

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 115

Criminal Case No 54 of 2018

Between

Public Prosecutor

And

BSV

JUDGMENT

[Criminal Law] — [Offences] — [Aggravated outrage of modesty]
[Criminal Law] — [Offences] — [Aggravated rape]
[Criminal Law] — [Offences] — [Aggravated sexual assault by
penetration]
[Criminal Law] — [Offences] — [Criminal intimidation]
[Criminal Law] — [Offences] — [Outrage of modesty]
[Criminal Law] — [Offences] — [Voluntarily causing hurt]

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Public Prosecutor

v

BSV

[2020] SGHC 115

High Court — Criminal Case No 54 of 2018

Hoo Sheau Peng J

17–20, 25–27 September, 18–20 November 2019, 17 January 2020

3 June 2020

Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 In the early hours of 27 March 2016, the accused (then 48 years old) was alone at home with the complainant (then 23 years old). The complainant is the accused's daughter. It is the Prosecution's case that sometime between 3.00am to 6.00am, the accused committed a series of serious sexual and violent offences against the complainant.

2 Nine charges are brought against the accused as follows:

- (a) The first charge of *outrage of modesty*, by touching the complainant's vagina with his hand intending to outrage her modesty, an offence punishable under s 354(1) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code");

- (b) The second charge of *criminal intimidation*, by threatening the complainant with death by placing a penknife at her neck and saying to her, “Don’t shout, I’ll slash you”, an offence punishable under s 506 of the Penal Code;
- (c) The third charge of *aggravated sexual assault by penetration*, by penetrating the mouth of the complainant with his penis without her consent, and in order to facilitate the offence, putting the complainant in fear of death, by placing a penknife at her neck and saying to her, “Blow for me, you want to do now or I will cut your throat”, an offence under s 376(1)(a), punishable under s 376(4)(a)(ii) of the Penal Code;
- (d) The fourth charge of *criminal intimidation*, by threatening the complainant with death by placing a penknife at her neck and saying to her, “Take out your clothings, otherwise I will use the knife to cut you till you die”, an offence punishable under s 506 of the Penal Code;
- (e) The fifth charge of *aggravated outrage of modesty*, by licking the complainant’s vagina intending to outrage her modesty, and in order to facilitate the commission of the offence, putting the complainant in fear of instant death by holding a penknife in his hand, an offence punishable under s 354A(1) of the Penal Code;
- (f) The sixth charge of *aggravated rape*, by penetrating the vagina of the complainant with his penis without her consent, and in order to facilitate the commission of the offence, putting the complainant in fear of death by holding a penknife in his hand, an offence under s 375(1)(a), punishable under s 375(3)(a)(ii) of the Penal Code;

(g) The seventh charge of *voluntarily causing hurt*, by punching the complainant on both sides of her head, an offence punishable under s 323 of the Penal Code;

(h) The eighth charge of *voluntarily causing hurt*, by strangling the complainant with one hand, an offence punishable under s 323 of the Penal Code; and

(i) The ninth charge of *aggravated rape*, by penetrating, with his penis, the vagina of the complainant without her consent, and in order to facilitate the commission of the offence, putting the complainant in fear of death by holding a penknife to her neck, an offence under s 375(1)(a), punishable under s 375(3)(a)(ii) of the Penal Code.

3 The accused claimed trial to all the charges. In his evidence, he admitted that on 27 March 2016, he had sexual intercourse with the complainant twice, and that they engaged in other sexual acts. He alleged that the complainant initiated the sexual encounter, and consented to all the acts.

4 Therefore, in relation to the two aggravated rape charges, the Defence's case is that, at most, the accused is guilty of the offence of incest under s 376G of the Penal Code. In relation to the aggravated sexual assault by penetration charge and the aggravated outrage of modesty charge, as those were consensual acts, the accused is not guilty of them.

5 As for the remaining five charges, the Defence's case is one of denial. During the consensual sexual encounter, he did not touch the complainant's vagina with his hand. He did not use a penknife to threaten the complainant with death twice (as alleged in the criminal intimidation charges), nor did he punch and strangle her (as alleged in the voluntarily causing hurt charges).

6 Having heard the evidence and considered the closing and reply submissions of the parties, this is my judgment.

The Prosecution’s case

The complainant’s evidence

7 The complainant was the main witness for the Prosecution. This is a summary of her evidence.

Personal and family background

8 The complainant has a Higher National ITE Certificate in Business Administration and studied nursing at the HMI Institute of Health Sciences.

9 The complainant got married on 18 October 2014. However, the marriage ran into problems. It was annulled in mid-2016. By March 2016, the complainant was in a relationship. I shall refer to her boyfriend as “SS”. At that time, the complainant drank regularly. She would usually drink a brand of whisky called “High Commissioner”, mixed with bottled green tea (such as the one from the brand “Pokka”). I shall refer to this as the “whisky-green tea mixture”.

10 The complainant’s parents divorced when she was young. Over the years, the accused had been in and out of prison. Nonetheless, they had a close relationship. He was a loving father. The complainant would visit him in prison alone. She was not as attached to her mother. The complainant also has an older brother (to be referred to as “K”) and a younger sister.

Events prior to 27 March 2016

11 On 2 March 2016, the accused was released from prison. The complainant went to pick him up, accompanied by SS, as well as her friend, who I shall refer to as “RR”. They brought him to the complainant’s home – which was an L-shaped studio flat rented and used by the complainant and her mother (“the flat”). With the help of K, the complainant persuaded her mother to allow the accused to stay in the flat until he found alternative accommodation. Thereafter, the accused stayed in the flat. The complainant also found the accused a job as a forklift driver in a logistics company.

12 On 22 March 2016, at the complainant’s request to relieve the numbness in her feet, the accused helped her to “crack the knuckles” on her toes. Her mother considered the accused’s conduct improper. Her mother moved out of the flat, and lodged a police report that the accused had molested the complainant.

13 Sometime in the afternoon of 26 March 2016, the complainant received a call from an investigation officer, Ramesh (“IO Ramesh”), from Jurong Police Station, informing her of the report of molest. The complainant denied that the accused had molested her. She arranged to see IO Ramesh the next day at 10.00am to close the case. The accused overheard her conversation with IO Ramesh, found out about the matter and became angry and aggressive.

14 Sometime in the evening of 26 March 2016, the accused, the complainant and RR gathered to drink the whisky-green tea mixture together. They were at the residents’ corner (near to the flat). Thereafter, they went back to the flat with some *roti prata* which they had bought, and continued drinking. Sometime after 11.00pm, SS went to the flat to fetch RR, and he drove RR

home, accompanied by the complainant. SS then drove the complainant back to the flat. It was between 1.35am and 2.00am on 27 March 2016 when the complainant got home.

The offences

15 When the complainant entered the flat, the accused was sitting in front of the television set (which was switched off). He was drinking and staring at the blank screen of the television set. He seemed to be very angry and tense. The complainant sat with him, and they continued to drink more whisky-green tea mixture.

16 At about 3.00am, the complainant prepared to go to sleep. She reminded the accused to wake her up early as she had the 10.00am appointment with IO Ramesh. Then, she got into her bed in the flat, and went to sleep. Her handphone was next to her pillow. The accused was still sitting in the living area, drinking and staring at the blank television screen. He remained very tense and angry, and appeared to be “thinking to himself”.

(1) First charge of outrage of modesty

17 The next thing the complainant was aware of was the sensation of “someone touching [her] vagina from... outside [her] shorts”. When she opened her eyes, she saw the accused naked, standing to her right and facing her. His right hand was rubbing her vagina from outside her shorts, while his left hand held a penknife to the right side of her neck.

(2) Second charge of criminal intimidation

18 Very shocked, the complainant said, “*Appa*, what [are] you trying to do?” The accused continued to rub her vagina from outside her shorts. With the

penknife still held at her neck, he said, “Don’t shout, I’ll slash you”. The complainant was very afraid that he might hurt her. She thought he was capable of doing anything, as he had already been in prison for manslaughter.

(3) Third charge of aggravated sexual assault by penetration

19 At this point, the complainant was crying because she was very scared. She begged the accused to stop, and asked him why he was doing this to her. He accused the complainant, her mother and her brother of “play[ing] a game” to send him to prison. He threatened to deal with her first, before dealing with her mother. The complainant denied his accusation. The accused then told her, “Blow for me.” She understood this to mean that he wanted her to fellate him, and she refused. Then, the accused said, “[D]o you want to do now? If not, I will cut... your throat.” The accused then pushed his penis into the complainant’s mouth for a few seconds. Meanwhile, the penknife was being held at her neck.

