warrants such a departure (*Terence Ng* at [39(b)]).

240 The relevant sentencing bands applicable at the first step of the *Terence Ng* framework are as follows:

(a) Band 1 (ten to 13 years' imprisonment and six strokes of the cane) applies to cases at the lowest end of the spectrum of seriousness where no offence-specific aggravating factors are present, or are only present to a very limited extent. Cases falling in the middle to upper ranges of Band 1 include those where the offence was only committed with one of the recognised aggravating factors (*Terence Ng* at [50]).

(b) Band 2 (13–17 years' imprisonment and 12 strokes of the cane) applies to cases of a higher level of seriousness, where two or more offence-specific aggravating factors are usually present. A paradigmatic example of a Band 2 case would be the rape of a particularly vulnerable victim coupled with evidence of an abuse of position. At the middle and upper reaches of this Band are offences marked by serious violence and those which take place over an extended period of time and which leave the victims with serious and long-lasting physical or psychological injuries (*Terence Ng* at [53]).

(c) Band 3 (17–20 years' imprisonment and 18 strokes of the cane) applies to extremely serious cases of rape, often featuring victims with particularly high degrees of vulnerability and/or serious levels of violence attended with perversities. In many of these cases, the offences would have been committed as part of a "campaign of rape" (*Terence Ng* at [57]).

Prosecution's position

241 The Prosecution submitted for a sentence of 12 to 15 years' imprisonment and 10 strokes of the cane.[477]

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[477] Prosecution's Sentencing Submissions dated 28 December 2023 ("PSS") at para 5.

242 In so submitting, the Prosecution noted that retribution and deterrence should be the dominant sentencing considerations in the present case, given the gravity of the accused's offence and the harm caused to V.[478] Applying the framework in *Terence Ng*, the Prosecution made the following submissions:

(a) The indicative starting point of the accused's offence would fall at least at the higher end of Band 1 of the *Terence Ng* framework, as there were three offence-specific aggravating factors in the present case.[479]

(b) First, it was significantly aggravating that the abetment by conspiracy to commit rape in this case involved a group offence. The presence of T alongside the accused not only motivated and emboldened the accused's offending, it increased V's sense of helplessness and psychological hurt in the aftermath of the offence.[480]

(c) Second, V was a vulnerable victim who was rendered unconscious and thus incapable of giving any consent to sexual intercourse. Even if she had regained consciousness, being blindfolded would also have affected her ability to identify her rapist, thereby compounding the difficulty of investigation into any offence.[481]

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478 PSS at paras 6-11.

479 PSS at para 14.

480 PSS at paras 15-19.

481 PSS at paras 20-23.

(d) Third, the accused violated the sanctity of V's matrimonial home and bedroom, destroying her personal sense of safety and security, and compounding the harm caused to her.[482]

243 These three offence-specific factors would point towards an indicative starting point of 12 to 13 years' imprisonment and 6 to 12 stokes of the cane within the higher end of Band 1 of the *Terence Ng* framework.[483]

244 As to the relevant offender-specific factors, the Prosecution submitted that the accused's post-offence communications with T demonstrated a lack of remorse.[484] This was further shown through his conduct during trial in making unfounded allegations against the victim (making comments on her purported history of substance abuse, and falsely alleging a second consensual encounter between them) and the police (making serious allegations about their lack of neutrality).[485] On the other hand, there were no applicable offence-specific mitigating factors.[486]

245 The Prosecution contended that the accused's lack of remorse should result in an upward calibration of the indicative starting point to 12 to 15 years' imprisonment and 10 strokes of the cane.[487] It was submitted that the resulting sentence would not be disproportionate compared to past precedent.

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482 PSS at paras 25 and 25.

