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[DISTRICT JUDGE PREM RAJ PRABAKARAN
13 August 2021

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

District Arrest Case No 924909 of 2019

Public Prosecutor

Against

Accused

BRIEF GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Use of criminal force to outrage modesty of person under 14 years of age]

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Public Prosecutor
v
Accused

District Arrest Case No 924909 of 2019
District Judge Prem Raj Prabakaran
22–25 June 2020, 4 February 2021, 15–16 March 2021, 18 March 2021, 23 April 2021, 4 June 2021, 18 June 2021, 30 June 2021, 13 August 2021

13 August 2021

District Judge Prem Raj Prabakaran:

Introduction

1 These are my brief oral grounds for my decision. I will therefore not canvass every single aspect of the cases run by the Prosecution and the Defence. I will issue full written grounds in due course, if necessary. A copy of these brief grounds, with redaction, will be forwarded to parties next Monday (16 August 2021). I will go through the key aspects of my brief grounds today.

2 The accused was charged for using criminal force to his stepdaughter (the "Complainant"), knowing it to be likely that he would thereby outrage her modesty. The Prosecution averred he had used criminal force to her by "rubbing her pubic area (skin-on-skin), rubbing and squeezing her breasts (skin-on-skin),

rubbing and squeezing her buttocks, and kissing her lips"[1] (the "alleged molest"). The Prosecution asserted the alleged molest happened while the accused was supposedly massaging the Complainant (the "alleged massage") in her bedroom (the "Bedroom") in the flat they lived in with eight other persons (the "Flat"). Where applicable, I will refer to the alleged massage and the alleged molest, collectively, as the "alleged offence".

3 The Prosecution contended that the alleged offence had taken place on a Tuesday or Thursday "evening [following the Complainant's return to the Flat] after [her] netball training sometime between August to December 2017".[2] The Prosecution did not dispute that the accused was not in Singapore on certain dates between August and December 2017 (**Exhibit D66**).[3]

4 The Prosecution's case was that the Complainant was "experiencing calf muscle cramps" after her netball training.[4] The accused then allegedly "offered to give [her] a massage, and [she] agreed unreservedly – especially since her mother, who was present, did not appear to object".[5] The accused "brought [the Complainant] to her [Bedroom], closed the door" and committed the alleged molest in the course of the alleged massage.[6] It was also the Prosecution's case that the Complainant was "then 13 years old" (*viz*., a person under 14 years of age). The alleged offence was hence punishable under s 354(2) of the Penal Code (Cap 224, 2008 Rev Ed).

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1 See the particulars set out in the charge, DAC-924909-2019.

2 [7], Prosecution's Closing Submissions.

3 Day 5, p 54, line 17 to p 55, line 10.

4 [7], Prosecution's Closing Submissions.

5 *Ibid*.

6 *Ibid*.

5 The accused claimed trial to the charge. He did not dispute that the Complainant would have been a person under 14 years of age sometime "between August 2017 and December 2017".[7] But, he denied all the physical elements set out in the charge (*viz*., the alleged molest during the alleged massage in the Bedroom of the Flat). That said, he accepted that the fault element of knowledge (referred to in the charge[8]) would be met *if* he had indeed committed the physical acts set out in the charge.[9]

Reasons for acquittal

6 I start by reviewing the fundamental rule of proof beyond a reasonable doubt, which rests on the presumption of innocence (*Public Prosecutor v GCK* [2020] 1 SLR 486 ("*GCK*") at [126]).

Prosecution's burden of proof beyond a reasonable doubt

7 The Prosecution had to prove the accused's guilt beyond a reasonable doubt. This entailed that "upon a consideration of all the evidence presented by the Prosecution and/or the Defence, the evidence must be sufficient to establish, beyond a reasonable doubt, each and every element of the offence with which [the accused has been] charged" (*Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 ("*Jagatheesan*") at [48]). The principle of proof beyond a reasonable doubt does not mean that the Prosecution must dispel all conceivable doubts. The "question in all cases is whether such doubts are real or reasonable, or whether they are merely fanciful. It is only when the doubts are [real or reasonable] that the Prosecution has not discharged its burden, and

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7 [7(a)], Defence's Closing Submissions.

8 See [1] above.

9 [4(c)], Defence's Closing Submissions.

the accused is entitled to an acquittal (*Teo Keng Pong v Public Prosecutor* [1996] 2 SLR(R) 890 at [50]). The Prosecution's burden of proof was stated in similar terms by Denning J in *Miller v Minister of Pensions* [1947] 2 All ER 372 at 373:

> That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course it is possible but not in the least probable," the case is proved beyond reasonable doubt, **but nothing short of that will suffice.**
>
> [emphasis added]

8 A "reasonable doubt is one for which a reason can be given, so long as the reason given is logically connected to the evidence" (*GCK* at [131]). The principle of proof beyond a reasonable doubt "mandates that, at the very least, those doubts for which there is a reason that is, in turn, relatable to and supported by the evidence presented, must be excluded. Reasonable doubt may also arise by virtue of the lack of evidence submitted, when such evidence is necessary to support the Prosecution's theory of guilt" (*Jagatheesan* at [61]). The "existence of a reasoned doubt is a necessary condition for an acquittal" (*GCK* at [131]).