(4) Fourth charge of criminal intimidation

20 Thereafter, the accused sat down on the complainant’s right side. He said he was going to have sex with her. Again, he said that he would deal with her first and then her mother. The complainant cried, begged and pleaded with him not to do so. She feared for her life. While still holding the penknife to her neck, the accused told her to take out her clothes and to do as he told. He threatened to cut her “until [she] die[d]” if she did not comply.

(5) Fifth charge of aggravated outrage of modesty

21 The complainant complied with the accused’s instructions, fearing for her life. She removed her T-shirt and her bra. Then, the accused asked her to

remove her shorts and panties. When she said that she did not want to do so, the accused pulled her shorts and panties off and threw them aside. He spread out her legs, moved himself in between them, and while holding the penknife in his hand, he licked her vagina. The complainant felt very disgusted, and tried to make him stop. She cried and begged him, and moved her legs. He stopped after a few more seconds.

(6) Sixth charge of aggravated rape

22 Then, the accused told the complainant that he was going to have sex with her. Repeatedly, she begged him not to, saying she did not want to and that she was his daughter. Ignoring her pleas, he forced his penis into her vagina, and moved in and out for a few seconds. He was still holding the penknife in his hand. The complainant felt very disgusted. She also felt pain in her vagina. After a few seconds, he stopped.

(7) Seventh charge of voluntarily causing hurt

23 Sitting beside the complainant, the accused said that “finally, he released after seven years”. He then said that he was going to kill or do something to the complainant if she were to report the rape. Still crying, she asked why he was doing this to her. She said that she had been there for him all these years, including visiting him while he was in prison. As she pleaded with him, she raised her voice in the hope of attracting the attention of a neighbour. The accused saw through her plan, and asked her not to “act smart”.

24 At this juncture, the complainant snatched the penknife from the accused, clasped it tightly between both hands and hid it below her pillow, underneath the right side of her face. The accused then punched her head with both his fists. One punch landed near the top of her head and the other landed

on her left ear. It was very painful, and the punch which landed on her head left her feeling “a bit blur for a few seconds”.

(8) Eighth charge of voluntarily causing hurt

25 After punching the complainant, the accused used one hand to strangle her neck. He held her so tightly that she had difficulties breathing. She was in pain.

(9) Ninth charge of aggravated rape

26 In order to breathe, the complainant kicked the accused. He fell to the floor. Then, he stood up, and said, “Trying to show your strength to me, is it?” While he struggled to snatch the penknife back from her, the blade of the penknife fell out of the casing. The complainant also lost her grip of the casing. The accused managed to snatch the casing, and placed the blade back into the casing. Then, he told her, “[D]on’t try too much” and “I’ll let you go if you listen to me and do as I [say].” He said he was going to have sex with her one more time, and repeated that he would let her go if she did as he said. While holding the penknife to the right side of the complainant’s neck, the accused again spread out her legs and sat between them. He had sex with her again, moving his penis in and out of her vagina for a few seconds – “not for very long”. Then, she felt “wet at [her] vagina”, and knew that he had “[shot] out [his] sperm on – into me or what, I am not sure”. The complainant felt very disgusted.

The immediate aftermath

27 After that, the accused again threatened the complainant, saying that he was going to do something to her, and that he was then going to do something

to her mother. He was still holding onto the penknife. In fear, she begged and cried. She tried to calm him down by assuring him that she would not tell anyone what had happened or report the matter to the police. It would be shameful for her as well. She also made him promise the same. The complainant said that she was trying to “brainwash” and “manipulate” him, so that he would not hurt or kill her. After a long time, she finally succeeded in calming him down. The accused then kept the penknife in the bag he used for work. This bag was where the police recovered the penknife subsequently.

28 The complainant then went to the toilet to wash up. She brought her clothes with her, but could not find her panties. She felt a “burning sensation” at the right side of her neck, but could not see clearly as she did not turn the toilet light on. After she left the toilet, she started hyperventilating. After breathing in and out of a plastic bag for a few seconds, she regained control of her breathing. At some point, she asked the accused whether there was any mark on her neck, and he replied that he could see a red mark on her neck. When she asked the accused for her handphone, he said that it was with him. To calm herself down, and to think of what to do, she asked the accused for a cigarette. The accused replied that he would go downstairs to buy cigarettes.

29 As the accused opened the door, the complainant noticed that the gate was fastened with a padlock. She thought this was peculiar. Usually, the gate would not be padlocked. As for the padlock, it was one bought by the accused, and only the accused had the key to it. The accused told her to accompany him to the shop. The complainant said she would rather rest. At that point, she was contemplating committing suicide by jumping down from the flat. The accused insisted that she went downstairs with him, and she had no choice but to comply.

30 From the bottom of the block of flats, they had to walk past a wet market to get to a 7-Eleven store. It took about five minutes. There, the accused entered the store to buy a pack of cigarettes. Then, the complainant wanted a drink to calm herself down, and asked the accused to buy alcohol for her. As it was about 6.55am at that time, *ie*, before 7.00am, they could not purchase alcohol from the 7-Eleven store. At her suggestion, they walked to a nearby coffee shop (the “Koufu coffee shop”) where they bought a bottle of Heineken beer. Then, they returned to the flat.

31 Back at the flat, again, the complainant asked the accused for her handphone. It had been wedged in between the washing machine and the wall. He retrieved it, and handed it to her. Then, the complainant called SS to pick her up, striving to speak in a “normal” way. On the pretext of wanting to buy a bottle of Red Bull to drink with the Heineken beer, she was allowed to leave the flat. The complainant explained that she had used a “normal tone” to speak to the accused, and she reiterated that they should pretend that nothing had happened.

32 When SS picked her up in his car, she broke down, and told him that her father had raped her. They went to pick up RR. She also briefly told RR what had happened.

The police investigations

33 Eventually, later that day, accompanied by SS and RR, the complainant went to the Nanyang Neighbourhood Police Centre to lodge a police report. There, K met them. The police report alleging rape by the accused was lodged at 12.46pm.

34 On the same day, the accused was arrested. He was interviewed by the investigation officer, Vimala Raj s/o Pathmanathan (“IO Vimala”), on both 27 and 28 March 2016. IO Vimala testified as to what the accused had said to him (and I shall discuss this at [129]). The accused also gave statements to the police which were introduced into evidence by the Defence (see [53] below).

The other supporting evidence

35 In addition to the complainant, SS, RR and K gave evidence, *inter alia*, regarding their interaction with the complainant on 27 March 2016. In the main, they testified as to the complainant’s state of distress, as well as seeing a red mark on her neck. SS and K testified that she told them that the accused had raped her.

36 Dr Qi Maili (“Dr Qi”) from the KK Women’s and Children’s Hospital examined the complainant on 27 and 28 March 2016. She furnished a medical report of the two medical examinations dated 12 April 2016. In it, she noted a “3-4cm linear shaped laceration” on the complainant’s neck. The report also contained an account given by the complainant of the offences.

37 On 15 August 2016, Dr Zheng Zhimin (“Dr Zheng”) from the Institute of Mental Health examined the complainant. In her report dated 15 August 2016, she concluded that the complainant was suffering from post-traumatic stress disorder (“PTSD”) of moderate severity, with co-morbid depressive symptoms. In a follow-up report dated 29 August 2019, Dr Zheng stated that the complainant continued to suffer from PTSD. This was prepared after Dr Zheng examined the complainant on 26 and 28 August 2019.

38 I should add that the Prosecution also produced CCTV recordings. These were obtained from the security cameras at various lift landings and within the

lifts of the block of flats in which the flat was situated, as well as the cameras of the Koufu coffee shop. The Prosecution also relied on records from the handphone of the complainant. With that, I turn to the evidence for the Defence.

The Defence's case

The accused's evidence

39 The accused elected to give evidence. In doing so, the accused claimed that the sexual encounter on 27 March 2016 was consensual in nature. In fact, he asserted that the complainant first seduced him on 25 March 2016.

Events on 25 March 2016

40 On the night of 24 March 2016, the accused returned from work at about 11.00pm, and he saw the complainant and RR drinking whisky. Then, the complainant accompanied RR home. When she returned to the flat, it was about 1.30am. The accused and the complainant drank whisky together until about 3.30am.