483 PSS at para 31.

484 PSS at para 27.

485 PSS at para 28.

486 PSS at para 30.

487 PSS at para 32.

246 Finally, the Prosecution contended that the sentence it sought would not offend the principle of parity when compared against the sentence of 11 years' imprisonment and 12 strokes of the cane meted out to T in respect of the specific charge involving the conspiracy with the accused to rape V.[488]

Defence's position

247 The Defence agreed with the Prosecution that the present case should fall within Band 1 of the *Terence Ng* framework,[489] but argued that the appropriate sentence should be eight to nine years' imprisonment and six strokes of the cane.[490]

248 According to the Defence, only one offence-specific aggravating factor was applicable in this case; namely, the element of a group offence. It was argued, however, that this factor should be viewed in the "context" of T having played the dominant role in the commission of the offence.[491] The Defence denied that any other aggravating factors applied. In particular, the Defence disagreed that V should be regarded as a vulnerable victim for the purposes of the accused's sentencing, on the ground that it was T who had drugged V and thereby placed her in a vulnerable position prior to the accused's arrival at T's apartment.

249 Further, according to the Defence, it was important to note that there was no planning or premeditation by the accused: it was T who had planned the offence and drugged V. The Defence argued that the lack of planning and

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488 PSS at paras 37-41.

489 DSS at para 5.

490 Defence's Submissions on Sentence dated 2 January 2024 ("DSS") at para 4.

491 DSS at para 8.

premeditation by the accused should go towards substantially reducing his culpability.[492]

250 The Defence also submitted that since the present offence was a one-off incident involving a single victim, this too demonstrated a lower level of culpability on the accused's part, as compared to T who had been convicted of multiple offences involving multiple victims.[493]

251 *Per* the Defence's submissions, since there was only one offence-specific aggravating factor in this case, the indicative starting point should be 10 years' imprisonment and six strokes of the cane;[494] this should then be calibrated downwards to 8 to 9 years' imprisonment and six strokes of the cane on account of the following offender-specific mitigating factors:

(a) the accused was untraced;[495]

(b) the accused was of good character, as evidenced by his involvement in grassroots volunteer activities and community service since 2009, and his financial contributions to charitable causes;[496]

(c) the accused demonstrated good rehabilitative potential as he had constantly upgraded his skillsets through various professional courses over the years. This showed his willingness to be a productive member of society;[497]

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492 DSS at para 9.

493 DSS at para 10.

494 DSS at para 11.

495 DSS at para 12.

496 DSS at paras 13 and 14.

497 DSS at para 15.

(d) the accused had cooperated with the police in the course of investigations into the present offence: he had willingly shared his password and account information with the police. His cooperation during his statement recordings was even acknowledged by Supt Burhan;[498] and

(e) immense hardship would be caused to the accused's family members if a crushing sentence of imprisonment were to be imposed on him.

Decision on sentence

The principal sentencing considerations

252 By way of general principle, I agreed with the Prosecution that the principal sentencing considerations in the present case should be deterrence and retribution. Our courts have always said that rape is generally regarded as "the most grave of all the sexual offences" (*Chia Kim Heng Frederick v Public Prosecutor* [1992] 1 SLR(R) 63 at [9]), with penile-vaginal penetration in particular warranting the heaviest of punishments (*Public Prosecutor v BMD* [2013] SGHC 235, cited by the Court of Appeal in *Pram Nair v Public Prosecutor* [2017] 2 SLR 1015 ("*Pram Nair*") at [152]). As the Prosecution has noted in its submissions,[499] it is well established that the primary operative sentencing considerations for the offence of rape should be retribution and the protection of the public (*Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 at [35], *Public Prosecutor v BVR* [2022] SGHC 198 at [32]).

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498 DSS at para 16.

499 PSS at para 9.

253 I also agreed with the Prosecution that the specific facts of this case reinforced the importance of retribution. According to the Victim Impact Statement ("VIS") provided by V, she was left "hurt, angry, disappointed and overwhelmed" when she first discovered the offences against her. Such was the trauma she experienced that she "thought that [she] would be better off dead".[500] It would be difficult if not impossible to comprehend fully the shock and anguish which V felt on learning that she had been sedated and then raped in her matrimonial bed while unconscious, in an act *abetted by her own husband*.