9 The Prosecution's legal burden to prove a charge beyond a reasonable doubt is a permanent and enduring burden that does not shift throughout the trial (*GCK* at [130]). As such, "in the context of a criminal trial, a trial court should generally not make a finding that resolves against the accused what would otherwise amount to a vital weakness in the Prosecution's case when the Prosecution itself has not sought to address that weakness by leading evidence and making submissions to support such a finding" (*Mui Jia Jun v Public Prosecutor* [2018] 2 SLR 1087 ("*Mui Jia Jun*") at [72]). The principle that the

Prosecution must prove the guilt of an accused beyond a reasonable doubt "implies that it is incumbent on the Prosecution, and not the court, to address any weakness in the evidence that the Prosecution adduces, failing which the Prosecution must accept the consequences that follow for its case against the accused" (*Mui Jia Jun* at [76]). "If indeed gaps in the evidence should prevail so that [a] trial judge feels it is necessary to fill them to satisfy himself that the Prosecution's burden of proof has been met, then the accused simply cannot be found legally guilty" (*Jagatheesan* at [59]).

Complainant's testimony had to be "unusually convincing"

10 The Prosecution and the Defence agreed that the Complainant's testimony had to be "unusually convincing" for the accused to be convicted of the alleged offence. The "unusually convincing" standard applies to all instances where the uncorroborated testimony of a witness (such as a complainant or an alleged victim) forms the *sole* basis for convicting an accused (*GCK* at [87] and [89]). This standard is used to describe a situation where a witness's testimony is so convincing that the Prosecution's case is proven beyond a reasonable doubt solely on the basis of that evidence (*GCK* at [88], citing *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 ("*Liton*") at [38]). On this note, a witness's testimony would be "unusually convincing" if that testimony, when weighed against the overall backdrop of the available facts and circumstances, contains that ring of truth that leaves the court satisfied that no reasonable doubt exists in favour of the accused (*Liton* at [39]). The relevant considerations in this regard include the witness's demeanour as well as the internal and external consistencies of the witness's evidence (*GCK* at [88]). I was, however, mindful of the dangers of relying excessively on the demeanour of witnesses in assessing the veracity of their evidence (*Sandz Solutions (Singapore) Pte Ltd and others v Strategic*

Worldwide Assets Ltd and others [2014] 3 SLR 562 ("*Sandz Solutions*") at [42]). The focus, therefore, must be on the sufficiency of the complainant's testimony, and the court must comb through that evidence in the light of the internal and external consistencies found in the witness's testimony (*Public Prosecutor v Wee Teong Boo* [2020] 2 SLR 533 ("*Wee Teong Boo*") at [45], citing *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [115]). The finding that a complainant's testimony is unusually convincing does not automatically entail a guilty verdict. The court must consider the other evidence and in particular, the factual circumstances peculiar to each case (*Wee Teong Boo* at [45], citing *XP v Public Prosecutor* [2008] 4 SLR(R) 686 ("*XP*") at [34]).

11 In a case where no other evidence is available, a complainant's testimony can constitute proof beyond a reasonable doubt "only if it is "unusually convincing" and thereby capable of overcoming any doubts arising from the lack of corroboration and the fact that such evidence will typically be controverted by that of the accused person" (*GCK* at [89], citing *AOF* at [111]).

12 On this note, I was aware that the requirement for strict corroboration in the *Baskerville* sense has not been followed in local jurisprudence. Instead, our courts adopt a liberal approach to corroboration, focusing instead on the substance, relevance, and confirmatory value of the evidence in question (*GCK* at [96]). The forms of corroboration were discussed in *Haliffie bin Mamat v Public Prosecutor* [2016] 5 SLR 636 in the following terms:

> 29 It should be noted that the "unusually convincing" standard does not introduce a new burden of proof. It "does nothing … to change the ultimate rule that the Prosecution must prove its case beyond a reasonable doubt, but it does suggest how the evidential Gordian knot may be untied if proof is to be found solely from the complainant's testimony against the accused" (*XP v PP* [2008] 4 SLR(R) 686 at [31], cited in *AOF* at [113]).

> 30 **Where the complainant's evidence is not unusually convincing, "an accused's conviction is unsafe unless there is some corroboration of the complainant's story"** (*AOF* at [173]). In *Liton* at [42] and [43], this court discussed the meaning of "corroborative evidence":
>
> > 42 As to what can amount to corroborative evidence, the Evidence Act (Cap 97, 1997 Rev Ed) did not, at its inception, provide a definition of corroboration and still does not do so. However, by virtue of s 2(2), the common law is imported into the Evidence Act unless it is inconsistent with the Act's tenor and provisions. **There is thus legal justification for the judicial adoption of the common law definition of corroboration laid down in the oft-cited English decision of *R v Baskerville* [1916] 2 KB 658 at 667, *ie*, independent evidence implicating the accused in a material particular.**
> >
> > 43 However, it is clear that **the *Baskerville* standard** (as set out in the preceding paragraph) **does not apply in its strict form in Singapore since Yong CJ, in *Tang Kin Seng* [*v Public Prosecutor* [1996] 3 SLR(R) 444], advocated a liberal approach in determining whether a particular piece of evidence can amount to corroboration**….
>
> **This more "liberal approach" to corroboration treats subsequent complaints made by the complainant herself as corroboration provided that "the statement [implicating] the [accused] was made at the first reasonable opportunity after the commission of the offence"** (*Public Prosecutor v Mardai* [1950] MLJ 33 at 33, cited in *AOF* at [173]).
>
> [emphasis added]