41 After the accused took a shower, he went to bed. At about 4.00am, the complainant tapped the accused on his shoulder, pulled at his T-shirt and said that she was “horny”. The accused told her that she should not say such words to him as he was her father. However, she replied, “It’s okay, no one is here. Come and make me happy. I feel very horny.” The complainant said she could not control herself, and asked the accused to help her. Then, she grabbed his neck and kissed him. The accused said that he felt very lost at that point, and he did not know why she was acting in that manner. He did not stop her because he had never raised his hand to hit her before. He was very loving towards her, and would often just give in to her.

42 Then, the complainant hugged him, put her hand into his shorts and masturbated him. She then removed their clothes and pulled him onto the bed on top of her. She got him to suck her breasts, and then pushed him down to lick her vagina. Then, she lifted him up by his head, and fellated him. He then grabbed both her legs, and she took his penis and placed it inside her vagina. She told him to push, and he had sex with her until he ejaculated. During this time, he knew very well that he was making a mistake.

43 After the accused wiped himself, the complainant said that she was not able to control herself, and told him to make her happy again. As he had already made a mistake, he felt that if he did not do it again, she would be angry. Hence, he agreed to do whatever she told him to do. Afterwards, she got on top of him, masturbated him, and then placed his penis into her vagina again to have sex with him, until he ejaculated for a second time.

44 Subsequently, they agreed not to tell anybody about what had happened. The accused then left for work, and they did not speak about the matter afterwards.

Events on 26 and 27 March 2016

45 As for the events in the evening of 26 March 2016, the accused's account was similar to that of the complainant. He spoke of how RR, the complainant and he drank together at the residents' corner near the flat. Then, they continued drinking in the flat. The complainant returned home at about 1.00am on 27 March 2016 after sending RR home. They continued drinking. From this point, the accused's account diverged from the complainant's version.

46 The accused said that he showered and went to bed. Sometime later, the complainant tapped him on the shoulder and woke him up. She said she needed

to talk to him, and wanted him to buy beer for her. He said he would do so later in the morning. Then, she touched him on his face, and said, “I am horny, do me again.” He refused, and said it would be a mistake as he was her father. She said there was no one around, and asked him to make her happy one last time. She then hugged him, kissed him, and touched his head, neck and body.

47 After that, she put her hand into his shorts, and began to masturbate him. Then, she removed her clothes, and said that she would make him happy so that he would buy beer for her. Then, she took off the accused’s shorts. She fellated him, got him to suck her breasts, then pushed him back down and got him to lick her vagina. She then pulled him up by his head until they were face-to-face. Then, she placed his penis into her vagina, and told him to push “very fast” until he ejaculated. After about ten to 15 minutes, he pulled himself out, and ejaculated.

48 The accused did as he was told because he thought that the complainant would tell someone about their prior mistake if he did not comply. Out of fear and not knowing what to do, he complied and had sexual intercourse with her. Then, the complainant said he did not do it properly. She wanted him to make her happy, and to do it one more time. The accused protested that he was feeling very tired. However, the complainant insisted. She got on top of him, masturbated him and had sex with him again until he ejaculated a second time. Her eyes were closed, and he did not know who she had in mind at the time. She then said she would not tell anyone about the incident, and that this would be the last time. He agreed not to tell anyone about the sexual encounter.

The aftermath

49 As the complainant wanted a cigarette, they went down together to buy cigarettes. They also bought a bottle of beer from the Koufu coffee shop. Back in the flat, the complainant wanted to drink the beer with Red Bull. However, she said the open can in the refrigerator was spoilt. She asked for \$2, to go downstairs to buy a can of Red Bull. She also asked him for her handphone. In fact, the complainant had left the handphone charging by the sofa in the flat. However, she had forgotten about it. The accused located it, unplugged it and gave it back to her.

50 After the complainant left the flat, the accused looked out of the kitchen window. She did not seem to be heading towards the market or the Koufu coffee shop. He called her at least 40 times. The calls went unanswered. He also called RR a few times during this period to ask if she knew the complainant's whereabouts. Indeed, his handphone records showed him calling the complainant 20 times from 7.57am to 10.50am. In addition, as shown in his handphone records, at 10.47am, he sent her a message saying, "pls pls pls [the complainant's nickname] call me *appa* I am sorry". He explained that he had sent the message because he knew that both of them had made a mistake. He wanted to admit that he had made a mistake and to ask for forgiveness. He wanted her to call and talk to him.

Other matters

51 The accused explained that for his work, the company issued him with two penknives to cut cartons. He did not use a penknife to threaten the complainant. As for the padlock, he admitted that he bought it. However, both he and the complainant used the padlock; the complainant had a key for the

padlock. When the complainant returned home on 27 March 2016 after sending RR home, she used the padlock to secure the gate.

52 The accused ventured quite a few reasons why the complainant, having been the one to initiate the sexual encounters with him, then turned around to frame him. I shall set out these allegations later (see [106]–[123] below).

Statements of the accused

53 The accused first mentioned the two consensual sexual encounters in a statement recorded from him pursuant to s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“the CPC”) in Tamil on 31 March 2016 at 10.40am (“the 31 March 10.40am statement”). In addition, two other statements recorded pursuant to s 22 of the CPC dated 31 March 2016 at 7.14pm (“the 31 March 7.14pm statement”) and 4 April 2016 at 4.05pm (“the 4 April statement”) respectively were admitted into evidence. I shall refer to the contents of these statements in due course. The Defence also adduced ten statements recorded from the accused pursuant to s 23 of the CPC, *ie*, cautioned statements, into evidence.

The supporting evidence

54 Dr Munidasa Winslow (“Dr Winslow”) of Winslow Clinic also gave evidence for the Defence. In his report dated 19 November 2019, Dr Winslow stated that it was “possible” that the drinking of whisky had impaired the complainant’s impulse control, as well as lowered her inhibitions at the time of the sexual encounter on 27 March 2016. Dr Winslow also commented on some other matters which I shall deal with below. Dr Winslow did not interview the accused or the complainant.

The issues

55 The parties did not disagree on the elements of the six different types of offences in the nine charges, *ie*, aggravated outrage of modesty, aggravated rape, aggravated sexual assault by penetration, criminal intimidation, outrage of modesty and voluntarily causing hurt, to be proved by the Prosecution beyond reasonable doubt.

56 Essentially, the case centred on two factual issues:

(a) Whether the complainant consented to fellatio, the accused licking her vagina and two rounds of sexual intercourse. Absence of consent is an element of each of the four charges related to these four acts, and the accused's claim is that the complainant consented to these acts.

(b) Whether the accused committed the act that forms the subject matter of the outrage of modesty charge, *ie*, touching the complainant's vagina during the sexual encounter, and whether the accused committed the acts of violence against the complainant. The defence is one of denial.

57 For completeness, in his opening address, counsel for the accused, Mr Lau Wen Jin ("Mr Lau"), highlighted that in the alternative, if the complainant did not consent to the sexual encounter, the accused was mistaken as to the complainant's consent, presumably raising the defence of mistake of fact under s 79 of the Penal Code. However, Mr Lau did not argue this point in the closing and reply submissions.

58 When I analyse the evidence, I shall deal with the parties' submissions in greater detail. Given that the case turns on factual disputes, I shall first set out the applicable legal principles for the evaluation of the evidence.

Applicable legal principles

59 It is settled law that the uncorroborated evidence of a complainant may be the sole basis for a conviction. However, such evidence must be "unusually convincing": see *Public Prosecutor v GCK* [2020] 1 SLR 486 ("*GCK*") at [87]; *Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 ("*Haliffie*") at [28]; *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [111]; and *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 ("*Liton*") at [37].

60 In *GCK* at [88], the Court of Appeal stated that the "unusually convincing" standard is used to describe a situation where the witness's testimony is "so convincing that the Prosecution's case [is] proven beyond reasonable doubt, solely on the basis of the evidence", citing *Liton* at [38]. As to what would constitute "unusually convincing" evidence, the Court of Appeal observed as follows:

88 ... In [*Haliffie*], this court considered that (citing [*Liton*] at [39]):

... a complainant's testimony would be unusually convincing if the testimony, 'when weighed against the overall backdrop of the available facts and circumstances, contains that ring of truth which leaves the court satisfied that no reasonable doubt exists in favour of the accused'.