The applicable offence-specific factors

254 I next address the application of the first stage of the *Terence Ng* framework.

Group rape

255 The Prosecution contended that it was a significant aggravating factor that the accused's conspiracy with T to commit rape was essentially a group offence.[501] The Defence conceded that this factor was "possibly aggravating" in the present case.[502]

256 In *Terence Ng*, the gravamen of the offence-specific factor of group rape was explained at [44(a)] as follows:

> It has long been held that offences which are committed by groups of persons, even if not the product of syndicated or planned action, are more serious (see PP v *Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [25(b)]). The reason for this is that the alarm suffered by the victim is invariably enhanced and also because group offences pose a greater threat to social

500 PSS at p 29.

501 PSS at para 15.

502 DSS at para 8.

> order. This applies with particular force to the offence of rape. When the offence is committed by multiple persons acting in concert, the trauma and sense of helplessness visited upon the victim as well as the degree of public disquiet generated increases exponentially.

257 In the context of group offences involving violence, Chao Hick Tin JA held in *Public Prosecutor v Ong Chee Heng* [2017] 5 SLR 876 at [34] and [36] that a sentencing court ought to have careful regard to the facts and circumstances of a given case in determining whether there was in existence a group element, and separately, whether that element was an aggravating factor. The mere fact that there was a group element does not necessarily mean that the commission of the offence was thereby aggravated. Consideration should be given, for instance, to whether the presence of more than one offender resulted in (a) a higher degree or a greater likelihood of fear to the victim; (b) had the effect of encouraging, facilitating or perpetuating the continued commission or escalation of the offence; and/or (c) resulted in a higher degree of actual and potential harm to the victim.

258 I found that there was a group element in the present offence and that it amounted to an offence-specific aggravating factor.

259 First, the presence of two people is not a barrier to the present case falling within the description of a "group rape", although this would affect the weight placed on such a factor. In *Arumugam Selvaraj v Public Prosecutor* [2019] 5 SLR 881, Aedit Abdullah J noted (at [14]) that a group assault by two persons would be "on the very edges" of the meaning of the term "group assault", compared to an assault by four or five. On the facts, I was satisfied that the present case fell within the description of "group rape": the presence of T did have the effect of encouraging and facilitating the rape, and resulted in a higher degree of psychological harm to the victim.

260 Second, for the group element in the offence to amount to an offence-specific aggravating factor, it is not necessary that all the participants in the group must have physically participated in raping the victim. In this case, therefore, it was irrelevant that T did not take part in the physical rape. In the context of violence-related group offences, V K Rajah JA held in *Public Prosecutor v Leong Soon Kheong* [2009] 4 SLR(R) 63 (at [36]) that "the law often does not benignly appraise the conduct of a 'passive' participant in a group assault". The presence of accomplices giving encouragement, support, and protection to the persons actually committing the act can mean that those not involved in executing physical attacks may nevertheless carry the same level of culpability as attackers, if they participate in the common objectives of the group and/or encourage the attainment of the same. Rajah JA qualified the above by emphasising that the mere presence of a group member may not invariably be sufficient participation to affix culpability, especially where no prior planning or discussion has taken place as to the group's objectives. This proviso did not apply to the present case: as I explained earlier (at [118]–[133]), both the accused and T clearly understood that when T messaged the accused to say that V was drugged and to invite the accused to come over, T was referring to V being drugged for the purposes of the accused engaging in sexual acts with her. There was thus an agreement between T and the accused to carry out this common objective.

261 Having found that there was a group element in the present case, I was of the view that this group element ought to be an aggravating factor for several reasons.

262 First, the presence of *both* the accused and T played a part in facilitating the offence. Having been informed that V was "out" from being drugged, the accused responded to T's invitation to come over to the apartment and

proceeded to carry out the physical rape of the unconscious V. Meanwhile, T both encouraged and facilitated the offence. He did so by administering the sedative drug to V, by inviting the accused to come over, by giving him access to the master bedroom, and by being physically present in the bedroom to watch the accused rape V. The last factor was particularly significant given my finding (at [117]) that the accused had a specific interest in having sex with V in her husband's presence – a fact that T would have been aware of as a result of his chats with the accused (see [91] above).

263 In light of the above reasons, I agreed with the Prosecution that T and the accused would have emboldened and encouraged each other through their acting to achieve the common objective of having the accused engage in sex with an unconscious V.[503] The element of a group offence poses a greater threat to social order (*Terence Ng* at [44(a)]) by making such offences more likely. The post-offence communications between the two men – which included their sharing the compromising image of V drugged, naked and blindfolded, as well as brazen suggestions of further "operations" against her – demonstrated to chilling effect the full extent to which they were emboldened by the group element in their offence (see *eg* [141]–[146] above).

