Public Prosecutor v DU
[2004] SGHC 238

Case Number : CC 14/2004

Decision Date : 25 October 2004

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Eugene Lee Yee Leng and Chong Li Min (Deputy Public Prosecutors) for prosecution; S K Kumar (S K Kumar and Associates) for accused

Parties : Public Prosecutor — DU

Criminal Procedure and Sentencing – Alibi – Whether defence of alibi established

Criminal Procedure and Sentencing – Charge – Framing of charge – Whether particulars in charge reasonably sufficient – Section 159(1) Criminal Procedure Code (Cap 68, 1985 Rev Ed).

Evidence – Admissibility of evidence – Whether statement made to the police was voluntary – Section 122(5) Criminal Procedure Code (Cap 68, 1985 Rev Ed).

Evidence – Sexual offences – Child victim – Whether delay in making complaint affected credibility of complainant

25 October 2004

Woo Bih Li J:

Introduction

1 The accused person ("the Accused") was charged with the following offences:

That you, [name of the Accused]

1ST CHARGE

sometime between 1998 and 1999, at Block 370 Tampines Street 34 #xx, Singapore, did voluntarily have carnal intercourse against the order of nature with [the alleged Victim's name was stated and I will refer to her as "V"], female/12 years old, to wit, by forcing the said [V] to perform an act of fellatio on you, and you have thereby committed an offence punishable under section 377 of the Penal Code, Chapter 224.

2nd CHARGE

sometime between 1998 and 1999, at Block 370 Tampines Street 34 #xx, Singapore, did use criminal force on one [V], female/12 years old, intending to outrage her modesty, to wit, by inserting an object into her vagina, and in order to facilitate the commission of the said offence, you voluntarily caused wrongful restraint to the said [V], and you have thereby committed an offence punishable under section 354A(2)(b) of the Penal Code, Chapter 224.

Objection under section 159(1) Criminal Procedure Code

2 The Defence objected to the charges on the ground that it was vague in the light of s 159(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") which states:

> The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom or the thing, if any, in respect of which it was committed as are *reasonably sufficient* to give the accused notice of the matter with which he is charged. [emphasis added]

3 The Defence pointed out that under s 159(2) CPC it is where the charge involves criminal breach of trust or dishonest misappropriation of money that the charge may state the dates between which the offence is alleged to have been committed and this too is subject to a proviso that the time included between the first and last of such dates shall not exceed one year.

4 The Defence also relied on some cases but I need mention three only, *ie*, *R v Mohamed Ali* [1933] MLJ 74 ("*Mohamed Ali*"), *PP v Yap Kok Meng* [1974] 1 MLJ 108 ("*Yap Kok Meng*") and *Lim Chuan Huat v PP* [2002] 1 SLR 105 ("*Lim Chuan Huat*"). The Defence submitted that the charges severely compromised the Accused who might otherwise be able to raise an alibi defence.

5 The Prosecution submitted that I should also take into account s 160 CPC, besides s 159. Section 160 states:

> When the nature of the case is such that the particulars mentioned in sections 158 and 159 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

6 The Prosecution submitted that it could only provide particulars as to the date of an offence in a charge if the victim were able to provide them. Here, V was not able to provide the date of the offence with any specificity. It submitted that s 160 recognises that there may be cases where such particulars will not be stated in the charge. The Prosecution also submitted that this was not the first time that a court had dealt with such charges. I list below some of the cases the Prosecution relied on:

Case No	Judge/Court	Offence	Date in the Charge
CC 14/1999	Tay Yong Kwang JC	s 377 PC (carnal intercourse)	1997 (Ninth charge)
Cr App 8/1999	Court of Criminal Appeal	s 376(1) PC (rape)	Sometime in 1997 (Second charge)
CC 29/2002	Tay Yong Kwang JC	s 352 PC (assault or criminal force)	Sometime between 1999 or 2000

CC 53/2002	MPH Rubin J	s 354 PC (assault or criminal force with intent to outrage modesty)	Sometime in 1996 (Fifth Charge

7 In some of the cases listed above, the accused persons pleaded guilty whilst in others, trial was claimed. In any event, the point about vagueness of the charge was apparently not argued.

8 In my view, s 160 did not assist. From the illustrations given under the section, this section relates to cases where even with the particulars mentioned in s 159 (and s 158), the nature of the case is such that there is insufficient notice to the accused person of the matter with which he is charged. For example, illus (b) states:

> A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

9 As for the case of *Lim Chuan Huat*, that pertains to a different point. In that case, each of two accused persons was charged with committing various offences within a period of about three months. I need refer only to the charge against Lim Chuan Huat to facilitate a better understanding of the judgment in that case. The charge read:

> That you, Lim Chuan Huat, M/42 years, are charged that you on various occasions between the 5th day of March 1999 to the 11th day of June 1999, at Blk 295 Choa Chu Kang Avenue 2 #12-159, Singapore, did voluntarily cause hurt to one Suprapti, F/27 years, to wit, by hitting her back, shoulders and hands with your hands and a rattan cane, and you have thereby committed an offence punishable under section 323 of the Penal Code, Chapter 224, read with section 73(2) of the Penal Code Chapter 224.

10 It was in that context that Chief Justice Yong Pung How said that the charges were drafted in breach of s 159(1) CPC. At [20], he said:

> In relation to the charges, I found the phrase 'various occasions' ambiguous. It shed no light at all on the exact number of occasions each appellant had allegedly caused hurt to the victim. The manner in which the charge was drafted also left the reader in doubt as to how each appellant had allegedly caused hurt to the victim. It was also unclear whether the nature of hurt inflicted by the appellants differed between each of these 'various occasions' or whether it was always the exact combination of acts as stipulated in the appellants' charges. Taking Lim as an example, did he always cause hurt to the victim by hitting her on her back, shoulders and hands with his hands and a cane, or were there instances where he had only used a cane to hit the victim on her palms?

11 However, Yong CJ noted s 162 CPC and found that the appellant accused persons were not misled by the errors in their respective charges and therefore Yong CJ did not consider the errors to be material.

12 Accordingly, the point in that case was not whether the period between 5 March 1999 to 11 June 1999 (in the context of the charge against Lim Chuan Huat) was vague.

13 It is perhaps because of that case that in the present case the charge under s 377 Penal Code reflected only one offence and not various offences, even though the evidence which the Prosecution adduced suggested that the offences, if indeed committed by the Accused, had been committed perhaps five times. The Prosecution also confirmed in the trial that the charge under s 377 Penal Code (Cap 224, 1985 Rev Ed) related to the first of such offences.

14 As I have mentioned, the Accused also faced a second charge. The Prosecution confirmed that the second charge was in respect of the same occasion as the first charge.

15 Coming back to the point about vagueness arising from the period of two years, I refer to the case of *Mohamed Ali* where Terrell J said at 75:

> The accused is the licensee of the Madras Cafe and was charged under Section 33(c) of Ordinance No 96 (Minor Offences) with having knowingly permitted prostitutes to meet and remain at the Cafe between 29th April and 7th June, 1931.
>
> I should mention to begin with that I consider that the dates on which the alleged offence was committed are far too vague and that one or two specific dates should have been mentioned so as to enable the accused person to know the charge which he was called upon to meet.

16 In *Yap Kok Meng*, Hashim Yeop A Sani J said at 109:

> It is fundamental in the system of justice as we know it that a person accused of a criminal offence must be informed clearly of the charge made against him. The first charge in the instant case commences with the words "That you between 27 September 1972 at about 6.30 pm and 8.05 am 22 December 1972 at Batu 14 Kuala Lumpur-Ipoh Road, Rawang …". These words are unclear and can be construed in various ways and to that extent the charge was badly drafted. The Criminal Procedure Code states in clear terms in section 153(i) that the charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged. Any charge which is not in conformity with this is bad. The fact that counsel for the accused had not drawn the attention of the learned President in the first instance will not alter the position. It is a fundamental rule that an allegation must be stated with sufficient precision to enable the accused to meet the allegation. I would also like to repeat the words of Adams J in *Mee Lian Co v Public Prosecutor* that it is also the duty of the court to see that a charge is properly drawn at the time it is read and explained to the defendant.

17 In Tan Yock Lin, *Criminal Procedure* (LexisNexis, 2004) vol 2, ch XIV, these two cases are mentioned with the following comments, at [654]:

> These cases do not generalize to a proposition that any indication of a period of time within which the offence is alleged to have been committed results in a vague charge. In the first case [meaning *Yap Kok Meng*], if the charge was true, there would have been possession at various times within the period indicated. Some instances of possession might have been lawful and the accused was entitled to know with which instance he was being charged. In the second case [meaning *Mohamed Ali*], the charge as formulated was consistent with there having been various meetings at the place of the offence and the accused was entitled to know which specific event formed the basis of the charge.