13 In this case, the question as to whether the Complainant's evidence was "unusually convincing" arises because the Prosecution was effectively seeking the accused's conviction on the charge based solely on the Complainant's testimony.[10] In this regard, subsequent repeated complaints by the Complainant cannot, in and of themselves, constitute corroborative evidence so as to dispense with the requirement for "unusually convincing" testimony (*Wee Teong Boo* at [46]; *AOF* at [114(a)]; and *XP* at [29]-[35]). This point was in fact made, earlier,

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10 *Wee Teong Boo* at [46].

in *Khoo Kwoon Hain v Public Prosecutor* [1995] 2 SLR(R) 591 ("*Khoo Kwoon Hain*") – in terms which bear quoting at some length:

> 44 In *Balwant Singh v PP* [1960] MLJ 264, Rigby J expressed the view that in cases of sexual offences, it is unsafe to convict where there is no independent evidence.
>
> 45 In *PP v Mardai* [1950] MLJ 33, the same view had been enunciated by Spenser-Wilkinson J. There, he said at 33:
>
> > Whilst there is no rule of law in this country that in sexual offences the evidence of the complainant must be corroborated; nevertheless it appears to me, as a matter of common sense, to be **unsafe to convict in cases of this kind unless either the evidence of the complainant is unusually convincing or there is some corroboration of the complainant's story. It would be sufficient, in my view, if that corroboration consisted only of a subsequent complaint by the complainant herself provided that the statement implicated the accused and was made at the first reasonable opportunity after the commission of the offence.**
>
> 46 So far as the complainant's recent complaints to [the complainant's sister, to whom the complainant had told that the accused had molested her] and the police are concerned, s 159 of the Evidence Act states:
>
> > **In order to corroborate the testimony of a witness, any former statement made by such witness**, whether written or verbal, on oath, or in ordinary conversation, **relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.**
>
> 47 Now, **it is not controversial that the complainant's previous complaint to her sister and the lodging of the police report are technically corroboration, in view of s 159 of the Evidence Act. <u>However, the fact remains that these are not corroboration by independent evidence. All the complaints originated from the complainant. They therefore have little additional evidential value.</u> Otherwise, by the same token, the [accused's] previous denials made to the police are also technically corroboration under s 159 of the Evidence Act.**
>
> 48 In the classic case of *R v Baskerville* [1916] 2 KB 658, Lord Reading CJ emphasised that in order for evidence to amount to corroboration, the evidence must be independent of

the testimony which is sought to be corroborated. It is clear that had it not been for s 159 of the Evidence Act, a recent complaint cannot be corroboration of the complainant's testimony. This was so held in *R v Whitehead* [1929] 1 KB 99. The reason simply is that the complaint originated from the complainant as well, and is not independent.

49 The position in Singapore is of course as stated in *PP v Teo Eng Chan* [1987] SLR(R) 567. Hence, a previous complaint goes beyond the question of consistency and is admissible evidence. **In my view, although s 159 has the effect of elevating a recent complaint to corroboration, the court should nevertheless bear in mind the fact that corroboration by virtue of s 159 alone is *not* corroboration by *independent* evidence. It would be dangerous to equate this form of corroboration with corroboration in the normal sense of the word. I can see no reason why a s 159 corroboration of a complainant's testimony should necessarily carry more weight than a s 159 corroboration of the accused's denial. Both appear to me to be equally self-serving.**

50 Hence, **I agree with counsel's submission that the court should treat [the] evidence [of the complainant's sister with great circumspection. Despite s 159, [the complainant's sister's] evidence is no more weighty that the [accused's] s 121 and s 122(6) statements. It would be erroneous to attach to them such weight as would have been the case had they been independent evidence. Thus, I am of the view that even though there was technically corroboration of the complainant's allegations, the corroboration is not of sufficient weight to materially affect the fact that all there is before the court is essentially the bare allegation of the complainant.**

51 In my view, in a case such as this, the observation in *Balwant Singh* should normally apply. **For this reason, if Spenser-Wilkinson J meant in *PP v Mardai* ([45] *supra*) that a mere corroboration by virtue of s 159 is sufficient to remove the caution that the complainant's testimony must be unusually convincing, then I respectfully disagree. If the complainant's evidence is not unusually convincing, I cannot see how the fact that she repeated it several times can add much to its weight. I am of the view that even though a previous complaint goes beyond the question of consistency in Singapore, it normally does not go very far, so far as its weight is concerned.**

[emphasis in italics in original; emphasis added in bold and by underlining]

14 I applied the "unusually convincing" standard to the Complainant's testimony, to assess if the Prosecution had proven its case beyond a reasonable doubt. The Complainant's testimony had to be sufficient, in and of itself, to overcome any doubts that arose from the lack of corroboration (*Wee Teong Boo* at [44], citing *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2019] 2 SLR 490 at [58]).

Reasonable doubt had arisen

15 In *GCK* (at [134]-[135]), the Court of Appeal observed that the principle of proof beyond a reasonable doubt could be conceptualised in two ways:

(a) First, a reasonable doubt may arise from "within the case mounted by the Prosecution".

(b) Second, a reasonable doubt may arise on an assessment of the "totality of the evidence". It is the assessment at *this* stage that relates to the "unusually convincing" standard – which arises in the context of mutually exclusive and competing testimonies. The "unusually convincing" standard sets the threshold for a witness's testimony to be preferred over the evidence put forth by the accused, where it is a case of one person's word against another's (*GCK* at [143]). The assessment of the Prosecution's evidence under the "unusually convincing standard" must thus be made with regard to the totality of the evidence presented (*GCK* at [144]).