264 Second, there was evidence in this case that the presence of a group element increased the psychological trauma suffered by the victim after her discovery of the offences committed against her. As V stated in her VIS, upon realising that there was more than one accused person involved in the offences against her, she "realise[d] how bad this case was", kept thinking about how

503 PSS at para 18.

cruel T had been to her, and could not help but numb herself to what had happened.[504]

265 Third, the Defence's argument that it was T who played the dominant role in the commission of the offence – and that the aggravating factor of group rape should consequently apply with less force in the accused's sentencing – was misconceived and entirely without merit.[505] Even if T could be said to have played a significant role in the commission of the offence through his encouragement and facilitation, it should not be forgotten that the accused was the one who committed the physical act of rape. As VK Rajah J (as he then was) held in *Tan Kay Beng v Public Prosecutor* 2006) 4 SLR(R) 10 ("*Tan Kay Beng*" at [20], citing *Caird* (1970) 54 Cr App R 499, a case involving violent demonstrations, at 507), while it is not the case that every offence committed in a group should be punished more severely than if the offence were committed by the offender alone, "when an individual actively engages in group violence, a proportionate sentence for each participant should include consideration of the net effect of that group violence". Rajah J also held (at [21]) that –

> To cross this threshold, it is necessary to show that the offender played an active part in the violence either by deed or by encouragement (*Caird* at 507). It is also sufficient to prove that rioters who may have refrained from joining in the physical assault of a victim or damage or property nonetheless shared in the common object of the unlawful assembly: *Pannirselvam s/o Anthonisamy* ([19] supra) at [72], endorsing *Rajasekaran s/o Armuthelingam* v PP [2001] SGDC 175. However, it must be remembered that even where the principle in *Caird* applies, it "does not inexorably imply that the role of the accused, relative to other offenders, can never be taken into account": *Phua Song Hua* ([19] supra) at [40].

504 PSS at para 16.

505 DSS at para 8.

266 It should be noted that while *Caird* was a case involving violent demonstrations, Rajah J clearly did not consider the above principle to be applicable only to such offences. In *Tan Kay Beng*, he considered the applicability of the *Caird* principle in the context of a case involving criminal intimidation committed by a group of three men at a coffee-shop before ultimately deciding against its application on the basis that the incident in question "conjure[d] the image of hot-blooded individuals acting impulsively": no-one in the appellant Tan's party had come armed with a weapon, and there was no evidence suggesting prior deliberation in the commission of the offences.

267 In contrast, in the present case, I found that when the accused went over to T's apartment on the night of the offence, it was with the understanding that V had been drugged and that he (the accused) was being invited by T to come over for the purpose of having sex with her in that state. I have also found that the accused brought a condom along to the apartment precisely because he was expecting to have sex with V in her drugged state; and that once he arrived at the apartment, he did in fact proceed to commit the physical act of rape. In the circumstances, therefore, the accused was very far from being some hapless or naïve bystander who was incidentally caught up in T's machinations.

Premeditation and planning

268 Next, I noted that in this case, the Prosecution accepted that premeditation and/or planning was not an applicable aggravating factor in sentencing.[506] On the facts before me, I accepted that this was the correct position. As I have explained earlier (at [89]–[107]), I found that the accused

506 PSS at para 19.

did talk to T about wife sharing prior to the night of the rape, and would have understood this term to mean a man carrying out sexual acts with another man's wife. The accused also talked to T about the use of sleeping pills in connection with wife sharing (see [96]). However, the evidence stopped short of establishing that these prior discussions of wife sharing related to the two of them planning to rape V specifically. Nor was there sufficient evidence for me to conclude that the accused was involved in *initiating* or *coordinating* T's drugging of V. There was, in short, insufficient evidence of the "significant degree of planning and orchestration" needed to establish the offence-specific aggravating factor of premeditation (*Pram Nair* at [134]).