The relevant considerations in this regard include the witness's demeanour, and the internal and external consistencies of the witness's evidence.

61 At [92] of *GCK*, the Court of Appeal stressed that the “unusually convincing” standard is not meant to impose a mandatory warning from the judge to himself or herself. At the last stage of the evaluation of the evidence and just before a conviction is found, it serves as a cautionary reminder. It is to ensure that the trial judge has an awareness of the dangers of convicting the offender on uncorroborated evidence, and that he or she undertakes a rigorous and holistic assessment of the evidence.

62 Where the evidence of a complainant is not “unusually convincing”, an accused’s conviction is unsafe unless there is some corroboration of the complainant’s evidence: see *Liton* at [37]. As to what can amount to corroborative evidence, the strict approach is set out in *R v Baskerville* [1916] 2 KB 658 (“*Baskerville*”) at 667; it requires independent evidence implicating the accused in a material particular. However, in the local context, there is a more liberal approach. The trial judge has the necessary flexibility to treat relevant evidence as corroborative. What is important is the substance as well as the relevance of the evidence, and whether it is supportive or confirmative of the weak evidence which it is meant to corroborate: see *Liton* at [42]–[43].

63 Indeed, the more liberal approach treats a subsequent complaint made by the complainant herself as corroboration provided that the statement implicating the offender was made at the first reasonable opportunity after the commission of the offence: see *AOF* at [173] citing *Public Prosecutor v Mardai* [1950] MLJ 33. With this framework in mind, I turn to analyse the evidence.

Analysis of the Prosecution's evidence***The complainant's evidence***

64 I begin with the complainant's evidence. In considerable detail, she recounted her relationship with the accused, the events of 26 March 2016, the offences, the aftermath of the offences and how she made the police report on 27 March 2016. Having considered the whole of her evidence, I am of the view that the complainant's account of the offences is cogent and coherent for these main reasons:

(a) The complainant explained what might have triggered the accused's conduct that early morning of 27 March 2016 – the report of molest had angered him. From what he uttered during the commission of the offences, the accused perceived there to be a conspiracy, by the complainant, her mother and K, to get him into prison. He wanted to punish the complainant for this. Here, I should highlight that the accused did not dispute that he found out about the report of molest that day. He, however, claimed that he was not angry with the complainant for this; he was only angry with her mother.

(b) By the time the complainant woke up, a naked accused was touching her vagina and holding a penknife to her neck. Thereafter, the acts progressed from the touching of her vagina, to fellatio, to licking her vagina and then rape. She was able to describe, with a degree of clarity, their relative positions, and how he handled the penknife at the various stages. While Mr Lau criticised some aspects of her evidence as incredible, such as how she described that the accused's upper body was not touching her during the two rounds of sexual intercourse, I do not

agree. Not a single detail strikes me as being implausible or unbelievable.

(c) According to the complainant, there was also a corresponding increase in the use of threats and force. Emboldened by each preceding act, the accused made more and more unreasonable sexual demands of the complainant. As narrated by the complainant, there was a very natural escalation of events.

(d) During that time, the complainant described herself as experiencing mixed feelings of fear, disgust and disappointment. Her emotional state, in my view, was consistent with the events as they unfolded.

(e) Meanwhile, her efforts to resist the accused gelled with the surrounding circumstances. In the main, Mr Lau found fault with three aspects of her efforts:

- (i) The complainant could have but did not scream for help.
- (ii) After she took the penknife away from the accused, the complainant did not threaten the accused.
- (iii) She did not try to escape at that point in time.

None of these seriously undermined the cogency of the complainant's account. I note that initially, the complainant cried, pleaded and begged the accused to stop, appealing to his love for her as a father. Then, she tried to raise her voice to catch the neighbour's attention. The accused saw through this, and warned her not to try to raise any alarm.

When these measures failed, and after the first instance of rape, the complainant wrested the penknife from him. Thereafter, she tried to hide the penknife from him. This would prevent the accused from using the penknife on her. This reaction was completely understandable. I do not think she could be faulted for not threatening him harm. Even then, her efforts ended in naught, and he managed to get the penknife back from her.

I am mindful that the complainant was alone in the flat in the dead of the night with the accused. Having seen both the accused and the complainant, physically, he was clearly the bigger of the two. I do not think she had any realistic opportunity to escape. The aforementioned progression of resistance is logical. It seems to me that the complainant had little choice but to comply with his instructions.

(f) As for her response and reaction in the aftermath of the offences, again, it was in accord with that of someone who had suffered a sexual and violent assault. I shall discuss this in some length at [85] below. Also, I note that there was considerable evidence to corroborate her account, including CCTV recordings, messages she sent to SS and the testimonies of SS, RR and K which I shall address later at [91]–[101] below.

65 In the face of rigorous cross-examination, the complainant did not waver. She remained firm about her version of the offences. Importantly, she did not embellish her evidence to strengthen her case. These are some examples:

(a) When asked whether she saw the accused's penis enter her vagina, she candidly replied that she did not, because she was crying and had closed her eyes. However, she felt it.

(b) She insisted that the accused used only one, and not both, of his hands to strangle her, but admitted that she did not see which hand he used to strangle her neck. She explained that she was busy trying to defend herself.

(c) Dr Qi's report stated that the two instances of sexual intercourse lasted for two minutes and seven minutes respectively. However, the complainant insisted that the sexual intercourse lasted for only a few seconds each time.

(d) Also, the complainant maintained that she was only aware that the accused ejaculated once – after the second round of sexual intercourse. Dr Qi's report stated that the accused ejaculated twice.

66 At [68]–[76] below, I shall deal with the discrepancies in the complainant's evidence with her prior accounts of the offences as documented in Dr Qi's report, as well as a conditioned statement of the complainant dated 31 January 2019 ("the conditioned statement"), prepared in accordance with s 264 of the CPC for use as her evidence in court. For now, it suffices for me to say that these two prior *documented* accounts do not detract from the internal consistency of the complainant's evidence. Not only is her account internally consistent – it is externally consistent with all the supporting evidence which I discuss from [77]–[105] below. Upon an evaluation of the accused's allegations of the complainant's motives at [106]–[123] below, I also conclude that she did not frame the accused. In light of the analysis above, the assessment of the evidence below, and my observation of the complainant in court, I am of the view that the complainant is a credible witness. I accept her account. It is not contrived. It rings of the truth.

Prior documented accounts of the offences

67 I now deal with two documents, which contain the complainant's prior accounts of the offences, *ie*, Dr Qi's report and the conditioned statement. Having examined these documents, I find that the complainant's testimony is largely consistent with her prior accounts of the offences.

Dr Qi's report

68 As noted by the Prosecution, there were five aspects of the summary of the offences in Dr Qi's report which were not wholly consistent with the complainant's evidence in court as follows:

- (a) In the report, it was stated that the accused "threatened to *slap* [the complainant]", whereas the complainant said that he threatened to "*slash*" her;
- (b) The report stated that the "knife" was held against her *face*, whereas the complainant said that the accused held the penknife against her *neck*;
- (c) According to Dr Qi, the accused ejaculated "2 minutes" after the first instance of rape, whereas the complainant testified that she did not feel any wetness then and that it only lasted a few seconds;
- (d) According to Dr Qi, the accused ejaculated "7 minutes" after the second instance of rape, whereas the complainant testified that it did not last that long. She was not sure what she mentioned to Dr Qi;
- (e) In the report, Dr Qi said that the "knife" injured the complainant when the accused tried to take it away from her, whereas the complainant said that she could not recall when the penknife cut her.

69 I should add two other aspects to those highlighted above. First, while the complainant said that the accused used a penknife, the report stated that a *knife* was used. Second, the report did not mention the incidents of the accused punching and strangling the complainant.

70 Given the complainant's emotional state on the day of the offences, I am not surprised that the complainant failed to express herself clearly, accurately or completely as follows:

(a) The complainant could well have said "knife" instead of "penknife", and that it was held against her "face" instead of "neck". I do not think the distinctions would have been significant to the complainant at the time.

(b) In saying "slash", the complainant could have led Dr Qi to mishear "slap". In court, from time to time, I had to listen quite carefully to understand what the complainant had said because of the way she pronounced certain words. In any event, I do not think Dr Qi's report is accurate. In the context of an offender who is wielding a knife to a victim's face, a threat to "slap" the victim is incongruent.