16 In my judgment, this was a case where a reasonable doubt arose on both fronts.

Reasonable doubt had arisen within the Prosecution's case

17 The term "within the case mounted by the Prosecution" is not synonymous with the term "at the close of the Prosecution's case".

18 The term "at the close of the Prosecution's case" relates to the *procedural* task of calling on the accused to give his defence, when the court is satisfied there is some evidence "which is not inherently incredible and which satisfies each and every element of the charge" against the accused (*GCK* at [134], citing s 230(*j*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed)).

19 In contrast, the term proof beyond a reasonable doubt "within the case mounted by the Prosecution" denotes the *evaluative* task of considering all the evidence adduced by the Prosecution at each stage of the proceedings" (*GCK* at [134]). In *GCK*, the Court of Appeal noted that a reasonable doubt may arise from "within the case mounted by the Prosecution" in two situations:

> 136 As we recently explained in [*Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2019] 2 SLR 490] at [113], **given that the legal burden lies on the Prosecution throughout a trial, as part of its own case, the Prosecution must adduce sufficient evidence to establish the accused person's guilt beyond a reasonable doubt on at least a *prima facie* basis. One example of a failure to do so would be where, after the Defence has been called, there are discrepancies in the accused person's testimony, but there remain significant inconsistencies *in the Prosecution's case* that nevertheless generate a reasonable doubt. In such a situation, the court would be obliged to acquit the accused person.** Another example would be where the Prosecution's evidence is so weak that, at the close of the Prosecution's case, it falls below the [*Haw Tua Tau and other v Public Prosecutor* [1981]-[1982] SLR(R) 133] standard. The court would then be entitled to find that there is no case to answer even without calling upon the Defence.
>
> [emphasis added]

20 The Court of Appeal in *GCK* also noted (at [137]) that the inquiry into whether a reasonable doubt has arisen from "within the case mounted by the Prosecution" may include, among other things, an:

(a) assessment of the internal consistency within the content of a witness's testimony; and

(b) assessment of the external consistency between a witness's evidence and the extrinsic evidence, which includes testing the witness's evidence against the inherent probabilities and uncontroverted facts.

21 I now elaborate on some of my reasons as to why a reasonable doubt had arisen from "within the case mounted by the Prosecution". In doing so, I was aware that there is no prescribed way in which victims of sexual assault are expected to act. "People react in different ways to sexual abuse and may compartmentalise or rationalise their actions. A calm, undisturbed disposition may generally incline the court to conclude that no wrong was committed, but it is not necessary for a complainant to be distraught for her to be believed" (*Public Prosecutor v Yue Roger Jr* [2019] 3 SLR 749 ("*Roger Yue*") at [34], a decision that was affirmed in *Yue Roger Jr v Public Prosecutor* [2019] SLR 829 at [3]). I was also sensitive to the fact that a child (as the Complainant would have been at the time of the alleged offence) may react very differently from an adult (see *Roger Yue* at [31]-[32]).

(1) Inconsistency in FIR on when alleged offence occurred

22 The case for the Prosecution was that the alleged offence had taken place on a Tuesday or a Thursday "evening [following the Complainant's return to the Flat] after [her] netball training sometime between August to December

2017".[11] In this regard, the Complainant testified in examination-in-chief that she had told Sergeant Boey Hui Qi, Michelle ("SGT Boey"), the recorder of the first information report the Complainant lodged on 17 October 2018 (**Exhibit P1**), that she was molested in "2017---around August to December…".[12]

23 The Complainant confirmed in cross-examination that the alleged offence happened between August and December 2017.[13] She said she recalled the alleged offence happened during this period because the Teammate and her "had some miscommunication and there [was] tension between [them]".[14] It was her evidence that she remembered this "tension [had] only started…during the second half of [2017 and so she] estimated [that the alleged offence had happened between August and December 2017]".[15]

24 When asked if she could "narrow [the alleged offence] down to a more specific time period than [the] 5 months from…August to December 2017", she said she was not able to do so.[16] She also said she:

(a) was "not really that sure" if the alleged offence had taken place after her birthday on 7 August 2017;[17] and

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11 [7], Prosecution's Closing Submissions.

12 Day 1, p 14, lines 28-32. It was also the Complainant's evidence that she "couldn't really remember which month it was".

13 Day 1, p 48, lines 12-15.

14 Day 2, p 48, lines 16-23.

15 *Ibid*.

16 Day 1, p 48, lines 24-28.

17 Day 1, p 48, lines 29-30.

(b) could not recall when the alleged offence "took place relative to [her] exams [in 2017]".[18]

25 That said, the Complainant agreed in cross-examination that:

(a) the alleged offence "could have happened as early as the 1st week of August [2017];[19]

(b) it was "more likely that [the alleged offence] took place at the earlier part of the period from August to December 2017"[20]; and

(c) the alleged offence had taken place "quite far away from [a] meeting" the Complainant had had with her principal in December 2017 "to talk about [a] change of school".[21]

26 The Complainant's testimony that the alleged offence had taken place sometime between August and December 2017 was, however, inconsistent with the first information report that stated that the "Date/Time" of the alleged offence was on 14 October 2018 at 12:00am.