Vulnerable victim

269 In terms of offence-specific aggravating factors, I also took into account the fact that V was a vulnerable victim.

270 As the CA made clear in *Terence Ng* at [44(e)], the rape of a vulnerable victim is recognised as an offence-specific aggravating factor because concerns of general deterrence weigh heavily in favour of the imposition of a more severe sentence to deter would-be offenders from preying on such victims (citing *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [24(b)]). In this case, the Prosecution pointed out that V was vulnerable by virtue of having been rendered unconscious and blindfolded, and both the accused and T would have been well aware of her vulnerability.[507] The Defence, on the other hand, sought to argue that V's drugged state should not be considered an aggravating factor

[507] PSS at paras 21-23.

vis-à-vis the accused because it was T who had drugged V prior to the accused's arrival.[508]

271 I did not find any merit in the Defence's argument. Although it was T who had drugged V prior to the accused's arrival, the accused himself was fully aware of her drugged state when he accepted T's invitation to go over to the apartment. Even on the accused's own account in court, T had texted him to say that V was drugged and that he should come over (see [71] above). In any event, the fact that it was T and not the accused who drugged V was irrelevant for the purposes of the accused's sentencing. The essence of the aggravating factor of a victim's vulnerability is not that an offender has *created* or *caused* a victim's vulnerability; it lies in the *exploitation* of that vulnerability (see for example *Public Prosecutor v BSR* [2020] 4 SLR 335 at [16]; *Public Prosecutor v Ong Soon Heng* [2018] SGHC 58 ("*Ong Soon Heng*") at [132]; *Pram Nair* at [132]). An offender who rapes a mentally impaired victim, knowing her mental impairment precludes her capacity to consent to sexual activity, will be held to have exploited the vulnerability of the victim, even though he has obviously had nothing to do with creating or causing her mental impairment. In the present case, given that the accused was aware of V's drugged state even before his arrival at the apartment, his act of raping her when she was in such a state constituted exploitation of her vulnerability for his personal gratification.

Violation of the sanctity of the victim's home

272 Next, I agreed with the Prosecution that the accused's breach of the sanctity of V's matrimonial home and bedroom should be a separate aggravating

508 DSS at para 8.

factor in this case.[509] The fact that the accused carried out the rape in V's home – indeed, in her marital bed – would have significantly compounded the psychological harm suffered by V by destroying her personal sense of safety and security (see for example *Public Prosecutor v NF* [2006] 4 SLR(R) 849 ("*NF*") at [55], citing *R v William Christopher Millberry* [2003] 2 Cr App R (S) 31 at [32]). The violation of a safe sanctuary that a victim calls home attracts considerations of both retribution and deterrence (see *Public Prosecutor v CEP* [2022] SGHC 15 ("*CEP*") (at [8], also *Public Prosecutor v CEJ* [2023] SGHC 169 ("*CEJ*") at [30]).

273 In this connection, it was irrelevant that T was the one who had given the accused access to the apartment.[510] Indeed, as Aedit Abdullah J noted in *CEP* (at [8]), the fact that a victim's husband abets a rapist's entry into a victim's matrimonial home is not just neutral, it is a substantially aggravating factor that increases the sense of exploitation and betrayal that would have been felt by the victim.

The offence was a one-off incident

274 In submitting on the application of the first stage of the *Terence Ng* framework, the Defence argued that the accused's offence was a one-off incident involving a single victim, and that this indicated a much lower level of culpability as compared to T's offence.[511] This argument did not assist the accused. The identification of the appropriate sentencing band at the first stage of the *Terence Ng* framework requires that the court consider relevant offence-specific *aggravating* factors. The fact that the accused faced only one charge

509 PSS at paras 24 and 25.

510 PSS at para 25.

511 DSS at para 10.

simply meant the absence of the aggravating factor of persistent offending and was not otherwise relevant to the calibration of the indicative starting point at the first stage of the *Terence Ng* framework.

The relevant band and indicative starting point

275 Given the presence of the three aggravating factors examined in [255]–[267] and [269]–[273] above, I did not agree with the Prosecution and the Defence that the present case should fall under Band 1 of the *Terence Ng* framework. As I noted earlier, Band 1 of the *Terence Ng* sentencing framework applies to cases at the lowest end of the spectrum of seriousness, where no offence-specific aggravating factors are present or are only present to a very limited extent. This was not a description that could be applied to the present case.