(c) As for the other discrepancies noted by the Prosecution at [68(c)]–[68(e)] above, the complainant's evidence in court, vis-à-vis her account as per Dr Qi's report, only put *the accused* in the same, if not a more favourable, light. In other words, the subsequent inconsistencies did not prejudice the accused. Therefore, as described above at [65(c)]–[65(d)], to my mind, these differences simply showed that the complainant did not exaggerate to plug any weaknesses in her evidence. She simply tried to give the most accurate evidence she could in court.

(d) In the same vein, it is plausible that the complainant could have omitted to mention the incidents of the accused punching and strangling her to Dr Qi. Compared to the instances of rape, the other sexual acts and the threat by use of a penknife, these were certainly not as egregious in nature.

71 At such, I agree with the Prosecution that these discrepancies do not detract from the complainant's evidence at all. More importantly, Dr Qi's report reflected that the complainant consistently alleged that she suffered sexual assaults in the sequence as follows – by being touched at the vagina, by fellatio, by licking of her vagina and twice by rape.

The conditioned statement – Application to impeach

72 I now turn to the conditioned statement. Eventually, the Prosecution did not adduce it as the complainant's oral evidence. Instead, based on the discrepancies in her testimony with portions of the conditioned statement, the accused sought to impeach the complainant's credit. The application is pursuant to s 157(c) of the Evidence Act (Cap 97, 1997 Rev Ed).

73 The four aspects of concern in the conditioned statement were as follows:

(a) At para 2, the complainant said that when she was awakened by the accused, "he was *pointing* a penknife with the blade sticking out at [her] neck". In court, she said he was *holding* the penknife to her neck;

(b) At para 5, the complainant said that she "did a blow job by *sucking* his penis. When [she] was *sucking* his penis, he was holding the

penknife at [her] neck.” In court, she did not mention that she “sucked” his penis.

(c) At para 6, the complainant said that the accused pulled off her shorts and panties, before asking her to take off her T-shirt. Then she took off her T-shirt and bra. In her testimony, she reversed the sequence, stating that she took off her T-shirt and bra before the complainant took off her shorts and panties.

(d) At para 12, the complainant described SS as her friend, and not her boyfriend (as she stated in court).

74 In my view, the first and fourth aspects were clearly immaterial. The former was simply about a difference in semantics – between “point” and “hold”. As for the latter, apart from being a minor discrepancy, there was also a satisfactory explanation by the complainant. She said that at the time of the making of the conditioned statement, there was a strain in her relationship with SS. Therefore, she described him as a friend.

75 Turning to the other two matters, these are the complainant’s explanations for the differences:

(a) In so far as the complainant was asked in court if she “sucked” the accused’s penis, suggesting an additional act over and above the penetration, the complainant replied she did not. She explained that he had pushed his penis deep into her mouth, and she had used her tongue to push it out. However, she did not “willingly or anything” suck his penis. In my view, again in her testimony, the complainant gave a simple and honest account of the act, and did not exaggerate what she meant by the “blow job”.

(b) In January 2019, when the conditioned statement was recorded, the complainant did not really want to dredge the incident from her mind. Thus, the complainant did not really focus on the sequence in terms of the removal of her clothes. She remained firm that the version in court is correct – that she had removed her T-shirt and bra before the accused removed her shorts and panties. In this regard, Dr Zheng’s evidence threw some light on how poorly the complainant was faring in January 2019: see [103(d)] below.

76 In my view, the explanations are satisfactory. Therefore, on the impeachment application, I rule that the complainant’s credit is not impeached.

Laceration (and absence of any other physical injury)

77 Moving on, as stated at [36] above, Dr Qi observed the laceration on the complainant’s neck on 28 March 2016. I should add that she missed this during the examination on 27 March 2016; the complainant was asked to return to see her on 28 March 2016, *inter alia*, to document this injury. In Dr Qi’s view, “it appeared to result from a blow from a sharp edged object by incision/stabbing”. The laceration is shown in the photograph marked “Exh P7-4”.

78 Mr Lau argued that little weight should be placed on the laceration. Based on Dr Winslow’s evidence, self-harm is correlated with alcoholism and substance abuse. It was also Dr Winslow’s opinion that the laceration (comprising of two thin lines) did not look like one caused by the blade of the penknife.

79 I note that Dr Winslow did not see the laceration on the complainant; he only saw the photograph marked “Exh P7-4”. He conceded that his view on the cause of the laceration was “speculative”, as he was “not an expert in injuries

caused”. In any event, he opined that the laceration could have been caused by the blunt edge of the penknife (just not the blade of the penknife).

80 Just as Dr Winslow did not have any expertise to weigh in on the cause of the laceration, neither did Dr Qi. Indeed, I do not quite understand Dr Qi’s evidence on the issue. As noted by Dr Qi, the laceration was superficial. I do not see how it could have been caused by “incision/stabbing”, which would suggest a deep cut. I also do not understand the use of the word “blow” in the same breath as “incision” or “stabbing”. As such, I do not accord any weight to Dr Qi’s evidence on this.

81 In my view, it was pure conjecture by the accused to allege that the complainant had inflicted the wound on herself (because she was an alcoholic and a drug abuser), and then presumably used it to frame the accused. Both SS and RR saw the red mark on the morning of 27 March 2016. RR testified that the cut was not there the previous night. Given such evidence, the self-harm proposition would have meant that the complainant had the presence of mind (as well as the opportunity) to harm herself *before* she met with SS on the morning of 27 March 2016. This was completely farfetched. As I discuss later, I find the key aspects of the evidence of SS and RR to be believable. It seems to me that the laceration was consistent with the complainant’s account of the use of a penknife by the accused, and how she suffered a cut during the course of the incident.

82 At this juncture, it is appropriate to deal with Mr Lau’s submission that the absence of any other physical injury supported the defence that the sexual encounter was consensual, and contradicted the complainant’s version, especially her claim that she experienced pain during the sexual intercourse. Specifically, Mr Lau pointed out that Dr Qi found no fresh tears on the

complainant's hymen. She did not find any bruising on the complainant's mons, labia and vulva. There was also no other physical injury on the complainant.

83 It is not disputed that the complainant was sexually active, and that there were old tears in her hymen. The absence of fresh tears is a neutral factor. Dr Qi acknowledged this. Dr Qi also said that from the lack of bruising on the mons, labia and vulva, she could not conclude that there had not been trauma to these areas.

84 As I noted at [64(e)] above, during the ordeal, the complainant largely complied with the accused's demands. Undoubtedly, any other physical injury would have buttressed the complainant's version of events. However, in accord with Dr Qi's view, the absence of any other physical injury is but a neutral factor. It does not detract from the complainant's claim of pain during the ordeal, and it certainly does not support the accused's claim that the sexual encounter was consensual in nature.

Behaviour in the immediate aftermath of the offences

Failure to raise alarm

85 I turn now to address Mr Lau's contention that the complainant's behaviour in the immediate aftermath of the offences was completely at odds with her allegation of a sexual assault of a serious nature by the accused.

86 Mr Lau pointed out that when the complainant left the flat with the accused at about 6.51am to buy cigarettes at the 7-Eleven store, and then to buy beer at the Koufu coffee shop, she could have but did not flee from the accused. Also, she could have but did not approach persons in the vicinity for help.

87 As argued by the Prosecution, victims of sexual abuse may not react in the same way as other victims of crime. Certainly, there is no general rule requiring victims to report the offences immediately or in a timely fashion to either the police or anyone else. The court is to assess the explanations provided so as to determine the impact of a failure to report an offence promptly, if any, on the complainant's credibility: *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2019] 2 SLR 490 at [62], [67] and [68].

88 In this regard, I am of the view that the complainant has provided very convincing explanations for her conduct. The complainant admitted that she did not ask for help from anyone at the wet market, the 7-Eleven store, the bread shop, the provision shop and the Koufu coffee shop. The complainant readily agreed that she knew the shop attendants at the bread shop and the provision shop. However, she denied that she knew any of the people seated at the Koufu coffee shop that morning. She explained that at that time, she was emotionally overwhelmed, and found it difficult to think. Affected by the incident, she was traumatised, lost and was still trying to digest it all.

89 Further, at that time, she felt that it was safer to lull the accused into believing that she would not report the matter, and to make her escape so as to seek help later. Even if she were to approach someone in the vicinity for help, she doubted that anyone would step forward. As the accused was physically near to her, he could still do harm to her. As I pointed out earlier (see [64(e)] above), physically, the accused was bigger than the complainant. He could also overtake her if she were to run. At that time, she did not have her handphone, and she did not have any money with her. She needed to plan her escape. Therefore, she returned to the flat with the accused. It was only after she had retrieved her handphone from the accused that she made her escape.