27 The Complainant confirmed in examination-in-chief that she had provided SGT Boey with the information stated in the section headed "Brief details" (*viz*., "ON THE ABOVE MENTONED DATE, TIME AND ADDRESS, I WAS MOLESTED").[22] That said, she said she did not recall

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18 Day 1, p 49, lines 2-4.

19 Day 1, p 48, lines 31-32.

20 Day 1, p 49, lines 11-14.

21 Day 1, p 49, lines 5-10 and Day 2, p 55, lines 2-8.

22 Day 1, p 13, lines 17-31.

informing SGT Boey that she was molested on 14 October 2018.[23] She said she was sure the alleged offence did not take place on 14 October 2018 (when she was studying at the Girls' School) because she "recall[ed] that [she] was [then] still at [the Mixed School] and [she had texted her Teammate] about [the alleged offence] right after".[24] She said she did not know why SGT Boey had recorded 14 October 2018 as being the date of the incident on the FIR.[25] She confirmed her signature appeared on the FIR.[26] But she said she was not aware that the FIR stated that the date of the alleged offence was on 14 October 2018 when she signed the FIR because she "didn't check".[27]

28 As the Defence observed, "[w]hat transpires from this is that [SGT Boey] had somehow recorded [the Complainant] as being molested on 14 October 2018 despite [the Complainant having allegedly] explicitly [informed SGT Boey] that the [alleged offence] happened sometime between August 2017 [and] December 2017".[28] On this note, the Complainant had accepted the following in cross-examination:[29]

(a) SGT Boey had asked her to sign the FIR after checking the details stated in the FIR.

(b) SGT Boey did not know her before she lodged the FIR.

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23 Day 1, p 14, lines 23-27. See also [22] above.

24 Day 1, p 15, lines 1-7.

25 Day 1, p 15, lines 8-10.

26 Day 1, p 16, lines 9-12.

27 Day 1, p 16, lines 13-17.

28 [27], Defence's Closing Submissions.

29 Day 2, p 20, lines 8-32.

(c) SGT Boey would not have known any details about the alleged offence.

(d) Even if she had not checked the FIR carefully before signing it, the date of the incident as stated in the FIR (*viz*., 14 October 2018) could only have been given by her to SGT Boey.

29 When pressed as to why she told SGT Boey that the alleged offence had happened on 14 October 2018, the Complainant said she did not "know how or why" the FIR reflected this as such.[30] Pressed further in light of her acceptance that this information as to the date of the alleged offence must have come from her, the Complainant said she did not "know why it turned out like that because [she] remember[ed] [having] told [SGT Boey] that [the alleged offence] happened back in 2017".[31]

30 The Prosecution did not call SGT Boey to testify as to the circumstances under which the FIR was recorded – and, why the FIR reflected the date of the alleged offence as 14 October 2018 despite the Complainant having allegedly told SGT Boey that the alleged offence had happened sometime between August and December 2017. I agree with the Defence that this was an inconsistency that related to a material fact (*viz*., the date the alleged offence happened) and had a direct bearing on the Complainant's credibility.[32] The Prosecution should have called SGT Boey to explain the inconsistency.

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30 Day 2, p 21, lines 1-4.

31 Day 2, p 21, lines 5-8.

32 [30], Defence's Closing Submissions.

31 The Prosecution had submitted that "the incident date "14 October 2018" recorded in the [FIR was] simply a typographical error".[33] It maintained this position in its reply submissions:[34]

> 2 …It is reiterated that the incident date "14 October 2018" recorded in the police report is simply a *typographical error*. The weight of the evidence points to the fact that the massage incident had taken place in 2017 – which was when the [Complainant] had confided in [the Teammate]. Further, 14 October 2018 is a **Sunday**, whereas [the Complainant] has clearly stated that the [alleged offence] happened on a weekday after her netball training in school – it was undisputed that these netball training sessions took place on Tuesdays and Thursdays in 2017. Indeed, the [Complainant] had recounted to *three individuals* ([the Teammate, the Classmate and the Teacher]) that the [alleged offence] took place after netball training. This was even *before* the police report had been lodged. In seeking to portray a mere typographical error as a contradiction, the Defence is grasping at straws.
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> 3 It must be borne in mind that this police report was made on the *very day* [the Teacher] had spoken to the [Complainant] and brought her to the counselling room. The [Complainant] was a scared 14-year-old girl who never wanted to make a police report, and remained reluctant to do so after she was forced to the police station. One can only imagine the distraught state of mind the [Complainant] was in when she lodged the police report. The fact that she signed off on the report without checking to see if the incident date indicated was accurate is understandable.
>
> …
>
> 5 It is submitted that in the present case, the evidence adduced from the [Complainant] and the Prosecution's witnesses about the context and timeframe in which the [alleged offence] took place – which would have made it impossible to have taken place on 14 October 2018 – is "superior" to any evidence that could have been adduced from [SGT Boey]. This is especially so given that such recorders of police reports typically only have a brief one-time interaction with complainants and do not keep detailed notes on what precisely transpired during the recording…
>
> [emphasis in original]

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33 [41], Prosecution's Closing Submissions.

34 [2]-[3] and [5], Prosecution's Reply Submissions.