18 Note 3 of [654] then states:

> *Cf* a charge that specifies that *an* offence of carnal intercourse against the order of nature was committed between January and March 1993, which was held in *PP v Dato' Seri Anwar bin Ibrahim* [2001] 3 MLJ 193 at 249 to be not vague. It was clear that only one act of carnal intercourse was being alleged. See also *Ku Lip See v PP* [1982] 1 MLJ 194 but the Federal Court appeared to have held that a charge alleging the commission of rape between May 1978 at or about 7 pm and June 1978 at or about 7 pm contained specific particulars that the offence was committed on *both* occasions at about 7 pm: at 195. There is an argument that a charge which does not specifically particularise the date of commission of the offence is not vague because such date is not material unless an essential part of alleged offence. But with respect, the requirements of s 160 … must not be overlooked. …

19 In *Ratanlal & Dhirajlal's The Code of Criminal Procedure* (16th Ed, 2002), the following comments are made with respect to s 212(1) of the Indian Code which is *in pari materia* with s 159(1) CPC:

> 1. Scope —An accused person is entitled to know with certainty and accuracy the exact nature of the charge brought against him. Unless he has [this] knowledge he would be seriously prejudiced in his defence. However, where it is not possible for the prosecution to mention particulars precisely having regard to the nature of the information available to the prosecution, failure to mention such particulars may not invalidate the charge.

The case of *Ranchhod Lal* AIR 1965 SC 1248 is cited in footnote 32 as the authority for the last proposition but the actual authority for that proposition should be the case cited in n 31, *ie Chittaranjan Das* AIR 1963 SC 1696.

20 I noted that s 159(1) CPC requires that such particulars as are "reasonably sufficient" to give an accused person notice of the matter with which he is charged are to be stated.

21 While it would be ideal if the time and date of an offence were stated in the charge, there may be occasions where a victim, especially a young victim, cannot remember the time and date of the offence. This will be all the more so if the victim does not mention the incident, whether out of fear or ignorance or some other reason, until much later.

22 Although it could be argued that an accused person would be prejudiced if the time and date of the offence were not stated because he might otherwise be able to raise an alibi defence, this argument would still apply even if the charge were to state that the offence was committed, say, in a particular month of a particular year. Such an argument, if valid, would mean that very few cases of sexual abuse against young victims would ever proceed to trial since young victims may not report sexual abuse immediately and their concept of time may be less reliable. Furthermore, the Defence did not suggest that a charge for an offence of sexual abuse said to be committed in a particular month of a particular year would be vague and prejudicial to an accused person.

23 In my view, the two charges framed did contain such particulars as to the time and place as was reasonably sufficient to give the Accused notice of the matter with which he was charged. As V was not able to give a more precise date or period of the offences, this would mean that her evidence had to be more carefully considered but that was another matter.

Trial within a trial (*voir dire*)

24 It was the Prosecution's case that the Accused had given three statements to the police:

(a) a statement on 5 September 2003 between about 12.00pm to about 1.00pm,

(b) a statement on 5 September 2003 between about 2.35pm to 3.45pm, and

(c) a cautioned statement on 5 September 2003 between 4.00pm to 5.00pm.

The Accused's position was that the cautioned statement was recorded even before the statement mentioned in (a) above was recorded.

25 It was quite clear to me from the evidence, which I shall elaborate on later below, that the cautioned statement was recorded between 4.00pm to 5.00pm of 5 September 2003. I will therefore refer to the statements at (a) and (b) above as the "first" and "second" statements respectively, and the third statement at (c) above as "the cautioned statement".

26 In the first statement, the Accused had admitted and described how he had caused V to perform fellatio on him although the time frame of the incident was said to be in the middle of 1997.

27 In the second statement, he mentioned that he caused her to perform fellatio in the living room of his flat at Block 370 Tampines Street 34 #02-07 ("the Tampines flat"). He said he had only asked her to suck his penis when he was asked whether he had indulged in other sexual acts with V.

28 The following charge was then read to the Accused by the investigating officer, Assistant Superintendent of Police Laurence Rajoo ("the IO") with the aid of an interpreter:

> You,
>
> [name of the Accused], male 36 years old
>
> D.O.B: 01/12/1966
>
> Nric No. S1775961B
>
> are charged that you, sometime between the year 1998 and 1999, at Blk 370 Tampines Street 34 #02-07, Singapore, had carnal intercourse against the order of nature with one [V], female 12 years old, D.O.B: 18 May 1991, to wit, by forcing the said [V] to perform an act of fellatio, and you have thereby committed an offence punishable under Section 377 of the Penal Code, Chapter 224.

29 In the cautioned statement, the Accused said:

> The charge is true. But I want the sentence to be lenient because I am the sole bread winner. My wife is pregnant and I have 2 other children. My wife is not working. I will change to be a better person and will not do the same offence again. My army reservist is coming on 16/9/03 to 30/9/03. I wish to complete it.

30 The Defence challenged the admissibility of these three statements under s 122(5) CPC on the allegation that they had been procured by threats and inducements.

31 The Defence also challenged the admissibility of another statement made by the Accused on

11 September 2003 on the same grounds. On this occasion, the Accused had made a statement to his wife at his flat at Block 894C Woodlands Drive 50 #03-01, Singapore ("the Woodlands flat") in the presence of three police officers above the rank of sergeant. He had asked for forgiveness from his wife for causing hurt to V. I will refer to this as "the fourth statement".

32 The Defence claimed that there were threats and inducements on 4 and 5 September 2003 and those threats and inducements were still operating on the Accused's mind on 11 September 2003. Accordingly, with the agreement of the parties, the *voir dire* for the fourth statement was conducted in the same *voir dire* for the first and second statements and the cautioned statement. In the course of the *voir dire*, the Accused also alleged he had been assaulted.

33 It was not disputed that on 4 September 2003, the IO and Senior Staff Sergeant Govindharajoo R ("SSSgt Govindharajoo") had gone to the Woodlands flat at about 6.00am to ask the Accused to go with them to assist them in their investigations. It was also not disputed that the Accused wanted to wait for his father before going with the police officers but he was informed that his father could go to Criminal Investigation Department ("CID") where they would be bringing the Accused.[1]

34 The Accused said that the police officers had knocked loudly at the door of his flat. However, they denied this, saying that they did not want to wake the neighbours up. The Accused also said that when he did not open the metal gate to the Woodlands flat initially, the police officers had threatened to summon the entire police force to break down the gate to the Woodlands flat and to let his neighbours know that he was being arrested.[2] The police officers denied saying this.

35 In any event, the Accused did go with the police officers to CID which was at Police Cantonment Complex ("PCC"). The Accused claimed that on the way there, the patrol car driven by SSSgt Govindharajoo hit a taxi but the patrol car did not stop. This was denied by the police officers who accepted that there was an accident involving a taxi but that the patrol car was not involved in the accident. SSSgt Govindharajoo elaborated that from the point of police procedure, he could not just have driven off and he would also have had to make a report about the accident, if the patrol car he was driving was involved in an accident.

36 At about 6.45am, the Accused and the police officers arrived at CID. The IO brought the Accused to an interview room of the Serious Sexual Crime Branch ("SSCB") on the 17th floor and interviewed him there.

37 At about 11.20am, the IO placed the Accused under arrest for an offence of rape and an unnatural offence under s 376(1) and s 377 of the Penal Code.[3] He then made an arrest report and handed the Accused over to the lock-up of Central Police Division at PCC at about 11.45am.[4]

38 In the evening of 4 September 2003, the Accused was brought out of the lock-up at 6.55pm for another interview by the IO at an interview room on the 17th floor of SSCB. He was brought back to the lock-up at 10.05pm that day.[5]

39 The Accused said that SSSgt Govindharajoo was present throughout the interviews in the morning and afternoon of 4 September 2003 but both the police officers said SSSgt Govindharajoo was present from time to time only as he was walking in and out of the interview room.

40 The Accused said that on 4 September 2003, the police officers kept on pressing him to admit he had done something wrong to a girl.[6] However he was not told the identity of the victim or the nature of the offence.

41 As for the identity of V, the Accused shifted his evidence. He said he was given the full name of V in the evening of 4 September 2003 but the name did not ring a bell.[7] Subsequently, he said that her full name was mentioned in the morning of 5 September 2003 after he had been interviewed by the IO and SSSgt Govindharajoo.[8] It was on his way to a lock-up thereafter that he began to realise that that was the name of V.[9]

42 The Accused denied that he had been talking about his sexual relationship with V's mother on 4 September 2003. He said he only mentioned this to the IO on 5 September 2003 before the interview in a room behind the lock-up had taken place.[10]

43 The Accused also said that during the evening interview of 4 September 2003, he was made to stand in a corner of an interview room at the SSCB with his hands handcuffed behind him. SSSgt Govindharajoo had repeatedly told him he had better admit to what he had done to a girl.

44 The IO was seated in a chair with his legs on a table. At one point, the IO stood up, banged his hand on the table and said words to the effect that everyone whom he had brought to the room had admitted to their crime and the Accused had better admit also. Thereafter, SSSgt Govindharajoo suddenly swung his right hand forward to slap the Accused. The Accused was shocked but managed to avoid the full force of the slap which hit his nose causing his spectacles to drop down his nose. The tip of his nose was painful.[11] The Accused also said that after the IO had banged his hand on the table and threatened the Accused to make an admission, the IO seated himself and put his legs on the table again and shouted words to the effect that he would put the Accused's wife in a lock-up and she could give birth in a lock-up. Also, the Accused would be blamed for all the rape cases in Woodlands.

45 The Accused initially said that at the evening interview of 4 September 2003, he did ask for permission to see his wife before giving a statement.[12] However, he changed his evidence to simply requesting to see his wife and father but without mentioning that he would make a statement thereafter.[13]

46 The Accused also said that during the evening interview on 4 September 2003, SSSgt Govindharajoo had told him in a soft tone that he would arrange for the Accused to see his wife and father and that his wife could also bring food to him, if he made an admission.[14]

47 As I have mentioned, the Accused was brought to Alexandra Hospital in the morning of 5 September 2003 for a pre-statement medical examination. The doctor who examined him did not notice any physical injury on the Accused who had complained about a chronic back pain. The Accused said he did not complain about the events of 4 September 2003 because of the presence of two or three other escorting officers in the same room as the doctor and him.