90 I am persuaded by the complainant's explanations, and I find her behaviour to be completely congruent with the difficult circumstances she found herself in. Indeed, the CCTV recordings and messages sent to SS supported these explanations. In any event, the complainant confided in SS, RR and K that very day, and made the police report immediately thereafter. Certainly, there was no undue delay on her part that raises any alarm in my mind regarding the veracity of her allegations.

CCTV recordings

91 I go to the relevant CCTV recordings. The relevant extracts from around 6.50am to 7.11am show that when the accused and the complainant left the flat at around 6.51am, the complainant was not carrying anything in her hands *ie*, she did not have her handphone with her. I also observe that she kept a distance from the accused. The relevant extracts of the CCTV recordings at 7.45am onwards show that when the complainant left the flat for the second time, she began crying once she was in the lift. She was obviously in a state of distress.

92 Such evidence corroborates the complainant's account that the accused had insisted that she went downstairs with him. She did not have her handphone, and she was lost and unsure what to do. The second time round, once she was away from the accused, she let out her emotions by bursting into tears.

Messages sent to SS

93 I also refer to the messages sent by the complainant to SS, shortly after 7.00am on 27 March 2016, when the accused returned her the handphone. At 7.14am, she sent a text message saying, "I wanna die. Thks for everything." When SS did not reply, she sent another message saying, "U there anot. Afta I die tan u reply uh..." (*ie*, "are you there or not? After I die then you reply *uh*").

As the complainant explained in court, she felt suicidal at the time. In my view, the messages reflected someone in a state of distress after a sexual assault involving violence.

Evidence of SS, RR and K

94 I turn to the evidence of SS, RR and K.

95 SS was the first person the complainant informed about the ordeal. SS described how the complainant was crying when he picked her up. She told him that the accused had raped her, and had used a penknife in the process. He saw the red mark on her neck. After that, SS drove to pick up RR, and they proceeded to a carpark where SS parked his car so that the complainant could speak with RR.

96 As the second person who saw the complainant after her ordeal, RR described how the complainant was crying and wailing. RR saw the red mark on her neck caused by the penknife. She took a photograph of it on her handphone to show the complainant, and the complainant told her that the accused had caused the mark using a penknife. After that, they proceeded to the police station to lodge the police report.

97 K testified that at the police station, he ascertained from the complainant that the accused had raped her. Also, the complainant showed him the “red line mark” at the right side of her neck, and said that the accused had used a penknife to “force” her.

98 Admittedly, SS testified that at the carpark, the complainant told RR in considerable detail what had happened. As SS overheard the conversation, he was able to provide a detailed account of what the complainant had said. RR,

however, was unable to provide any details of that conversation with the complainant. She explained that she could not quite make out what exactly the complainant said as the latter was crying so hard. Turning to the complainant, she said that she only told RR that her father had raped her, and that he had used the penknife to threaten her. She was ashamed and embarrassed to say more to her friend. She was also mindful that SS was nearby. In other words, there were differing accounts about what the complainant told RR at the carpark (and what SS could have overheard).

99 It seems to me that with time, RR was not able to remember the details of the events. In fact, she was not able to recollect much of the drinking session on 26 March 2016. In any event, she found it difficult to understand what the complainant was saying at the carpark. As for SS, I am mindful that he remained the complainant's boyfriend until the time of the trial. I do not discount the possibility that over the course of the two and a half years prior to the trial, he might have learned of more details of the incident. He might have attributed his knowledge of the details of the incident to the conversation between the complainant and RR at the carpark. Therefore, I do not place much weight on SS's account of the details of the offences (supposedly recounted by the complainant at the carpark). Instead, I prefer the complainant's evidence that she did not reveal details to SS and RR.

100 That said, I do not find that these differences render the evidence of SS and RR unreliable. While SS and RR are the complainant's boyfriend and friend respectively, I find them to be generally credible witnesses. Indeed, Mr Lau did not challenge their testimonies in any significant way. Similarly, I see no reason to doubt that K told the truth in court.

101 While these three witnesses could not throw light on the details of what happened that early morning, what they clearly testified to was the complainant's state of distress, and the presence of the red mark on her neck which she said was caused by the accused's use of a penknife. Also, SS and K testified that they were told that the accused had raped the complainant. I accept such evidence, which serves to corroborate – in the liberal if not in the strict *Baskerville* sense – the complainant's account that she was the victim of a sexual attack by the accused.

Diagnosis of post-traumatic stress disorder

102 I now turn to Dr Zheng's evidence. About six months after the events, Dr Zheng saw the complainant. As documented in Dr Zheng's first report, during the consultation, the complainant was emotionally distressed, and still found it hard to talk about the incident on 27 March 2016. Based on symptoms displayed by the complainant, Dr Zheng diagnosed the complainant to be suffering from PTSD. Dr Zheng opined that it would be very unusual for the complainant to suffer from the symptoms displayed without having experienced "[e]xposure to actual or threatened death, serious injury or sexual violence" – this being the first criterion for a diagnosis of PTSD.

103 Almost three years later, when Dr Zheng saw the complainant on 26 and 28 August 2019, she was still suffering from PTSD. In Dr Zheng's second report, she documented what happened to the complainant in the intervening time as follows:

- (a) The complainant did not return for outpatient follow-up sessions; she thought she did not need psychiatric help.

(b) The complainant was unable to hold down her nursing job. She experienced flashbacks of what had happened to her, low mood and poor sleep. To cope, she drank beer every night. Subsequently, she started abusing methamphetamine. She had not abused drugs before. Her mother reported her to the police, and she spent six months in prison.

(c) After her release, her situation improved. She worked full-time for ten to 11 months, and saw a counsellor regularly. She did not think much about what had happened to her. Her mood improved, she slept better and she drank less.

(d) In January 2019, the Prosecution contacted her about the upcoming trial. She started to feel anxious and fearful, and she started to experience flashbacks about what had happened to her. Her mood deteriorated, she slept poorly and her drinking increased. In July 2019, she also started abusing methamphetamine again.

104 Dr Zheng concluded that the complainant had started taking drugs, after a sustained period of low mood and anxiety, because of reminders of the incident and the upcoming trial. According to Dr Zheng, reckless and self-destructive behaviour is another symptom of PTSD. I note that by the time of the trial, the complainant was undergoing rehabilitation at the Changi Drug Rehabilitation Centre.

105 Having perused both of the reports, and without any clear challenge by Mr Lau, I accept Dr Zheng's evidence that PTSD is preceded by a traumatic event of actual or threatened death, serious injury or sexual violence. In my view, the complainant's diagnosed condition supported her complaint of a sexual attack by the accused with the use of threats of death and violence.

Motives for framing the accused

106 To round off, I turn to deal with the accused's allegation that the complainant framed him. In this connection, I agree with the Prosecution that there are two main theories put forth by the accused why she did so. The first is that from the outset, there was a sinister plot by the complainant to frame the accused for rape. She did this out of anger at him for the breakdown of her marriage and/or for scolding her friends, and/or for being a controlling figure in her life. Second, the complainant had consensual sex with the accused without any sinister plot in mind. She was drunk and disinhibited, and she was having serious relationship problems with SS. After that, she deeply regretted her actions. Also, she wanted to avoid prosecution for incest.

107 On the first theory, it seems to me that the accused's three underlying assertions (which are somewhat inter-related) are hopelessly unmeritorious. The complainant married her ex-spouse on 18 October 2014. The complainant candidly testified that her father was "highly possessive and jealous" of the relationship with her ex-husband, and interfered in the marriage. However, the marriage was already in trouble in 2014, and the complainant did not live together with her ex-husband or consummate the marriage. By March 2016, the complainant was in a relationship with SS. In fact, SS testified that by then, they had been together for one year. Even if the complainant bore a grudge against the accused, she had moved on to a new relationship.

108 Besides, from February 2015 to March 2016, the accused was in prison. The accused did not deny that the complainant visited him in prison. The accused also agreed that upon his release, the complainant asked him to stay in the flat and got him a job. It was completely farfetched to say that the resentment

against the accused for playing a role in the breakdown of the marriage between 2014 and 2015 then prompted the complainant to frame the accused in 2016.