276 In determining the indicative starting point, I considered that V's vulnerability and the violation of the sanctity of V's home constituted significant aggravating factors. As for the third factor of group rape, the fact that only two persons were present meant that the severity of this particular offence-specific aggravating factors fell between the severity of an offence committed by a single offender and that of an offence committed by a large group. In my view, an indicative starting sentence of 13 years' imprisonment and 12 strokes of the cane was appropriate.

The applicable offender-specific factors

277 I next address the second stage of the *Terence Ng* framework in which the offender-specific factors were considered.

Lack of remorse

278 The Prosecution relied on the accused's post-offence conduct and his conduct at trial to argue that he demonstrated such a lack of remorse that it warranted consideration as an offender-specific aggravating factor. In respect of post-offence conduct, the Prosecution pointed to the accused's communications with T, where the two men had discussed plans to drug and rape V (at least in the period 22 March 2014 to 30 March 2014). This showed that far from being remorseful about having raped V on 14 March 2011, the accused was in fact emboldened to discuss with T plans for raping V again.[512] As for the accused's conduct at trial, the Prosecution pointed to the unfounded allegations he had made against both V and the police officers involved in his VRI interview as further evidence of his lack of remorse.[513]

279 It is well-established by caselaw that an accused's lack of remorse can constitute an aggravating factor if the court is satisfied that he or she is unremorseful. While such lack of remorse can be inferred either from an accused's conduct at trial (see *eg Zeng Guoyuan v Public Prosecutor* [1997] 2 SLR(R) 556 ("*Zeng Guoyuan*")) or from an accused's conduct post-offence (*Public Prosecutor v Tan Chee Beng and another appeal* [2023] SGHC 93 at [155]), it is an inference that a court should be slow to draw (*Thong Sing Hock v Public Prosecutor* [2009] 3 SLR(R) 47 at [61]).

280 In this case, I found that the accused's overall behaviour warranted the inference that he lacked any genuine remorse. In drawing this inference, I relied

512 PSS at para 27.

513 PSS at para 28.

on the accused's post-offence conduct, rather than the conduct of his defence at trial.

281 I have detailed some of the accused's post-offence communications with T above at [138]–[158]. From the evidence available, the accused continued to engage in discussions with T about drugging and raping V, at least between 2014 and 2016. He also sought sexual gratification by using photographs and videos which showed V being sexually violated while she was unconscious. This behaviour revealed an appalling desensitisation on the accused's part to the grave degradation that V was subjected to. I agreed with the Prosecution, therefore, that the tone and the content of these conversations showed a total lack of remorse for raping V. In my view, any regret currently expressed by the accused[514] stems more from having been caught and having to face the legal consequences, rather than from genuine remorse for what he did.

282 As for the aspersions said to have been cast by the accused on V,[515] the Prosecution focused on two main allegations. First, the accused was said to have tried to besmirch V's character at trial by claiming that V had told him about having previously been incarcerated for drug offences[516]. The Prosecution contended that in mentioning V's purported incarceration, the accused was trying to imply that she must have consumed illicit drugs and gotten high on the night of 14 March 2011, when in reality she had been sedated with sleeping pills – and the accused knew this.

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514 DSS at para 16.

515 PSS at para 28(a).

516 NEs 25 August 2023 Page 50 Lines 30-32.

283 While the above allegation did appear to be an afterthought and a fabrication, I noted that it was not subsequently repeated by the accused in the remaining tranches of his testimony. The Defence did not pursue this point in its closing submissions, nor did it subject V to cross-examination on this point. As such, although the accused's behaviour in coming up with this story about V's drug-related antecedents demonstrated yet again a facility for invention, I did not think it amounted to conducting his defence in an "extravagant and unnecessary manner" (*Terence Ng* at [64(c)]).