48 The Accused said that after he had come back from the pre-statement medical examination, he was taken up to an interview room again. The IO and SSSgt Govindharajoo were present and they interviewed him again for one to two and a half hours.[15] They again asked him to admit to having done something to a child and the IO mentioned the full name of V but the Accused said he did not know her and denied doing anything to the child. He said the threats about locking up his wife till she gave birth in the lock-up and putting the blame for all the rape cases in Woodlands were repeated. The IO had also said that the IO would not allow him to see his wife and father until he made an admission.[16] Up till then, he was still not told the offence which he was to admit to.

49 The Accused said that he was then brought to the lock-up and shortly thereafter he was brought to an interview room behind the lock-up for the recording of a statement by the IO. An

interpreter, Ms Masdiana Ramli, was present too.

50 The Accused also said that when the second statement was recorded, the interpreter was someone else other than Ms Masdiana. The Accused said that since he was not wearing his glasses then, it seemed to him that the interpreter for the second statement had a different figure, looked different and had a different voice.[17] She appeared pregnant.[18] When the Accused was asked whether he was referring to another interpreter by the name of Sapiahtun Mohd Ali who had interpreted other statements to him after 5 September 2003, the Accused said he did not know this name. He also said that he was not sure whether Ms Sapiahtun had interpreted statements to him after 5 September 2003[19] but he remembered clearly that she was the interpreter who had interpreted the second statement to him.[20]

51 When it was pointed out to the Accused that Ms Masdiana's name was recorded at the top of the first page of the second statement as being the interpreter and her signature appeared on every page of that statement, the Accused said that when he signed the second statement, including the first page thereof, the top part or heading of the first page was blank. He noticed this because as he was not having his glasses on, he was more careful when he signed.[21] He also said that the interpreter of the second statement did not sign on it, thus suggesting that it was signed later by Ms Masdiana who was not the interpreter for this statement.[22]

52 Likewise, when the first page of the first statement showing the venue of the interview to be on the 17th floor at an SSCB interview room and not at an interview room behind a lock-up, the Accused said that when he signed the first statement, including the first page, the first page was blank.[23]

53 Coming back to the time on 5 September 2003 just before the Accused had given any statement, the Accused's evidence was that when Ms Masdiana was present, he told her that he had not done anything but she responded that if he had not done anything, he would not be there.[24]

54 The Accused also said that he had declined to sign the cautioned statement three times. However, he signed it because the IO had instructed the interpreter to coax him to sign it and she did.[25] At that time, he was scared and worried for his family including his pregnant wife who was due to deliver at any time and his children and job.[26] Subsequently, he added that it was because of all the threats and inducements on 4 and 5 September 2003 that he signed all the three statements.[27]

55 As for the post-statement medical examination which was done after 5.00pm of 5 September 2003, the Accused said that again he did not disclose the threats and inducements to the doctor because of the presence of escorting officers.[28]

56 On 11 September 2003, the Accused was brought to the Woodlands flat for a search to be done. On this occasion, he knelt down before his wife and asked her for forgiveness for what he had done to V. As I have said, the voluntariness of this statement was also challenged by the Accused.

57 The Accused's version was that while he was brought out of the lock-up on 11 September 2003 before making the trip to the Woodlands flat, the IO had told him that he could not talk to anyone in the flat. The IO had also said that if he wanted to talk to his wife, he must ask her for forgiveness for having caused hurt to V.[29] This was allegedly repeated by the IO just before they entered the flat. The Accused then said that he decided to speak to his wife and ask her for such forgiveness because the IO instructed him to do so and he was in fear because of the events on 4 and 5 September 2003.[30] He said that he wanted to say something else to his wife after he had

sought her forgiveness but did not do so because someone pulled him back. Shortly after that, one of the police officers told him to say what he liked to his wife but he refrained from doing so as he remembered that he had been told that he was only to ask for forgiveness from his wife.[31]

58 The Accused said that he did subsequently complain about being forced to give statements on 5 September 2003. The complaint was made to Dr Tommy Tan at Changi Prison Hospital the next day after the Accused was brought to the Woodlands flat.[32] The Accused said he informed Dr Tan that he was told to admit to something he had not done. He was slapped and threatened that his wife would be put in a lock-up and made to give birth there. He would be blamed for all the rape cases in Woodlands.[33] He also told Dr Tan that he had been worried about his family as he was the sole breadwinner and especially about his wife who was due to give birth on 12 or 13 September 2003.[34] As it turned out, the Accused's wife had already given birth before 11 September 2003 but he did not know this until 11 September 2003. The Accused also told Dr Tan that he could not sleep, he was thinking about his predicament and had lost his appetite.[35]

59 The Defence called Dr Tommy Tan as its second witness for the *voir dire*. Dr Tan was a consultant psychiatrist who was attached to Woodbridge Hospital at the time he gave evidence for the *voir dire*. He had examined the Accused on three occasions: on 23, 26 and 30 September 2003 at the old Changi Prison Hospital in order to produce a psychiatric report on the Accused. He had made contemporaneous case notes of what the Accused had told him. I state below Dr Tan's evidence as to what the Accused had told him based on his case notes.

60 On 23 September 2003, the Accused told Dr Tan that the policeman would slap him if he did not confess. The policeman did not slap him. The Accused had kept telling the police that he did not do anything wrong.[36]

61 On 26 September 2003, the Accused told Dr Tan that the police said he had committed the alleged offence in 1998 or 1999 and it was committed in his previous residence at the Tampines flat. He had emphasised to them that he did not commit the offence. He said he had made a confession to the police. He was under stress. He was not allowed to talk or see his family. The police threatened to slap him but did not do so. He said he confessed because he was scared. A female police officer kept asking him repeatedly if he had committed the offence.[37]

62 Dr Tan said that the Accused had said he was under stress and was scared because the female officer had repeatedly questioned him and the police had threatened to slap him. However the Accused did not name the police officers who had interviewed him.[38]

63 On 30 September 2003, the Accused did not tell Dr Tan anything else about what happened to him while he was in police custody.

64 Dr Tan had noted in a medical report dated 1 October 2003 that when he had examined the Accused, the Accused had symptoms of depression. That report said that the Accused had said that his appetite was not good and his sleep was disturbed, as he was worried about his family. The Accused had said his mood was low. He spoke in an anxious tone.

65 There was no record in Dr Tan's case notes that the Accused had informed him of any of the following:

(a) that the Accused was in fact slapped by the police,

(b) that the police had threatened to put his wife in a lock-up and make her give birth

there,

(c) that the police had threatened to blame all the rape cases in Woodlands on the Accused.

66 Dr Tan's evidence was that if he had not written down such allegations, it meant that probably the Accused had not mentioned them to him.[39] Dr Tan also said that when the Accused was examined by him on all three occasions, the Accused was not wearing spectacles but he did not appear confused.[40] However, he was squinting.[41]

67 The third and last witness for the defence in the *voir dire* was the Accused's wife, "W". She said that on 11 September 2003, after the Accused had asked her for forgiveness for what he had done to V, he was pulled back by an officer before he could say any other word.[42] The Accused had looked frightened, worried and scared when he had asked for forgiveness.[43]

68 She said that thereafter, she met the Accused on 6 October 2003 at Queenstown Remand Prison.[44] The Accused had informed her that he had been forced to ask for forgiveness. He had mentioned the name of the officer but she could not recall the name. The Accused had said that he was threatened in that if he did not seek her forgiveness, he would be blamed for all offences in Woodlands. Also, she would be put in a cell to give birth to their third child. She could not recall whether her husband had ever mentioned that he would be slapped.[45] In cross-examination, she said that the Accused did tell her that the police had hit him on his nose and that the police had tried to slap him.[46]

69 The evidence for the Prosecution was that SSSgt Govindharajoo was walking in and out of the interview room on the 17th floor on 4 September 2003 and he was not present throughout the interview. The IO and he said that the Accused was told of the nature of the offences, *ie* rape and unnatural offence, and the name of V on 4 September 2003. They agreed that throughout 4 September 2003, the Accused denied having committed such offences. They denied all the Accused's allegations of threats, assault and inducement. They said that during the interviews on 4 September 2003, the Accused had been going on about his relationship with V's mother and he was remorseful about this. The Accused had said that he wanted to meet his wife before giving a statement. However, he was not allowed to do so.

70 On 5 September 2003, the Accused was brought to Alexandra Hospital in the morning for a pre-statement medical examination. He was brought back to PCC and handed over to the IO at an interview room of SSCB at about 11.47am. SSSgt Govindharajoo was not present and there was no interview before the recording of the first statement.

71 The information recorded on the first statement indicated that the recording of the statement started at 12.00pm and ended at 1.00pm. The information recorded on the second statement showed that the recording started at about 2.35pm and ended at 3.45pm. The information from both the first and second statements revealed that the recording was done at room #17-06 of SSCB, which was on the 17th floor, and not in a room behind a lock-up. The name of the interpreter for both these statements was recorded as Ms Masdiana. Her signature was found on every page thereof. Likewise her signature was found on every page of the charge and cautioned statement and there was information thereon that the recording thereof was from 4.00pm to 5.00pm. The evidence from the IO and Ms Masdiana was that the cautioned statement was also recorded at the same interview room as the first and second statements.