32 In this regard, I accept the following aspects of the Defence's submissions – which were grounded on the evidence adduced before the court:

(a) In examination-in-chief, the Complainant only said that:[35]

(i) she did not know why SGT Boey had recorded 14 October 2018 as being the date of the incident on the FIR.[36]

(ii) she was not aware that the FIR stated that the date of the alleged offence was on 14 October 2018 when she signed the FIR because she "didn't check".[37]

(b) "During cross-examination, [the Complainant] did not say that it was a typographical error despite [being] given the opportunity to explain".[38] All she said was that she did not:[39]

(i) "know how or why" the FIR reflected that the date of the alleged offence was 14 October 2018.[40]

(ii) "know why [the FIR] turned out like that because [she] remember[ed] [having] told [SGT Boey] that [the alleged offence] happened back in 2017".[41]

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35 See also [27] above.

36 Day 1, p 15, lines 8-10.

37 Day 1, p 16, lines 13-17.

38 [4], Defence's Further Reply Submissions.

39 See [29] above.

40 Day 2, p 21, lines 1-4.

41 Day 2, p 21, lines 5-8.

(c) The Complainant never testified that she had "signed off on the [FIR] without checking to see if the incident date indicated was accurate"[42] because:[43]

(i) she was a "scared 14-year-old girl who never wanted to make a police report, and remained reluctant to do so after she was forced to the police station".

(ii) she was in a "distraught state of mind" when she lodged the FIR.

Indeed, the only evidence that the Complainant gave as to her state of mind was that she was "screwed" when she was told she had to make a police report after speaking to her Teacher.[44] The Prosecution did not adduce further evidence from the Complainant as to what "screwed" actually meant. In any event, the Prosecution did not adduce any evidence from the Complainant as to the Complainant's state of mind at the time she lodged the FIR. I note that the Teacher did testify that the Complainant was "very emotional" in the counselling room "when she started saying how…she [had] been touched inappropriately" and had "started crying hysterically".[45] The Teacher had also said that the Complainant was "actually very upset about the incident".[46] When asked why the Complainant was "crying hysterically", her Teacher's reply was that "she was, uh, probably very affected by the whole incident".[47] That

42 [3], Prosecution's Reply Submissions.

43 [5], Defence's Further Reply Submissions

44 Day 1, p 40, lines 19-21.

45 Day 3, p 20, lines 19-26 and p 22, lines 1-6.

46 Day 3, p 23, lines 1-8.

47 Day 3, p 22, lines 7-9.

said, the Teacher was not in a position to testify as to the Complainant's actual state of mind – as she candidly accepted in cross-examination, she was "not in the child's head, so of course, [she] wouldn't know for sure if [the child is] lying".[48] In any event, the Teacher's evidence related to what happened in the counselling room, and not to what happened when the Complainant lodged the FIR. As the Teacher said, she "wasn't personally involved in the police report"[49] and was not "part of the process".[50]

(d) The Prosecution's submission as to what recorders of police reports "typically" do was "pure conjecture on the Prosecution's part".[51] As SGT Boey was not called, there was no evidence that she only had "a brief one-time interaction" with the Complainant and had "not [kept] detailed notes on what precisely transpired during the recording [of the FIR]". Indeed, there was very little, if any, evidence adduced from even the Complainant as to what precisely transpired during the recording of the FIR.

33 I agree with the Defence that it was "hard to see why [SGT Boey's] evidence would not have been of assistance…when [she] was the recorder of the [FIR] and would have been able to confirm whether [the Complainant] had told [her] that the [alleged offence] occurred in 2017 or on 14 October 2018".[52]

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48 Day 3, p 44, line 5 to p 47, line 3.

49 Day 3, p 22, lines 10-19.

50 Day 3, p 37, lines 18-32.

51 [6], Defence's Further Reply Submissions.

52 [7], Defence's Further Reply Submissions.

34 Indeed, SGT Boey – being the recorder of the FIR – would have been *best* placed to testify if the date of the incident, as stated in the FIR, was:

(a) indeed "simply a typographical error" on her part (because the Complainant had, in fact, informed her that she was molested sometime between August and December 2017[53]); or

(b) meant to be some *other* date or period, whether in 2017 or 2018 (because the Complainant had informed her as such).

35 I note further that:

(a) The Teacher never actually testified that the Complainant had told her that the alleged offence had taken place on a day in 2017 after she had returned home from netball training.[54] All the Teacher said was that the Complainant had:

(i) "mentioned that she was…injured from netball" and the accused "gave her a massage in the room".[55]

(ii) said that the alleged offence happened "after she injured herself from netball".[56]

While it was not disputed that the Complainant's "netball training sessions took place on Tuesdays and Thursdays in 2017" when she was studying at the Mixed School, the Complainant was also playing netball

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53 See [22] above.

54 [2], Prosecution's Reply Submissions.

55 Day 3, p 20, lines 19-26.

56 Day 3, p 32, lines 24-26.

as a co-curricular activity ("CCA") for the Girls' School in 2018.[57] Indeed, it was the Teacher's evidence that she "can't…remember the details" as to what the Complainant told her regarding when the alleged offence had happened.[58] When asked if the Complainant had "mention[ed] [this] at all or [she] can't remember or there was no mention at all about when [the alleged] offence happened", the Teacher said, "[the Complainant] probably did but [she – the Teacher] don't remember because…[it was her] first time dealing with such [a] situation [and she] was not familiar on what to do".[59] She also said that because she was trying to calm the Complainant (who was "very emotional at that time") down, she "didn't pay attention to…the finer details" and she "got the broad strokes of what happened".[60] Asked if the Complainant had revealed in the counselling room when the alleged offence happened, the Teacher said the Complainant "probably did, but [she] can't remember when". She continued, "If you're looking for like week ago, 2 week[s] ago, I can't remember, but it would have definitely [come] out when the counsellor spoke to her".[61] The Prosecution did not call this counsellor as a witness in these proceedings.