284 Second, the Prosecution argued that the accused's story of a second consensual sexual encounter with V should be viewed as an attempt to attack V's credibility at the expense of her reputation. Again, I did not find that this portion of the accused's testimony amounted to conducting his defence in an "extravagant and unnecessary" manner (*Terence Ng* at [64(c)]). There was nothing to preclude the accused from seeking to introduce evidence which (according to him) negated any motive he had for raping V. It is true that I found the Defence's pre-occupation with the narrative of a second consensual sexual encounter to be based on a misapprehension of the Prosecution's case, and that I found the accused's account factually implausible in any event. However, this did not mean that the accused should be penalised at the sentencing stage for advancing such a narrative. In advancing his defence, the accused was entitled to raise evidence in favour of his claim that he had an ongoing consensual sexual relationship with V at the time of the offence; that I have rejected the factual plausibility of this version of events does not mean that the accused should be penalised for raising this. It should be noted, moreover, that when V was cross-

examined about the alleged second consensual sexual encounter and she denied it, counsel did not try to pursue the allegation further.[517]

285 For the reasons stated above at [114], therefore, while I rejected the allegations made by the accused against V, I did not find that these allegations *per se* warranted my drawing an inference of lack of remorse on the accused's part.

286 Insofar as the accused's evidence about the police officers was concerned, caselaw has established that an accused's conduct in casting unjustified aspersions on the conduct of the police may be held to demonstrate a lack of remorse (*Public Prosecutor v Amir Hamzah Bin Mohammad* [2012] SGHC 165 at [19]). It was only at a very late stage of the trial that the accused came up with the allegations about the police not having been neutral during the recording of his VRI statement. This led to two senior police officers (Supt Burhan and Insp Ang) having to be recalled for cross-examination; and I eventually rejected the allegations against these two officers (at [213] above). I agreed with the Prosecution that the allegations of a lack of neutrality were serious, that they were untrue, and that they warranted my inferring a lack of remorse on the accused's part.

The accused's lack of antecedents

287 I next address the offender-specific mitigating factors brought up by the Defence. In respect of the accused's lack of antecedents, contrary to the Defence's submissions,[518] this was a neutral factor and not a mitigating one

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517 NEs 22 August 2023 Page 81 Lines 7-27.

518 DSS at para 12.

(*Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580 at [65]).

The lack of premeditation and planning by the accused

288 The Defence also submitted that the absence of any significant premeditation and planning by the accused went towards significantly reducing his culpability. However, this too was erroneous, since the absence of premeditation and planning would simply constitute a neutral factor. I would also reiterate that this was not a case where the accused was some guileless babe in the woods who got swept along in the wake of T's criminal behaviour. On the evidence before me, I found the accused's behaviour in going to T's apartment after learning that V had been drugged – and in raping her while she was in a drugged state – to be predatory and callous.

The accused's character and rehabilitative potential

289 As for the accused's involvement in volunteer activities and community services,[519] caselaw has established that charitable works by an accused cannot be regarded as mitigating on some form of social accounting that balances the past good works of the offender with his/her offences (*per* Sundaresh Menon CJ in *Public Prosecutor v Lim Cheng Ji Alvin* [2017] 5 SLR 671 at [23]). The only basis on which limited weight may be given to such works is if they are sufficient to demonstrate that the offence in question is a one-off aberration, which might then displace the need for specific deterrence. Even then, the modest mitigatory weight attached to evidence of good character and/or public service can be displaced where other sentencing objectives assume greater

519 DSS at pp 6-36.

importance (*Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 ("*Stansilas*") at [102(c)]). In this case, the charitable and volunteer works by the accused were insufficient to satisfy me that the present offence was a one-off aberration. In any event, as I have earlier noted (at [252]), the primary sentencing considerations for offences of rape should be deterrence and retribution; and these assume a far greater importance than the modest weight to be attributed to the accused's charitable and volunteer works.

290 The above observations would apply equally to the accused's submission that his efforts at upgrading his professional skills demonstrated his rehabilitative potential.

The accused's cooperation with the police

291 As for the accused's assertion that he had cooperated with the police during the statement-recording process, this assertion was considerably undermined by his conduct at trial in introducing – at the eleventh hour – allegations of lack of neutrality against the police; allegations which, moreover, I found to be completely untrue.

292 Nevertheless, insofar as the accused did share his password and account information with the police, I accepted that this act of cooperation carried substantial mitigating value, as it would have enabled the police to save on the time and resources needed for investigations.