72 The IO and Ms Masdiana said that she was the interpreter for all these three statements

which were recorded in the interview room of SSCB on the 17th floor and not at an interview room behind the lock-up. Ms Masdiana denied that the Accused had told her before the recording of any of these statements that he did not do anything. She also denied that she had responded that if he had not done anything, he would not be there. The evidence for the prosecution was also that the Accused was wearing his spectacles when these three statements were recorded.

73 After these three statements were given, the Accused was brought to Alexandra Hospital for a post-statement medical examination.

74 It was common ground that he did not complain to either of the doctors at the pre-statement and post-statement medical examination of any threat, assault or inducement.

75 As regards 11 September 2003 when the Accused was brought to the Woodlands flat for a search, the IO denied that he had told the Accused that he could not speak to anyone without his permission.[47] However, SSSgt Govindharajoo remembered the IO saying that. On the other hand, SSSgt Govindharajoo and a third escorting officer Inspector B Burhanudeen HJ Hussanair ("Insp Burhanudeen") did not hear the IO telling the Accused that if he wanted to speak to his wife, he had to ask for forgiveness for what he had done to V. The IO denied this allegation too. Insp Burhanudeen said that it was an emotional scene when the Accused knelt down and asked for forgiveness from his wife. The Accused was crying and the inspector himself was teary while kneeling or squatting beside the Accused then. These three officers denied that after the Accused had knelt down and asked for forgiveness from his wife for having caused hurt to V, he was pulled away before he could say anything else to the wife.

76 I was of the view that the IO and SSSgt Govindharajoo had not knocked on the door of the Woodlands flat unduly loudly at 6.00am of 4 September 2003. They were mindful that to do so might wake the neighbours up. I was also of the view that they were not so foolish as to threaten to summon the entire police force to break down the metal gate or to let the neighbours know that he was being arrested. If made, such a threat might have been heard by other members of the Accused's family or neighbours. I was also of the view that the patrol car in which the Accused was driven from the Woodlands flat to PCC that morning did not hit a taxi and was then driven off. I accepted that if there was such an accident, a report would have to be made by the police officers who would also have to stop and not just drive off.

77 In any event, the allegations of the Accused about all these incidents before he reached PCC that morning were of peripheral relevance on the issue of the credibility of the IO and SSSgt Govindharajoo. It was not the Accused's position that these alleged incidents caused him to make the four statements. It seemed to me that the purpose of these allegations was also to paint the picture of bullying police officers who were in a rush to get their hands on him to extract a confession from him.

78 I was also of the view that in the morning of 4 September 2003, the Accused must have been informed about the name of V and the nature of the offences alleged against him, *ie* the offence of rape and unnatural offence, although it was not clear to me whether fellatio had been specifically mentioned to him then. It would have been pointless for the police to try and obtain information from him without telling him the name of V and something about the alleged offences. I also did not believe the Accused's evidence that while he did ask what the offences were about, he was too confused to ask who the victim was. I rejected the Accused's evidence that the full name of V was mentioned only the next day. His evidence on this point had shifted as I have mentioned. I also did not accept his evidence that when that name was mentioned, he did not initially realise who she was.

79 I would add that even if fellatio had not been specifically mentioned to the Accused on 4 September 2003, the fact of the matter was that on 5 September 2003, he was giving statements about fellatio.

80 As regards the main issue, *ie* whether the alleged threats, assault and inducement had occurred, the Accused's own witness Dr Tommy Tan put the lie to the Accused's evidence that he had disclosed the alleged threats and assault to Dr Tan. Also, the Accused did not complain to Dr Tan that he was induced to make a confession with the inducement being that he would be able to see his wife and father. Furthermore, the Accused's complaints to Dr Tan mentioned a female police officer but, for the *voir dire*, there was no complaint about a female police officer. Dr Tan's evidence demonstrated the extent to which the Accused was prepared to fabricate his evidence. I found that the Accused's allegations about the threats, assault and inducement had been fabricated. Furthermore, while he might well have hoped to see his wife and father, that was different from an allegation of inducement by the police.

81 I also noted that the Accused had to be prompted by defence counsel before he said that he made the first three statements as a result of the threats and assault.[48]

82 I did not accept the Accused's evidence that after he had been brought back from the pre-statement medical examination in the morning of 5 September 2003, he was brought first to an interview room on one of the upper floors, and then brought back down to the lock-up and then brought out again but this time to an interview room behind the lock-up. Again the documentary evidence which the Prosecution relied on showed that after the Accused was brought to the 17th floor, the first statement was recorded on the 17th floor at SSCB. The second statement was also recorded at the same floor. I did not accept the Accused's allegation that certain parts of the first and second statements were blank when he signed them. These allegations were not raised with the IO and the interpreter during cross-examination. Also, it seemed to me that the Accused had come up with evidence about the interview being conducted in a room behind the lock-up to cast doubt on the overall credibility of the IO and Ms Masdiana.

83 As for the Accused's allegation that he had told Ms Masdiana that he had not done anything and she had replied that if he had done nothing, he would not be there, I was of the view that the Accused had again fabricated his evidence, this time to attack Ms Masdiana's credibility as she was the interpreter for the first three statements. His evidence that she was not the interpreter for the second statement was also to attack such credibility but it was contradicted by documentary evidence. Also, Ms Masdiana's evidence was steady throughout whereas the Accused's was not. It was also telling against the Accused that he claimed at one stage that as he did not have his spectacles with him during the recording of the three statements, he could not see the second interpreter clearly. Yet he could see the IO's face clearly enough to tell that the IO was staring at him when he allegedly told Ms Masdiana that he had not done anything. I did not accept the Accused's explanation that the interpreter was further away from him than the IO. All three were in the same interview room and the interpreter would not have been much further from the Accused, if at all, as she had to interpret the IO's questions to the Accused and the Accused's responses to the IO.

84 As for the Accused's allegation that he had declined to sign the cautioned statement three times but the IO had instructed the interpreter to coax him to sign it and she did, this allegation was not raised with the IO or the interpreter during cross-examination. In my view, it was a further fabrication by the Accused.

85 I also did not accept that the Accused was not wearing his spectacles on 5 September 2003

during the recording of his three statements. He was wearing them on 4 September 2003 at an interview room on the 17th floor and there was no reason why he should be deprived of them on 5 September 2003 when he was being interviewed again on the 17th floor.

86 It seemed to me that the Accused had said he did not have his spectacles with him on 5 September 2003 to paint the picture that he was disoriented and hence more susceptible to threats and inducements. Yet, as I have mentioned above, it was his own evidence that although he did not have his glasses, he was more careful when he signed the second statement. Thus his allegation about not having his spectacles no longer assisted him with the picture he was hoping to paint.

87 As regards the fourth statement, I was of the view that the IO did tell the Accused that he could not speak to anyone at the Woodlands flat without the IO's permission. SSSgt Govindharajoo had recalled this. However, that was not the crux of the Accused's allegation. The crux was that the IO had said that if the Accused wanted to speak to his wife, he would have to seek her forgiveness for causing hurt to V. I saw no reason for the IO to say that because on 5 September 2003, the Accused had already confessed to a charge involving fellatio. Secondly, the Accused did not explain initially why he chose to speak to his wife if he had to comply with such a condition. He could have simply remained silent. He then shifted his evidence by saying that he was instructed by the IO to ask for forgiveness.[49] In my view, the Accused was overcome by emotion after carrying his third child who had just been born and whom he had not seen before. He then blurted out his request for forgiveness. This was reinforced by the evidence of Insp Burhanudeen who was the police officer closest to the Accused at the time the Accused sought his wife's forgiveness. Insp Burhanudeen said he himself was emotionally affected.[50] As I have mentioned, Insp Burhanudeen and the other two officers there had also denied that the Accused was pulled back after he had sought forgiveness. I was impressed by the inspector's overall candour and I accepted this evidence of his as well.

88 In summary, I found that the alleged threats, violence and inducement had not occurred. The Prosecution had proved that each of the four statements had been given voluntarily for the purpose of s 122(5) CPC. Accordingly, I ruled that the four statements were admissible in evidence.

Formal facts

89 M is a divorcee. She has three children, *ie* two sons and V, with V being the youngest child. V was born on 18 May 1991. She would have been about seven years old in 1998 and about eight years old in 1999. In so far as the two charges were referring to the age of V as 12 at the time of the offences, this was incorrect. However, there was no prejudice to the Accused as V's date of birth was not disputed. The Accused was born on 1 December 1966. He would have been about 32 years old in 1998 and about 33 years old in 1999.

90 V's mother, M, is the aunt of W, the wife of the Accused whom the Accused married in 1994. Therefore W is the cousin of V. Accordingly, it would not be accurate to refer to the Accused as the uncle of V. However, probably because of the age difference between V and the Accused, V referred to the Accused as her uncle. I mention this only to avoid any confusion. There was no suggestion of mistaken identity or prejudice to the Accused arising from V referring to the Accused as her uncle.