36 I was cognisant that the Classmate testified that the Complainant had told her that "whenever she comes home from CCA and, like, if her legs would hurt, [the accused] would offer to massage her and then, from there, she said

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57 Day 1, p 67, lines 10-16 and Day 4, p 9, lines 8-9.

58 Day 3, p 32, line 24 to p 33, line 6.

59 Day 3, p 33, lines 7-15.

60 Day 3, p 33, lines 17-20.

61 Day 3, p 36, lines 11-23.

[his hands] would like go up".[62] But no evidence was adduced from the Classmate as to the point(s) in time this referred to. Such evidence would have been important, given that the Complainant was in the same CCA of netball in 2017 and 2018.[63] As such, it cannot be said that the Classmate had testified that the Complainant had told her that the alleged offence had taken place on a day in 2017.

37 I noted that the Teammate did testify that the Complainant has texted her sometime in 2017 stating "something about being touched by her stepfather".[64] In cross-examination, the Teammate testified that she recalled that this text was sent sometime in the "late part" of 2017 "because that was when [the Complainant] moved out of [the Mixed School]".[65] But the Teammate also said that the Complainant did not inform her of the "circumstances under which [this had] happened" and "when it had happened".[66] As such, it cannot be said that the Complainant had told the Teammate that the alleged offence took place on a day in 2017 after she had returned home from netball training. I will say more about the Teammate's evidence later.

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62 Day 4, p 3, lines 19-30.

63 See [35] above.

64 Day 3, p 50, line 23 to p 51, lines 11.

65 Day 3, p 54, line 21 to p 55, line 2.

66 Day 3, p 55, lines 27-32.

(2) Many inconsistencies between Complainant's testimony and statement

38 I now come to the many inconsistencies between the Complainant's testimony in June 2020 and her investigation statement recorded on 17 October 2018. These inconsistences related to at least *seven* aspects:

(a) the sequence of events during the alleged offence.

(b) the way the accused had allegedly touched her breasts.

(c) the way the accused had allegedly touched her buttocks.

(d) the position the accused was in when he allegedly kissed her.

(e) whether she could still communicate with her Teammate after she changed schools.

(f) the frequency at which the accused allegedly tapped her buttocks.

(g) whether the accused had touched her inappropriately in other ways apart from the alleged offence and allegedly tapping her buttocks.

39 The inconsistencies on these aspects have been set out, largely, in the parties' closing submissions.[67] They were also highlighted to the Complainant during her cross-examination.[68]

40 I was conscious of taking issue with faulty recollection on the Complainant's part in assessing the veracity of her evidence (*Sandz Solutions* at [42]-[56]). In this regard, I was aware that she was testifying some 20 months

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67 [59], Prosecution's Closing Submissions and [35], Defence's Closing Submissions.

68 Day 2, p 44, line 32 to p 52, line 7.

after her statement was recorded and, at most, some 35 months after the alleged offence (assuming the alleged offence took place on 1 August 2017).

41 I was also conscious of the relevant academic/scientific literature, "tonic immobility", and the need to proceed with caution in making generalisations about observations and memory (*GCK* at [105]-[114]). In addition, I was sensitive to the fact that the Complainant was only about 13 years old at the time of the alleged offence and that she might react very differently from an adult.[69] Against this backdrop, I noted her evidence in re-examination when asked how she felt "throughout the time that [the accused] was massaging and touching [her]". She said she "was [frozen in that she was just very still and shocked] [and] so [she] didn't really know what was going on".[70]

42 That said, I noted her evidence on the first day of her cross-examination *before* she was shown her investigation statement on the second day of her cross-examination. On that first day, she was cross-examined as to what she had noticed about the accused while she was supposedly facing upwards and the accused was allegedly touching her breasts and then her pubic area. She testified that she did not recall anything "about [the accused and] his expression" although her eyes were open because she was just frozen. But, she also followed up immediately to say that she "knew what was going on but…just didn't….do anything about it".[71]

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69 See [21] above.

70 Day 1, p 31, lines 28-32.

71 Day 1, p 61, lines 2-11.

(A) SEQUENCE OF EVENTS DURING ALLEGED OFFENCE

43 When asked to explain the inconsistencies between her testimony and her statement as to the sequence of events – relating, in particular, to the location on her body the accused had allegedly first touched and the accused's positions when he did so – the Complainant's response on three occasions was that she could not exactly remember the whole sequence of events.[72] In this regard, I note that the Complainant *had* testified in examination-in-chief and cross-examination (*before* she had been shown her statement) that she could not recall:

(a) how long the accused had allegedly caressed and grabbed her breasts.[73]

(b) if the accused had massaged her legs/calves during the alleged offence.[74]

(c) which hand the accused had used to touch her right breast.[75]

(d) which hand the accused had used to reach into her shorts.[76]

(e) which buttock the accused had caressed first.[77]

44 Apart from the alleged offence itself, a review of the notes of evidence would also show that the Complainant had informed the court of other aspects

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72 Day 2, p 45, line 16 to p 47, line 8.