109 According to the accused, in 2014, the complainant was also unhappy with him for trying to stop her from consuming drugs, and for scolding her friends who were drug addicts. When they refused to change, he then decided he would take drugs as well. Then, somehow, the complainant and her friends plotted to report him to the police, and to send him to prison in February 2015. Indeed, the complainant then proceeded to do so.

110 In my view, there was no reason whatsoever for the accused to take drugs, so as to stop the complainant from doing the same. If the complainant had been taking drugs, there was no reason for her to call the police, and risk being arrested for taking drugs herself. I agree with the Prosecution that this was a most bizarre story.

111 Moreover, again, these incidents allegedly happened between 2014 and 2015. As I highlighted at [108] above, the accused conceded that after his release from prison in March 2016, they were on good terms. It did not make any sense for the complainant to frame him for what happened in 2014 and 2015.

112 It was only in cross-examination that the accused mentioned an incident when he scolded her friends in 2016. On 4 March 2016, the complainant brought home male friends who were “good for nothing” and “useless”. The accused chased them away, and the complainant was angry with him for doing so. It seemed clear to me that the accused made up this evidence, as he did many other matters as he went along so as to cast the complainant in a bad light.

113 For completeness, according to the complainant, in February 2015, she had to call an ambulance to help the accused (who was abusing drugs during the period of time). The accused was sitting on the floor with a penknife lodged in his neck. Given the nature of the case, after the ambulance was called, the police was activated. Thereafter, the accused was incarcerated. When cross-examined on this, the accused did not seriously dispute that this was what happened to him.

114 On the second theory, again, the three underlying assertions simply did not stand up to scrutiny. On the suggestion that the complainant falsely alleged rape to protect herself from being prosecuted for the offence of incest, it was completely at odds with the accused's evidence that they had promised not to mention their sexual encounter to anyone else. If the accused did not have any intention of reporting the matter, there was no logical reason for the complainant to lodge a report of rape. This would have clearly invited a police investigation, and brought the matter into the open.

115 As for the suggestion that the complainant regretted her actions after the effects of alcohol and drugs had worn off, again, it made no sense to file a police report. This would expose the matter, draw more attention to the mistake, and invite a police investigation.

116 In any event, I reject the allegation that the complainant was abusing drugs. The complainant was candid about taking methamphetamine after March 2016, but said she had not taken drugs prior to that. This was consistent with what she told Dr Zheng. I find the accused's story that the complainant was abusing drugs with her sister, as well as a group of friends, completely unsubstantiated.

117 Turing to her alcohol consumption, it is not clear how much exactly the complainant drank on 26 and 27 March 2016. By her own account, she drank about seven to nine cups of the whisky-green tea mixture altogether. Each cup would be filled halfway with the mixture, and the mixture would be about one part whisky and three parts green tea. She would use disposable cups to drink. As calculated by the Prosecution in the closing submissions, this would mean that she consumed from about 175ml of whisky (if she had drunk seven cups from a 200ml disposable cup) to about 398ml of whisky (if she had drunk nine cups from a 345ml disposable cup). At the end of the day, it was not seriously disputed that she drank a substantial amount of whisky.

118 Mr Lau contended that the complainant had been “economical with the truth on the type and quantity of alcohol”. According to SS, she also consumed beer regularly, in addition to the whisky-green tea mixture. However, in my view, the complainant did not hide the fact that she drank beer. She said that in the immediate aftermath, she had asked the accused to buy beer for her; they bought a bottle of Heineken beer at the Koufu coffee shop. In giving evidence, she focused more on the drinking of whisky-green tea mixture, especially in the time leading up to the incident.

119 While there is no doubt that the complainant drank large quantities of the whisky-green tea mixture on 26 March into 27 March 2016, and even if she drank beer that day, this was not unusual for her. By all accounts, she was a regular drinker. She drank every day. In particular, both the accused *and* the complainant testified that they drank together regularly. They usually bought two to three 375ml bottles of High Commissioner whisky per day, which they would share between the two of them or with other persons as well.

120 The more important question, therefore, was the effect of that alcohol consumption on her. In this regard, SS testified that the complainant was “always in control”, and K testified that she “know[s] how to control herself” and “knows her limit”. In fact, it was the accused’s evidence that the complainant was in complete control of the situation on both 25 March and 27 March 2016. She knew exactly what she wanted, and she was instructing him exactly what to do for her to obtain sexual pleasure. He had no problems understanding her. Based on such evidence, there is little basis to allege that she was drunk, disinhibited and not in control of herself during the incident.

121 At this juncture, I turn to Dr Winslow’s evidence. At the highest, Dr Winslow opined that it was possible that the complainant’s consumption of alcohol reduced her impulse control and inhibitions. He was, however, unable to state that this was to such an extent that it would cause her to initiate or consent to sexual intercourse with her father. Indeed, Dr Winslow observed that from her actions, she “had sufficient mental capacity” to “try and think of what she was doing”, and “was also able to make decisions”. At the end of the day, Dr Winslow did not interview the complainant and/or the accused. His opinion was a general one – of the general effects of alcohol on individuals. His evidence is of limited use in assessing the effect of alcohol on the complainant that day.

122 Moving on to the alleged relationship issues with SS, the complainant spoke of a misunderstanding between them, and said that they were arguing in the early morning of 27 March 2016 before she went back to the flat. The accused alleged that she downplayed the problems with SS, and that she was facing significant problems. However, in my view, it is highly unlikely that a relationship issue would drive the complainant to have sexual intercourse with her father. Even Dr Winslow said that such revenge sex cases were “few and far

between”, and of those he had seen, they did not even involve persons having sex with a family member in revenge.

123 I end by observing that the complainant did not try to implicate the accused at all costs. To reiterate, she described the accused as a loving father who took care of her. Certainly, she did not paint the accused in the worst possible light, or allege any prior improper sexual conduct towards her. In fact, she disagreed with the report of molest filed by her mother. The complainant, in my view, did not frame the accused.

Analysis of the Defence’s evidence

124 I now turn to the accused’s evidence. My first observation is that the accused’s version of how the complainant seduced him, not just once, but on two separate days, is inherently incredible for the following reasons:

(a) The accused claimed that he knew it was wrong for them to engage in sex. Yet, on the first occasion, he simply succumbed to her advances, and complied with her detailed instructions on how to please her. His explanation was that as a loving father, he could not hit her, and he could only give in to her. This was baffling. Without hurting the complainant, the accused could have resisted in many other ways during the different stages of the purported sexual encounter. He did nothing of that sort at all.

(b) After that first occasion, he claimed to have felt extreme remorse and regret. He made mistakes at work. If so, it seems odd that he was perfectly content to stay in the flat, alone with the complainant. It seems to me he was content to carry on life as per normal, drinking the whisky-green tea mixture with the complainant, RR and other friends of theirs.

(c) It was also perplexing that he did not ask the complainant why she acted the way she did. As the accused claimed, the complainant's actions were troubling. In fact, he thought she behaved like a "psycho". As a concerned and loving father, which he professed himself to be, he took no steps to seek help for her well-being. When confronted with this failure to look after the complainant's well-being, the accused claimed that he forgot about the sexual encounter, and forgot to ask about the complainant's well-being. This was because they had promised not to talk about it. When asked how he could possibly forget about the matter, he then claimed that she would become angry if he were to broach the subject. The accused's story simply did not add up.

(d) In the early hours of 27 March 2016, again, the accused put up a mere token of resistance to the complainant's sexual advances. All he could do was to protest by telling her that what they were doing was wrong. Physically, he did absolutely nothing to put some distance between them so as to stop her. The accused also claimed that he was afraid she would tell someone about the mistake on 25 March 2016. Again, this made no sense. After all, according to the accused, the complainant had promised not to tell anyone about the matter. Indeed, the accused did not say that the complainant threatened to tell someone about it; it was simply his fear of being exposed. This fear seemed unfounded, since it would also be something shameful for the complainant to talk about. Even if the accused was worried about the mistake being exposed, I do not understand how committing another mistake would help the accused an iota.