Evidence for the Prosecution

Evidence of the victim

91 V could not remember exactly when she had been to the Tampines flat alone with the Accused. She believed it was between 1998 and 1999 although she was less certain about having

gone there with him in 1999.[51] She believed it must have been on a Saturday or Sunday as she did not play truant from school. She was attending the afternoon session in a primary school in those years and had attended religious classes in the morning on some weekdays.[52] She was supposed to have gone to the Tampines flat to play with the Accused's first born daughter.[53] She had gone with the Accused on a number of occasions but could not remember how often.[54]

92 On the first occasion, the Accused had brought V into the master bedroom and asked her to take a bath. After she did so, he wrapped her in a towel and blindfolded her. He then carried her on the bed and placed her on it facing upwards. He tied her hands to the side of the bed. Then she felt something inserted into her private part. Thereafter he untied her hands and told her to sit on the floor. Something was put into her mouth and she was told to suck it. At that time, she was still blindfolded. The blindfold was subsequently removed. The Accused told her to change and thereafter he fetched her home.[55] Her home was also at Tampines. Each time she went alone with the Accused to the Tampines flat, his wife and daughter were not present.[56]

93 V said that the object that was inserted into her private part felt big and caused her pain. It was moving in and out. She cried but did not struggle or ask the Accused to stop. He told her not to cry. The object that was inserted into her mouth was long hard and watery. She did not feel any pain then. She did not like the taste of the object in her mouth.[57] She believed the object inserted into her mouth was his private part.[58] She said she felt sad on the same day after the first occasion and cried at home before she slept.

94 She did not tell her mother about what happened to her because she did not know that what had happened to her was wrong and she was afraid she might not be believed.[59] She did not know what to say.[60] She agreed that the Accused did not threaten or bribe her to keep the matter a secret.[61]

95 V remembered an instance when she, M and the Accused were in the Accused's car. He had dropped M at Tampines Interchange where M would usually take a bus to a mass rapid transit ("MRT") station. After M had been dropped off, V was brought to the Tampines flat. There something was inserted into her private part and she had to suck his private part. She had wanted to tell M that she did not want to go with the Accused but was afraid to do so as he was in the car too.[62] However, when V got back home, she did not mention to M or her father that she was reluctant to go with the Accused. She said she did not know why she did not tell either of them then.[63] V thought that this incident was probably after the first instance of such acts.

96 V did not realise that what the Accused had done was wrong until 2002 when she was in Primary Five. She had received sex education and was taught menstruation then. Her teacher had said that when a man inserts his private part into a girl's and does not ask for her permission, that is wrong.[64] Thereafter she mentioned what the Accused had done to two of her best friends separately in 2003. I will refer to these two girl friends as "H" and "Myg". They were her classmates in 2002 and 2003. By 2004, V was in the normal stream of secondary school. H remained V's schoolmate in secondary school in 2004 but Myg was no longer in the same school as V in 2004.

Evidence of H and Myg

97 H said that V had mentioned to her on 8 August 2003 that V had to suck her uncle's private part and something had been inserted into V's private part. V had also said that she was blindfolded and her hands were tied. V said this had happened about five times.[65] V looked sad as she was narrating the incident to H. H calmed her down and advised her to tell her parents but V was afraid to do so.[66] Although the conditioned statement of H did not say that V had told H that V was made to

suck her uncle's private part, I accepted H's oral evidence that she was told this although in cross-examination she accepted that perhaps V was not so sure about what she was made to suck.[67] I found H's evidence to be generally steady. H also said that she could not remember whether she attended any sex education class but she remembered they were taught about menstruation.[68]

98 Myg said V had mentioned to her on or about 11 August 2003 that her uncle had raped her. There was no mention by V to Myg of any other act of sexual abuse. V told Myg she was ashamed to tell her parents. She looked sad and was close to tearing. Myg advised her to inform her parents immediately.[69] Myg remembered that they were taught a little bit about sex in primary school but she could not remember which year it was taught.[70]

Evidence of M

99 I now come to the evidence of V's mother, M.

100 On 24 August 2003 at about 8.15pm, V and M were going to Block 125 Bedok North Street 1 for a religious class. While they were in a taxi, V said she had something to tell M. Upon being pressed further, V said it was about adultery. M told V they could discuss the subject after the religious class. The class ended at about 10.00pm and during the journey back, M questioned V further. V asked whether M remembered Uncle DU, meaning the Accused, and the period when V spent some time at the Tampines flat. M remembered that between 1998 and 1999, the Accused had asked for V to come over to play with his first child who was an infant then. The Accused had fetched V from her residence to the Tampines flat. At that time, V was staying with her parents in the Tampines neighbourhood as well.

101 V told M that when she was in the Tampines flat with the Accused, he had instructed her to remove her clothes and to shower in the master bedroom toilet. He would then carry her, put her on his bed, blindfold her and tie her hands to the side of the bed. V further said that she would feel pain at her private part as if something hard was entering her vagina. V said the hard object was inside her vagina for a long time and after removing it from her vagina, the Accused would untie her. Thereafter, he would instruct her to sit on the floor beside him and make her perform what M believed to be oral sex on him. After removing her blindfold, the Accused would ask her to wear her clothes and then send her home. M asked V how many times the Accused had done such acts and she replied that it was on five different occasions.

102 When they arrived home at about 11.00pm, M called her sister who was the mother-in-law of the Accused and told her what the Accused had done. Subsequently, she also told her ex-husband about the matter.

103 On 25 August 2003, after V returned from school, M and her ex-husband brought V to the Tampines Neighbourhood Police Centre to lodge a police report.

104 M's evidence was that she had cautioned V about telling lies. V maintained that what she said was true. She also told M that she kept the incident away from her because she was afraid to reveal it and she also did not understand what the accused had done to her. The reason why V decided to tell M was because her friends advised her to do so.

105 M had stayed initially in a flat at Block 872 Tampines Street 84. In December 1999, she signed an agreement to sell this flat. After completion of that sale, she moved to a rented flat at Bedok Reservoir and stayed there for three months. Thereafter she moved to another flat which she had purchased at Block 933 Tampines Street 91. Whenever M moved, V would move along with her as

well.

106 In 1995 or 1996, M had allowed V to go out with W and her husband, the Accused. At that time, W and the Accused were staying in the Tampines flat.

107 Sometime between 1996 and 1997, the Accused had an affair with M after he had invited her and brought her to the Tampines flat. The affair occurred in the Tampines flat. Since then, M did go to the Tampines flat but not when the Accused was alone.

108 V's father had been unemployed since 1989 because of his heart condition except for 2000 when he had to get a job as a security guard because M had cancer. In 1998 and 1999, it was V's father who would accompany her downstairs daily to wait for the school bus. At times when V was not attending school in the morning, V would be attending religious classes at a mosque. She attended the mosque twice a week on weekdays.[71] Based on this evidence, M deduced that the Accused must have fetched V to the Tampines flat to play with his daughter on a Saturday or Sunday.[72] It was she who had brought V down to the car park to await the Accused (NE 223). However, M recalled, after being reminded recently by V, that there was one Saturday when the Accused had picked up both M and V, dropped M at a Tampines MRT station and then went off alone with V to the Tampines flat. V had told M recently that on this occasion she had wanted to tell M that she did not want to accompany the Accused but had failed to tell M.[73]

109 M denied that after her sexual encounter with the Accused and while she was leaving the Tampines flat, she had warned him not to reveal the incident to anyone, otherwise she would get him into trouble.[74] She also denied that on 4 September 2003, she had told W and the Accused's parents at the lobby of PCC (see para 35) that she had liked the Accused but since the affair or since 2003 she had decided to get him into trouble.[75] She also denied that she had told the Accused's father then that she had had a good time with the Accused on two occasions and as she no longer required him, she would make sure he would be put behind bars.[76]

110 Although M had said during the preliminary inquiry that the Accused had fooled and tricked her into having sex with him, she said during the trial that what she had meant was that he had persuaded her to do so.[77] She said she was not angry with him because that was in the past and the most important thing was that she would not repeat the affair again. In her mind, she too was at fault for it.[78]

111 M said that notwithstanding the affair, she had allowed V to go with the Accused to the Tampines flat. She still trusted the Accused as a relative as he was the husband of her niece. Moreover, the Accused himself had a daughter then, *ie* in 1998 and 1999, and he had wanted to "borrow" V to play with his daughter. She understood that W was not working and thought she would be at home.[79] She had believed that W was not working in 1998 and 1999.[80]

Evidence of Dr Lisa Wong

112 Dr Lisa Wong was an associate consultant with the Department of Obstetrics and Gynaecology of Singapore General Hospital. She had examined V on 29 August 2003. The vaginal examination showed old hymenal tears at 2, 4, 8 and 11 o'clock. This suggested penile penetration.[81]

113 Initially, V had told her that the Accused's penis was inserted into her mouth but she was not sure what had been inserted into her vagina.[82] However, Dr Wong said subsequently that V was unsure as to what was inserted into her mouth and vagina.[83]

114 Dr Wong agreed that hymenal tears can occur for various reasons other than penile penetration. However, she thought it was unlikely that an injury could cause multiple tears and unlikely that a fall could cause multiple tears.[84] While Dr Wong accepted that several falls could possibly cause tears to different parts of the hymen, Dr Wong noted that often no hymenal tear would occur just because of a fall.[85]

Evidence of Dr Parvathy Pathy

115 Dr Parvathy Pathy was a consultant psychiatrist with the Child Guidance Clinic. That clinic was previously at the Institute of Health but the institute's name had been changed to Health Promotion Board.