Hardship to the accused's family

293 Finally, the Defence submitted that the health of the accused's wife had been affected by the stress related to his arrest and trial; his son had developed

tics due to anxiety; and his parents, who were aged and had health problems, also needed him to care for them.[520]

294 In this regard, our courts have long made clear that mitigating weight will only be accorded to an accused's personal circumstances if they are genuinely "exceptional or extreme" (*Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [10] and [12]); further, that little weight can be attached to the fact that an accused's family will suffer if he is imprisoned for a substantial period of time (*NF* at [60]). In the present case, I did not find the personal circumstances cited by the Defence to be so "exceptional or extreme" that mitigating weight should be accorded to them.

Adjustment to the indicative starting point

295 Taking into consideration the aggravating and mitigating factors present, I did not find it necessary to calibrate the indicative starting point of 13 years' imprisonment and 12 strokes of the cane.

Application of the principle of parity

296 As for the issue of parity, I noted that when T pleaded guilty, he was sentenced to 11 years' imprisonment and 12 strokes of the cane (*CEJ* at [49]) for his involvement in the present offence. His appeal against this sentence was subsequently dismissed by the Court of Appeal. At the same time, it must be remembered that this was one charge out of a total of six proceeded charges which T faced during sentencing, and that his total sentence was 29 years' imprisonment and 66 strokes of the cane (with the number of strokes of the cane capped at 24 based on the maximum statutory limit).

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520 DSS at paras 18 and 19.

297 Having claimed trial to the Charge, the accused would not be entitled to the sentencing discount usually awarded to a plea of guilt. On balance, I was satisfied that the sentence of 13 years' imprisonment and 12 strokes of the cane was not disproportionate when compared with T's sentence.

Comparison with precedents

298 For completeness, I was also satisfied that the sentence was consistent with past precedent. In this connection, the Prosecution highlighted two cases: *BUT v Public Prosecutor* [2019] SGHC 37 ("*BUT*") and *Srihari s/o Mahendran v Public Prosecutor* (CA/CCA 28/2020). The latter case, being unreported, was of limited precedent value: the absence of detailed reasons for the sentence imposed in that case made it difficult to draw any useful comparison to the present case (*Abdul Mutalib bin Aziman v Public Prosecutor and other appeals* [2021] 4 SLR 1220 at [99]; *Toh Suat Leng Jennifer v Public Prosecutor* [2022] 5 SLR 1075 at [51]).

299 As for *BUT*, this was a case in which the accused pleaded guilty to two charges of abetment of rape and one charge of sexual assault by penetration, all of which involved his then girlfriend. The victim had consented to being physically bound and blindfolded during sexual activity with the accused at a hotel, after his suggestion that they try new things to "spice up" their relationship. Despite the victim rejecting the accused's request for a "threesome", the accused arranged for a third party, SM, to join in his sexual activity with the victim without her knowledge. The two men then alternated sexually penetrating the victim with both penile and digital penetration, taking care to maintain the illusion that the victim was only having sex with the accused. This took place on two separate occasions, both of which were recorded by the accused. In addition to these three charges, the accused faced

54 other charges which were taken into consideration. He received an aggregate sentence of 19 years and 11 months' imprisonment following appeal. The individual sentence for each charge of abetment of rape faced by the accused in *BUT* was 12 years' imprisonment and 10 strokes of the cane.

300 I agreed with the Prosecution that there were differences between the present case and *BUT* which justified a higher sentence in the present case.[521] Although both cases involved an agreement between two people to carry out the rape of a blindfolded victim, the victim in *BUT* was not drugged. The element of violation of the sanctity of the victim's home was also not present in *BUT*. The number of charges faced by the accused in *BUT* and the aggregate sentence meted out to him should also be kept in mind. Further, in contrast with the present case, the accused in *BUT* pleaded guilty and was consequently entitled to the sentencing discount awarded to a plea of guilt. These differences justified the dissimilarity between the accused's sentence and the sentence imposed for the charges of abetment of rape in *BUT*.

521 PSS at paras 34 and 35.

Conclusion

301 To sum up: I found at the end of the trial that the Prosecution was able to prove beyond a reasonable doubt the Charge of conspiracy to rape. I rejected the accused's account of events; and upon convicting him of the Charge, I sentenced him to 13 years' imprisonment and 12 strokes of the cane.

Mavis Chionh Sze Chyi
Judge of the High Court

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