125 It is worth reiterating that the accused is physically a bigger person than the complainant. There is absolutely no reason why the accused should have

just succumbed to the complainant's advances on both occasions. His account of the sexual encounters is unbelievable. In reaching this view, I am mindful that the accused is not a highly educated man. Also, he had consumed a fairly large quantity of the whisky-green tea mixture. These were matters which Mr Lau urged me to consider in assessing the accused's evidence. However, I do not see how his lack of educational qualification would have affected his decision-making, specifically as to whether to have sex with the complainant or whether and how to put up more resistance to her advances. After all, the accused admitted that he well knew – at the material times – that it was wrong to have sex with his daughter. Further, like the complainant, the accused was a regular drinker. There is nothing to suggest that he was not in control of himself because of the alcohol. As he claimed, on the morning of 27 March 2016, he was fully aware that he was making a mistake. He was fully able to understand the complainant.

126 Second, the accused's actions in the aftermath contradicts his story that there was a consensual sexual encounter on 27 March 2016 as follows:

(a) The accused claimed that at the time, he was very tired. He did not want to have sexual intercourse the second time round. If so, it simply did not make sense for the accused to accompany the complainant downstairs to buy cigarettes. It was not as if the accused wanted anything for himself. The complainant could well have proceeded on her own.

(b) When the complainant left the flat on her own at around 7.45am, the accused checked on her from the kitchen window. Within 12 minutes, the accused began calling her repeatedly. Then, he sent the message in which he apologised for *his mistake*: see [50]. Certainly, he

made no mention of how they had made a mistake together. Evidently, the accused was in a state of panic, and he feared that the complainant would report the matter.

127 Third, there were many unsatisfactory aspects to the accused's evidence. I mentioned some of these when I dealt with the accused's allegations on the complainant's motives for framing him (see [107]–[116] above). In addition, I would highlight one matter. On the basic issue regarding the state of his relationship with the complainant from 2014 to 2016, the accused tied himself up in knots with a convoluted tale. He tried desperately to portray himself as a good father. Then, he described the complainant to be a financially dependent, problematic and vindictive daughter. She reported him to the police, and got him arrested in 2015. However, he agreed that the complainant visited him while he was in prison from 2015 to 2016. Upon his release from prison in March 2016, the complainant begged him to stay with them (even though he could arrange for alternative accommodation). Also, she found him a job as a forklift driver, as he was unsuitable for the job arranged for him by the Singapore Corporation of Rehabilitative Enterprises. He also conceded that they had a good relationship at the time, and would drink together regularly. His evidence simply did not gel.

128 Fourth, in the course of giving evidence, the accused fabricated evidence to strengthen his case. I cite three examples:

- (a) On the complainant's bizarre plan to send him to prison sometime in 2014 and 2015, the accused was suddenly able to provide details in re-examination. He then alleged that "the plan was made on a Monday". It was about 5.00am, and he was due to go to work. From the toilet, he heard the complainant and her sister plotting away.

(b) To discredit the complainant, the accused also heaped more and more criticisms on her character. Apart from alleging that she took drugs as early as in 2014, he then added in cross-examination that in 2016, she hung out with men who were “good for nothing”. Subsequently, he alleged that she acted in “TCS dramas”, and would cry to achieve what she wanted. He also said that she was not “virtuous”.

(c) When asked why the complainant wanted to withdraw the report on molest if she wanted to get him into trouble, the accused said that she well knew that the offence of outrage of modesty was a minor one compared to that of rape. Then, he added that the complainant purportedly quizzed him about the likely sentences for a number of offences – these included rape, molest, robbery, murder, drug trafficking and voluntarily causing hurt.

129 Fifth, the accused did not mention his defence at the earliest opportunity. After his arrest on 27 March 2016, IO Vimala informed him that he had been arrested for an offence of rape. In English, the accused said that he did not do such a thing as the complainant was his daughter. He blamed his ex-wife for setting him up. The accused did not mention that he had any sexual activity, consensual or otherwise, with the complainant. In cross-examination, the accused confirmed that he did not tell IO Vimala about the sexual encounter on 27 March 2016, and attributed this omission to his promise to the complainant to keep the incident to himself.

130 On 28 March 2016, IO Vimala interviewed the accused a second time in English. When IO Vimala expressly asked the accused if he had sexual intercourse with his daughter, the accused replied that he did not. Repeatedly, the accused said that he would not do such a thing. He added that his ex-wife

wanted him out of the house. To verify what the accused had said to him, IO Vimala checked his investigation diary.

131 The accused disputed IO Vimala's account. He claimed that on 28 March 2016, he had told IO Vimala that he did not rape the complainant, and that they had consensual sex. I do not accept his assertion. It appeared that the Defence's argument in this regard is that the interview process was hindered by a language barrier. During IO Vimala's cross-examination, the suggestion seemed to be that the accused did not understand the questions asked of him. There are two issues with this argument: first, the accused's purported inability to understand what IO Vimala said, even if true, does not affect IO Vimala's ability to understand him – IO Vimala never cited any such difficulty. IO Vimala *heard and recorded* the accused saying he did not have sexual intercourse with the complainant. Second, I have no doubt that the accused would have understood the words "rape", "sex" or "sexual intercourse" in English. In court, the accused answered in English on more than a few occasions, and had to be reminded to wait for the questions to be interpreted to him in Tamil. I thus prefer IO Vimala's account, *ie*, that the accused flatly denied having "sexual intercourse" with the complainant.

132 In my view, the accused's failure to mention the core of his defence to IO Vimala undermines his case. The accused's account of the complainant consenting to the sexual acts, if true, would clearly have exculpated him. That he did not mention this version of events in his first two interviews with IO Vimala casts doubt on the veracity of his account. The accused mentioned his defence only in the 31 March 10.40am statement. While the Prosecution has submitted on the many inconsistencies between the versions of the two sexual encounters set out in the 31 March 10.40am statement and the accused's

evidence in court, I do not propose to deal specifically with these differences. As stated above, in my view, the accused's evidence is inherently unbelievable.

133 Instead, my sixth point is to deal with the inconsistencies in the accused's evidence regarding the padlock. In the 31 March 7.14pm statement, he said that when he bought the padlock, there were four keys. He gave one of them to the complainant. However, he had never used the padlock, and "no one in the family [used] this lock". Then, in the 4 April statement, the accused was asked whether before the sexual intercourse on 27 March 2016, he used a padlock to lock the gate of the flat. In response, he said he did not. He added that "[w]e do not use the pad-lock at all. We only lock the gate with the key."

134 In court, the accused said that the complainant used the padlock every day. Specifically, on 26 March 2016, the complainant unlocked the padlock when RR, the complainant and the accused returned to the flat with the *roti prata*, when she left to send RR home, and when she returned home after that. The next morning, the complainant unlocked the padlock when she left to buy Red Bull. None of this was put to the complainant, indicating that the accused fabricated such evidence as he went along. The accused then tried to explain that the portion of the 31 March 7.14pm statement that contradicted his testimony was not completely correct. Again, the problems plaguing this aspect of his evidence showed how unreliable the accused was.

135 To round off, in my view, the complainant provided a very cogent explanation on what could have provoked the accused to attack her – that of the accused's anger over the report of molest which he found out about on the day itself. On this point, I reject the accused's evidence that he was only unhappy with the complainant's mother, and not the complainant.

136 In sum, I find the accused to be a completely untruthful witness, who made more and more spurious allegations against the complainant in the course of his evidence. I reject his story of consent by the complainant to sex and the sexual acts, his denial of touching the complainant's vagina, his denial of his use of a penknife and his denial of committing the offences of criminal intimidation and causing hurt. For completeness, there could not have been any mistake of fact on the accused's part as to the lack of consent by the complainant to his attack.

Conclusion

137 By all of the foregoing, I accept the complainant's version on the commission of the offences. Her evidence substantiated all the elements of the offences, and showed that she did not consent to the sexual intercourse or the sexual acts. As discussed above, her evidence is consistent with, and corroborated by, the supporting evidence. It is also consistent with the surrounding facts and circumstances. Given that there is, in fact, ample corroborative evidence, the "unusually convincing" standard is not applicable. Nonetheless, for completeness, to my mind, her account is "unusually convincing". On the other hand, as discussed, I reject the accused's defence. Accordingly, the Prosecution has proved its case against the accused beyond reasonable doubt on all the nine charges. I find the accused guilty and convict him of all the nine charges.

138 I will hear parties' submissions on sentence.

Hoo Sheau Peng
Judge

Ng Yiwen, Kavita Uthrapathy and Sarah Siaw (Attorney-General's
Chambers) for the Prosecution;
Lau Wen Jin (Dentons Rodyk & Davidson LLP) (assigned) for the
accused.