116 Dr Pathy had interviewed V and M on 13 October and 3 November 2003. On average, she saw one to three child victims of sexual abuse in a month although at times, she would not see any in a month. She said that there was a range in the length of time that a child victim might take to disclose sexual abuse, ranging from a day to years. There was a variety of reasons for delay. The abuser might have threatened the child not to tell anyone. The child might not realise the meaning of the incident especially when the child was young. Some would feel ashamed or embarrassed. Some might think that nobody would believe them.[86]

117 Dr Pathy agreed that while V could have told her mother about having to remove her clothes to take a shower, being blindfolded and tied to a bed in the same year when the incident occurred, it was Dr Pathy's experience that most sexually abused children do not do so.[87] Indeed, Dr Pathy was not surprised that V did not tell her mother about the incident shortly thereafter.[88] It was also her view that usually children do not fabricate such lies or have fantasies of a sexual nature.[89]

118 V did not tell Dr Pathy that she was threatened by the Accused.[90] V also told Dr Pathy that she liked boys and had held the hands of two boys. There was one other boy she liked but V had only talked to this boy and did not hold his hands. It was not a steady relationship. There was no sexual act with any of these boys.[91]

119 Dr Pathy was of the view that when V told her that she had sucked the private part of the Accused, this was what V believed and V was not sure about the object she had sucked.[92]

Evidence of police officers in respect of the four statements

120 It is not necessary for me to repeat the evidence of the police officers which they reiterated during the trial as to how the Accused was brought from the Woodlands flat to PCC and how his four statements came about.

121 However, I should mention that during the trial, the IO accepted that a total of ten cautioned statements had been recorded from the Accused between 5 and 10 September 2003, *ie* before the Accused had asked for forgiveness from his wife on 11 September 2003. The IO also said he was not sure for which offence the Accused had sought forgiveness.[93]

Evidence on first information report

122 Staff Sergeant Eric Neo Chin Hock had recorded the report of M on 25 August 2003. He had spoken to V as well. Aside from a rape allegation, V did tell him that she was made to suck an object which was placed in her mouth. The object was hard and something came out of it.[94]

Evidence for the Defence

Evidence of the Accused

123 The Accused's education level is Primary Four from the English stream. He had been residing in the Tampines flat from 1996 to November 2001. On 1 December 2001, he moved to the Woodlands flat.

124 He said that in June or July 1997, he and his wife had brought V for an outing but he had never brought her to the Tampines flat.[95]

125 Between 1997 and 1999, he was working for the same company at Kian Teck Way from Mondays to Fridays, from 8.30am to 5.30pm. Initially he said he was not required to work for this company on Saturdays.[96] He had a part-time job then for which he worked on Saturdays and Sundays, from 8.30am till 6.00pm or 7.00pm,[97] except for those occasions when he had to cover a colleague on a Saturday in his permanent job.[98] In cross-examination, he said that the name of the company which he had worked for part-time in 1998 and 1999 sounded like "Sian Chuan Motors Trading". He said this company had been located at Aljunied Road. The building it was located in no longer existed and had been replaced by houses. In cross-examination, he said the company's business was in the sale of second-hand motor parts but in re-examination, he said he was a second-hand car salesman for it.[99] He referred to the boss of that company as "boss" and it was his father who had introduced him to the job.[100] That company did not make any CPF contribution for him and paid him in cash. He agreed that he had not informed the police about his part-time job but said that they did not ask him what he was doing on weekends.[101] He added that occasionally on Saturdays, besides covering a colleague, he would go to his mother-in-law's stall in the afternoon to assist.[102]

126 The Accused's first child was born on 15 December 1997. His wife was working in 1998 but stopped working after a few months either in June, July or August 1998.[103] She was not working in 1999.

127 He had known M for 20 years prior to October 2004. He had come to know her when he was her colleague. It was M who had introduced W to him. He confirmed that M and he had had an affair in 1997. He said that after that incident, she warned him not to reveal the relationship.[104] In examination-in-chief, he said that he did not know whether she was angry with him after the affair but in re-examination, he said that maybe M hated him after that.[105]

128 The Accused said that one Mr Ismail from the mosque V attended had informed him that in 1998, the religious classes were only on Saturdays and in 1999, V was attending such classes on Mondays and Wednesdays in the afternoon.[106]

129 He said he was told by his father that on 4 September 2003, when M had spoken to his father at the lobby of PCC, M had said that she was instrumental in putting him behind bars and she was very satisfied. His gut feeling was that she had framed him because she had wanted to borrow $5,000 from him but he was unable to help her.[107] She had asked him for the loan before V's birthday party in May 2003.[108]

130 He also claimed that his father had told him that on that occasion on 4 September 2003, M had lifted up her skirt which revealed a pair of trousers and she had scratched her private part.

131 The Accused said that he had given the four statements because of threats made to him. These were the same threats he had alleged for which a *voir dire* was conducted and I need not

repeat them. However, the Accused added during the trial that as regards his cautioned statement, it was the interpreter Ms Masdiana who had taught him what to say in his plea for leniency, except that the words regarding the completion of his reservist duty were his own. The Accused accepted that his allegation about what the interpreter had suggested to him was itself not raised with the interpreter when she was on the stand. However, he said that this was because he had only told his counsel that the fellatio charge was untrue.[109]

132 The Accused identified various parts of the first two statements given on 5 September 2003 as having been fabricated by him because of the threats he had received. Those were the parts where he had admitted to bringing V to the Tampines flat and to getting her to commit fellatio. He had fabricated them because he was hoping to see his father and his wife.[110]

133 The Accused said that two or three days after 5 September 2003 he had gathered his courage and told the IO that he denied doing anything to V. However, he was not able to identify any denial recorded in a subsequent statement of his on 8 September 2003. He then said that his denial was on another day after the 8 September 2003 statement was recorded.[111]

134 As for the Accused's fourth statement where he apologised to his wife for doing something wrong to V, the Accused reiterated his evidence in the trial within a trial which I need not repeat.

Evidence of the Accused's father

135 Mohamed bin Ali is the father of the Accused.

136 He said that on 4 September 2003, M had claimed that it was she who had caused the Accused to be put into a lock-up. She informed him that she had let the Accused have sex with her twice and she lifted up her baju kurung, revealing a pair of pants underneath and patted her private part to indicate her urge for sex. She also used her fingers to scratch her private part. Since the urge was gone, she decided to report the matter to the police and was satisfied that she had caused the Accused to be put into the lock-up. M was screaming like a vampire that she was very satisfied and was screaming for some time.[112] Yet Mr Mohamed also said that at that time he did not believe that M had framed the Accused.[113] On that occasion on 4 September 2003, the Accused's mother and W were also present. W was not far away from M and Mr Mohamed. Mr Mohamed noticed that M had nudged W's head with her finger and thereafter M left without speaking to W.[114]

137 Mr Mohamed said that the Accused was doing a part-time job on Saturdays and Sundays in 1998 and 1999. This job was at a place at No 10 Aljunied Road where houses have since been built. The Accused was selling second-hand cars.[115] Mr Mohamed said that he himself had worked at this place from January 1996 to the middle of 1997. He did not know the name of the shop or the name of the owner. He would refer to the owner as "towkay". He said the Accused's working hours for this part-time job was from 12.00 noon to 7.00pm and the Accused had never missed working there every weekend in 1998 and 1999. He knew this because sometimes he would go to assist in the shop when the Accused called him for his assistance, even though he (Mr Mohamed) had stopped working there since mid-1997. When he helped out, he would work until 12.00 noon on Saturdays and Sundays.

The evidence of the Accused's wife

138 W's evidence was that after giving birth to their first child on 15 December 1997, she was on maternity leave for two months. She went back to work but stopped working in or around September 1998. Before she stopped working, she was working on Saturdays. Her mother-in-law who was taking care of the first child had been diagnosed with kidney failure. She remembered that she and her

husband had brought V out once after her first child was born.[116]

139 She said that in 1998 and 1999, the Accused had a part-time job as a car dealer and worked in that job on Saturdays and Sundays from 8.00am to 6.00pm, unless he had to go back to his permanent work place.[117] However, she was not sure or could not recall whether he could have been doing something else on Saturdays if he was not at his permanent or part-time job.[118]

140 She said that she was not sure whether M had told Mr Mohamed on 4 September 2003 that M was instrumental or was satisfied in having the Accused put behind bars. She was not sure if M had screamed that she was satisfied but then said M might have said in a loud voice that she was angry.[119] She said M did lift her baju kurung and pat her private part.

The court's findings

141 It was obvious to me that V could not remember the years in which the alleged offences were committed. The years 1998 and 1999 were determined by M after a process of deduction starting with V's reference to the time when she was brought from her first residence in Tampines by the Accused to the Tampines flat to play with his daughter. Using those occasions as a reference point, it was M who deduced that the years were 1998 and 1999. These were the years when V was in Primary One and Primary Two. These two years were within two important perimeters. First, the Accused's daughter was born on 15 December 1997. Second, M and her family had moved from their first flat in Tampines after she had contracted to sell the same in December 1999.

142 However, M was less certain as to which day of the week V had been brought to play with the Accused's daughter , although she thought it was on Saturdays as V was attending school daily on weekdays and also religious classes on some weekdays.

143 The next question was whether the Accused did have the opportunity to bring V to the Tampines flat between 1998 and 1999 and to be alone with her.

144 The Accused sought to show that he had no such opportunity because (a) W had stopped working since 1998 and (b) in 1998 and 1999, the Accused had a permanent job where he was working from Mondays to Fridays and he had a part-time job where he worked every weekend.

145 W's evidence was that she was on maternity leave for two months after the birth of her daughter. Thereafter she went back to work until about September 1998 when she stopped work permanently. Therefore, the fact that she had stopped work could not give the Accused the complete alibi that he wanted.

146 As for the allegation about the part-time job, I did not accept the evidence for the Accused thereon. There were three different versions as to his working hours for the part-time job. He said it was between 8.30am to 6.00pm or 7.00pm. Noraini said it was between 8.00am to 6.00pm. Mr Mohamed said it was between 12.00 noon to 7.00pm.

147 Moreover, I noted that during examination-in-chief, the Accused avoided giving any further details about this part-time job. I also noted that during cross-examination, the Accused hesitated before he came up with the supposed name of the company for which he was working part-time. He also hesitated before he said that he simply referred to the owner as "boss". In my view, each hesitation was not due to a sudden lapse of memory because, if his allegation were true, he must have considered the information in his mind for some time before he took the stand as he knew that the part-time job was part of his alibi. I was of the view that each hesitation indicated that he had

not yet settled in his mind the fabricated evidence he was going to give on these details. In cross-examination, he said that the business was dealing with second-hand motor parts. In re-examination, he said he was dealing in second-hand motor cars. Also, there was no evidence of any attempt made by him to locate this company which was supposedly no longer at its previous place of business or his previous colleagues.

148 The evidence of Mr Mohamed on this issue was such that Mr Mohamed was unable to give any more specifics about this part-time job beyond saying that it was at 10 Aljunied Road. Although he had himself allegedly stopped working there since mid-1997, he was certain that the Accused was working there every weekend. I did not believe that he had been working there before or that he did subsequently go back on Saturdays to help when the Accused asked him to do so.

149 As for W's evidence on this issue, she did not give any more specifics beyond the Accused's alleged working hours which were different from the evidence of the Accused and Mr Mohamed as I have mentioned.

150 It was telling that even W was unable to say with certainty that the Accused was doing nothing else on Saturdays except either working at his permanent job, when he was asked to cover a colleague, or at his part-time job.

151 It was clear to me that the part-time job was a fabrication to try and give the Accused a complete alibi.

152 The Accused then came up with a third attempt to give himself some sort of alibi which was a reverse alibi, *ie* that V was somewhere else on Saturdays in 1998. As I have mentioned, the Accused said that Mr Ismail from the mosque V attended had informed him that in 1998, the religious classes were only on Saturday mornings. I did not believe this evidence because the Accused had sufficient opportunity to subpoena this Mr Ismail to give evidence in court but he did not, even though he said this information was crucial for him.[120] Secondly, he claimed to have obtained this information only after the second tranche of the trial[121] but I noted that on 2 August 2004, during the second tranche of the trial, his defence counsel had already suggested to V that she was attending religious classes on Saturday mornings in 1998.[122]

153 Next, the Accused suggested that he was being framed by M with whom he had had an affair in about 1997. If this were true, it would mean that M had persuaded V to lie in order to frame the Accused. Yet, this important link was never suggested to M or to V in cross-examination. Notwithstanding this important omission, I did consider whether the Accused was being framed.

154 Evidence was given by Mr Mohamed that M had told him on 4 September 2003 at the lobby of PCC that she was instrumental in causing the Accused to be put in a lock-up because she no longer wanted sex from the Accused and she was screaming like a vampire saying that she was very satisfied. The sole purpose of such evidence was to suggest that she had framed the Accused. Yet when Mr Mohamed was asked whether he believed that M had framed the Accused, he said he did not.[123] W also did not suggest that M had framed the Accused.

155 Even the allegation that M had lifted up her skirt or baju kurung to scratch her private part was fabricated. When it was suggested to M that she had lifted up her skirt, she promptly retorted that she never wears skirts. On that day, she was wearing jeans.[124] It was after this riposte that the evidence for the Defence was that she was wearing pants underneath her baju kurung. Yet it was not suggested to M that she was wearing pants underneath her baju kurung. I mention this incident because it demonstrated the propensity of the Defence to come up with fabricated evidence.

156 As for the Accused's allegation that M had warned him not to reveal the affair, I believed M that she did not give such a warning and that she had accepted that she too was partly to blame for it. In any event, there was no evidence that the Accused had revealed the affair until after M had made a police report about sexual abuse against V. Accordingly, the Accused's allegation about M's warning was a red herring.

157 As for the Accused's belated allegation that M had wanted to borrow $5,000 from him, this allegation was not even raised with M during cross-examination. It was clear to me that the Accused had fabricated this allegation as well.

158 The evidence also demonstrated that while M and the Accused may have maintained some distance between them after the affair, there was no rancour. It appeared that no one else suspected anything had occurred between the two and the Accused was invited, along with his family, to attend V's birthday party in May 2003.

159 While it may well have been imprudent for M to have allowed V to go with the Accused to the Tampines flat bearing in mind the affair she had had with the Accused while the Accused was married to W, the question was whether she did in fact allow this. It was clear to me that M did not suspect that the Accused might be a threat to V. In her simple mind, V was just going over to play with the Accused's daughter and she did allow this.

160 On this point, I also accepted V's evidence that she did go over on occasions to the Tampines flat with the Accused to play with his daughter.

161 In the circumstances, I was of the view that M had not framed the Accused. I was also of the view that the Accused did take V to the Tampines flat in 1998 and 1999. However, it did not necessarily follow that V was telling the truth about the sexual abuse. There was a delay of about five to six years before V had mentioned the abuse first to H on 8 August 2003.

162 The Defence relied on a statement by Yong CJ in *DT v PP* [2001] 3 SLR 587; [2001] SGHC 193 at [62] that "it is not usual human behaviour for a victim not to make a quick complaint to her family or friends".

163 I noted that that statement was actually first made in *Tang Kin Seng v PP* [1997] 1 SLR 46 ("*Tang Kin Seng*") when Yong CJ said at [79]:

> The evidential value of a prompt complaint often lay not in the fact that making it renders the victim's testimony more credible. The evidential value of a previous complaint is that the failure to make one renders the victim's evidence *less* credible. The reason is simply common human experience. It is not usual human behaviour for a victim not to make a quick complaint. However, as in all cases where common human experience is used as a yardstick, there may be very good reasons why the victim's actions depart from it. It would then be an error not to have regard to the explanation proferred. All these merely illustrate the fallacy of adhering to a fixed formula.

164 In that case, the victim was a maid of 27 years of age. There was no issue about any delay in her reporting of the offence there. The passage which the Defence had relied on was said in the context of whether a previous complaint could constitute corroboration.

165 The statement was reiterated by Yong CJ in *Tan Pin Seng v PP* [1998] 1 SLR 418 ("*Tan Pin Seng*"). The victim in that case was 22 years of age. There was a delay of five days in making a police report. The accused person had contended that an adverse inference should be drawn against

the victim for failing to make a prompt police report and had relied on the passage from *Tang Kin Seng* which I have cited above. Yong CJ said at [29]:

> I found this contention to be totally misconceived. The test in each case is the yardstick of common human experience. While it is not usual human behaviour for a victim not to make a quick complaint to her family or friends, the same cannot be said of a failure to make a prompt police report. In my experience, there is a natural reluctance on the part of victims of sexual offences to make a police report. This stems from a variety of reasons. …

166 In *DT v PP* ([162] *supra*), there were two charges of outrage of modesty. The first incident occurred when the victim was aged ten. The second incident occurred about two years later. After each incident, the victim related what had happened to her grandmother who instructed her not to reveal the incidents to anyone, including her mother. The complainant, however, confided in her close friend after the second incident. No police reports were made immediately after each incident and the allegations were raised some two years after the second incident during a family gathering, after which police reports were made. In that case, Yong CJ said that there was no general rule which requires victims of sexual abuse, or those cognisant of the same, to report them immediately, more so to the police. After referring to what he had said in *Tan Pin Seng* and *Tang Kin Seng*, Yong CJ accepted the explanation of the grandmother for not reporting the incidents to the police promptly.

167 In the case before me, it was not a question of delay in reporting the matter to the police. V had not mentioned the alleged abuse at all for five or six years until she first disclosed the same to H.

168 Although no threat was made against and no bribe was offered to V, an important consideration was the fact that V was only about seven to eight years of age at the time of the alleged abuse.

169 Having considered the evidence, I was not surprised at the delay in disclosure for five or six years. I was of the view that the reason for the delay was because V had not realised the full meaning and gravity of the acts of abuse and the acts of blindfolding her and tying her. The significance of all these acts had eluded her just as the significance of the absence of the Accused's daughter had eluded her. It was not so much because she feared she might not be believed. In my view, V was trying to rationalise in her own mind the reasons for her delay in disclosing the abuse but that was different from saying that she had fabricated the abuse.

170 V had begun to realise the significance of the abuse after the sex education in 2002 when she was in Primary Five. There was a delay of about one year between the time of the sex education and the time she first disclosed the abuse to H on 8 August 2003. I was of the view that this delay was because she was grappling with the significance of what had happened and because she feared she would not be believed. Both H and Myg had testified that V had said she was afraid to tell her parents and had looked sad while narrating the incident. I did not find it incredulous that V should choose to make the disclosure to her friends rather than to M. As the incident involved an adult, she was probably more fearful about disclosing it to another adult first, even though that would be her own mother. Hence she discussed the matter first with her friends.

171 I would add that I do not find it surprising that children think that they may not be believed. In my view, it is adults' instinctive response when told about something serious by children that causes children to feel this way. For instance, M said that when she was told about the abuse, she had cautioned V about telling lies. Even the Prosecution reminded V, and H and Myg as well, that they had to tell the truth in court. I do not blame the Prosecution for its caution but we should not be unduly sceptical when a child says that she did not disclose a serious matter earlier because of her

fear of disbelief. A child may even fear being scolded for making such serious allegations against an adult.

172 I come now to the evidence of V that there was one incident when she was in a car with M and the Accused. She had wanted to tell M that she did not want to go with the Accused but had failed to do so. To me, this reflected her confusion. As for the point that she did not reveal anything to her parents after she returned home, this was probably because she had lost whatever little focus she had had on the abuse once she was no longer with the Accused.

173 Ultimately, I found V to be generally candid with her evidence. I accepted V's evidence about how she was wrapped in a towel, and blindfolded and her hands were tied to the bed in the master bedroom of the Tampines flat while she was alone with the Accused.

174 As regards the first charge, I was also of the view that the Accused did insert an object into V's mouth to suck. The question was whether it was his penis in order to constitute the offence of carnal intercourse. I noted that the Accused had ensured that V did not see the object she sucked. I was of the view that it was not an innocuous object. I was not surprised that V was not certain that she had sucked his penis given the fact that she was blindfolded and was of a tender age then. However, V did mention to Staff Sergeant Eric Neo when the report was first made that the object was hard and something had come out of it. At trial, V also said that the object was long and watery and she did not like the taste of it. Even if I were to discount V's evidence at trial as having been the result of suggestions or questions to her before the trial commenced, there was corroboration from some of the Accused's statements that the object she was made to suck was his penis.

175 As regards the fourth statement in which the Accused had sought forgiveness from his wife for what he had done to V, this appeared at first blush to be damning evidence against the Accused. Certainly it was strong evidence that he had committed a serious wrong against V but what was this serious wrong? As I have mentioned, the evidence revealed that prior to 11 August 2003 when the Accused had sought forgiveness, he had given ten cautioned statements. As a result, even the IO was constrained to say that he did not know for which offence the Accused was seeking forgiveness.[125] In the circumstances, although I found that the fourth statement had been given voluntarily and was admissible in evidence, I gave no weight to it.

176 As for the first three statements, which included the cautioned statement, I was mindful of the fact that the Accused had undergone two long sessions of interrogation on 4 September 2003. Even though I concluded that the Accused had fabricated the allegations of threats, violence and inducement, I was of the view that he must have been tired and anxious. He mentioned a number of times that he had not been allowed to see his father and his wife who was about to deliver their third child. I considered whether he had decided to capitulate out of sheer exhaustion and in the hope of being allowed to see his father and wife soon thereafter. However, I noted that the Accused was not one who was particularly submissive. When he was first asked to accompany the police officers in the morning of 4 September 2003, his instinctive response was not to comply but to say that he would prefer to wait for his father. Secondly, it was his own evidence that at the end of the two sessions, he was still denying that he had done anything wrong. Thirdly, he did not suggest that he decided to capitulate out of exhaustion and anxiety at not being able to see his father and wife. Rather, his position was that he had given the three statements in response to threats, violence and inducement which I had concluded had not occurred. Fourthly, the Accused had admitted only to causing V to perform fellatio on him. If he was going to capitulate because of exhaustion and anxiety, he would not have restricted his admission to this only.

177 It seemed to me that the Accused had taken a calculated decision to admit to only one

offence which he had viewed as the least serious, hoping that he would get a lenient sentence and that the authorities would not pursue any other offence. He had also decided to minimise his statement on what he had actually done in the course of the abuse. That is why he did not mention that he had tied V's hands and blindfolded her. I found that the Accused would not have admitted to causing V to perform fellatio on him, if it had not occurred.

178 I did not accept that the substance of the Accused's plea of leniency in his cautioned statement was suggested to him by the interpreter. That point was not raised with the interpreter when she was under cross-examination. I did not accept the Accused's explanation that the reason for this omission was because he had not told his counsel about it. In my view, the plea for leniency was a genuine one from him. He was even hoping to be able to serve his reservist duty from 16 September 2003 to 30 September 2003 and this, he admitted, had not been suggested to him by the interpreter.

179 Much was made by the Defence of the fact that in the Accused's first statement, he had said that he had brought V (to the Tampines flat) in the middle of 1997, but yet he had admitted to a charge which stated that the offence of fellatio was committed between 1998 and 1999. I should say first that it was not the duty of the IO to check why the Accused was admitting to a charge with different dates or to try and correct the Accused's statement. The statement was that of the Accused and the charge was based on what the IO had learnt from V and M.

180 The fact that the Accused was admitting to a charge with different dates from that which the Accused had mentioned in his statement did not mean that the admission was devoid of any weight. It seemed to me that it did not matter to the Accused then whether he was admitting to an offence committed in 1997 or one committed between 1998 and 1999 since he was already claiming, in his second statement, that he had brought V to the Tampines flat only once in any event.

181 In the circumstances, I had no reasonable doubt that the Accused had caused V to perform fellatio on him.

182 In the context of the second charge, there was medical evidence of penetration of V's vagina. In my view, the hymenal tears were not the result of falls or some sporting activity but of sexual abuse by the Accused.

183 Accordingly, I was of the view that the Prosecution had proved its case beyond a reasonable doubt on the first charge and on the second charge. I found the Accused guilty and convicted him on each of these charges. Although the Accused had no antecedents and no other charges were being taken into consideration, V had been entrusted to the Accused. Also, the act of outraging V's modesty was not one of touching her vagina but inserting an object into it which caused her pain. In the circumstances, I sentenced him to five and a half years' imprisonment on the first charge under s 377 Penal Code and six years' imprisonment with six strokes of the cane on the second charge under s 354A(2)(b) Penal Code. The sentences were to run concurrently and from the date of sentencing as the Accused had been out on bail.

Accused convicted.

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[1]NE 339

[2]N 610

[3]See exhibit P8

[4]N 350

[5]NE 351

[6]NE 563, 580, 581

[7]NE 563, 621 and 622

[8]NE 567

[9]NE 623

[10]NE 616 to 618

[11]NE 631 and 632

[12]NE 637

[13]NE 637 to 641

[14]NE 357, 536 and 643

[15]NE 650

[16]NE 567, 568

[17]NE 575

[18]NE 576

[19]NE 675 and 676

[20]NE 672, 675, 676, 678, 699

[21]NE 669

[22]NE 668, 669

[23]NE 663

[24]NE 571

[25]NE 589 and 686

[26]NE 589

[27]NE 596, 698

[28]NE 603

[29]NE 379, 598

[30]NE 600

[31]NE 689

[32]NE 605 and 601

[33]NE 601,691

[34]NE 607 and 608

[35]NE 608

[36]NE 704

[37]NE 706

[38]NE 706 and 707

[39]NE 709

[40]NE 712

[41]NE 704

[42]NE 715 and 716

[43]NE 716

[44]NE 722

[45]NE 716 to 718

[46]NE 726

[47]NE 379

[48]See NE 596

[49]See NE 600 again

[50]NE 456

[51]NE 1050

[52]NE 1006

[53]NE 981, 982 and 1002

[54]NE 980

[55]NE 984 to 985

[56]NE 1030

[57]NE 1157 to 1159

[58]NE 986 and 987 and 1148

[59]NE 988, 990

[60]NE 1034

[61]NE 1056

[62]NE 1118 to 1128

[63]NE 1129 and 1131

[64]NE 988, 989, 997, 1057

[65]NE 1224

[66]PS 18A

[67]NE 1230, 1232, 1233

[68]NE 1226

[69]PS 19

[70]NE 158

[71]NE 248

[72]NE 209

[73]NE 215 and 216

[74]NE 258

[75]NE 253

[76]NE 255

[77]NE 257

[78]NE 258, 262

[79]NE 262

[80]NE 192

[81]NE 954 and 955

[82]NE 958 and 959

[83]NE 967

[84]NE 964

[85]NE 964 and 965

[86]NE 42

[87]NE 58

[88]NE 122

[89]NE 59, 126

[90]NE 59

[91]NE 90 to 92

[92]NE 102

[93]NE 876 and 881

[94]NE 289

[95]NE 1280 and 1281

[96]NE 1276

[97]NE 1289

[98]NE 1290

[99]NE 1338 and 1367

[100]NE 1338

[101]NE 1339

[102]NE 1340

[103]NE 1290

[104]NE 1293

[105]NE 1297 and 1369

[106]NE 1295 and 1345

[107]NE 1295 and 1296

[108]NE 1304 and 1305

[109]NE 1318 to 1320

[110]NE 1323, 1333, 1334

[111]NE 1337

[112]NE 1372, 1378

[113]NE 1376

[114]NE 1373

[115]NE 1372 to 1374 and 1379

[116]NE 1390

[117]NE 1388

[118]NE 1392 and 1393

[119]NE 1394, 1395

[120]NE 1368

[121]NE 1344

[122]NE 1014

[123]NE 1376

[124]NE 256

[125]See again NE 876 and 881