73 Day 1, p 21, line 31 to p 22, line 1.

74 Day 1, p 31, lines 20-25 and p 63, lines 25-26.

75 Day 1, p 58, lines 2-9.

76 Day 1, p 60, lines 21-30.

77 Day 1, p 63, lines 4-5.

that she could not supposedly recall. Indeed, she struck me as a witness who was completely at ease with saying that she could not recall certain aspects. Yet, she had been extremely clear in her testimony about the various positions the accused had allegedly adopted during the alleged offence – a point she acknowledged as well.[78] When asked to draw the positions the accused had adopted during the alleged massage (**Exhibit P3** and **Exhibit P4**), I observed that she was able to do so with very little, if any, hesitance and very quickly. She did not display any signs that she was unsure or unclear on this aspect of her evidence. Pressed on this, she could only say that she "was just trying to say what [she] thought was accurate at that point in time".[79] I did not find this response at all satisfactory. Had she indeed been unable to remember, she could have easily said so – as she had done on many other occasions during her testimony *before* she was shown her statement (and the inconsistencies therein).

45 I note that the Complainant was also able to testify that the accused was kneeling on her right, as seen in **Exhibit P4**, and at a right angle to this side, after the accused had asked her to turn around from the position shown in **Exhibit P3**.[80] Yet, she had stated in her statement that she "did not see where…[the accused] was on the bed" at this time.[81] Confronted with this, all she could say was that she "just remember[ed] that [the accused] was on the side that was…closest to the door".[82] The Complainant's explanation that she just remembered this during the trial was not at all persuasive. She gave no convincing reason as to why her memory was somehow better at the time she

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78 Day 2, p 49, lines 14-22.

79 Day 2, p 49, lines 23-25

80 Day 1, p 56, line 12 to p 57, line 1.

81 [5], Exhibit D57.

82 Day 2, p 47, line 20 to p 48, line 2.

testified in June 2020 than when she gave her statement in October 2018. Even then, she had stated in this statement that she did not see where the accused was on the bed.[83] In these circumstances, it was difficult to understand why and how this fact could have suddenly dawned upon her.

(B) MANNER OF ACCUSED'S ALLEGED CONTACT WITH BREASTS

46 I was conscious of the significant difference between:

(a) the Complainant's clear and unhesitating testimony during the trial that the accused had used his hand to caress and grab her right breast for more than 10 seconds before moving this same hand across to do the same to her left breast for more than 10 seconds;[84] and

(b) the Complainant's statement that the accused had "rubbed and squeezed…both [of her] breasts with…both [of his hands at the same time] for a few seconds".[85]

47 Pressed on this difference, the Complainant could only say she "likely don't really remember what has happened anymore".[86] Again, if she had indeed been unable to remember, she could have easily said so – as she had done on many other occasions during her testimony and before she was shown her statement (and the inconsistencies therein).

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83 [37], Defence's Closing Submissions.

84 Day 1, p 21, line 11 to p 22, line 3; p 58, lines 2-25; and p 60, lines 17-21.

85 [5], Exhibit D57.

86 Day 2, p 47, lines 9-19.

(C) MANNER OF ACCUSED'S ALLEGED CONTACT WITH BUTTOCKS

48 There was also the significant difference between:

(a) the Complainant's clear and unhesitating testimony during the trial that the accused had reached in from the leg hole of her shorts and caressed one of her buttocks over her underwear for slightly more than 10 seconds before moving his hand across to do the same to the other buttock;[87] and

(b) the Complainant's statement that she "felt one of [the accused's] hands go beneath her [shorts] and on top of [her] panty [and start] rubbing and squeezing [her] buttocks from one side to the other side".

49 In her statement, the Complainant also stated that the accused had told her that her buttocks were "tight and stiff" while he was rubbing and squeezing them from one side to the other side.[88] This was contrary to her testimony, where she said that the accused had not said anything to her apart from instructing her on how to lie down on the bed.[89]

50 Asked to explain these inconsistencies, she responded that:[90]

> Perhaps, back then when I was making this statement, I had a **briefer and more accurate memory** of the thing because it was closer to 2017, however now, I can't exactly recollect and remember every single thing and every single detail about the whole incident anymore.
>
> [emphasis added]

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87 Day 1, p 28, line 20 to p 29, line 12 and p 30, lines 3-19 and p 62, line 30 to p 63, line 14.

88 [5], Exhibit D57.

89 Day 1, p 63, lines 6-9.

90 Day 2, p 48, lines 3-23.

51 It was unclear what exactly the Complainant meant when she referred to a "briefer and more accurate memory" in the same breath. In any event, I agreed with the Defence that this was "not a credible explanation given her unhesitating description of what had happened during [the alleged offence]".[91]

(D) ACCUSED'S POSITION DURING ALLEGED KISS

52 The Complainant was also inconsistent as to the accused's position when he allegedly kissed her. She testified that the accused had been standing right in front of her while she sat on the side of the bed when he leaned down to kiss her.[92] This was in marked contrast to her statement, where she had stated that the accused was "sitting beside [her] on [her] left [on the bed]" when he "then leaned towards [her] and kissed [her] on [her] lips".[93] When confronted with this inconsistency, she could only say that she was "not able to remember or recollect…accurately anymore because it's been like 3 years since the incident [had] happened".[94] I found this difficult to accept as well – there had been no hesitation at all when she testified that the accused had been standing right in front of her while she sat on the side of the bed when he leaned down to kiss her. Once more, if she had indeed been unable to remember, she could have easily said so – as she had done on many other occasions during her testimony before she was shown her statement (and the inconsistencies therein).

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91 [41], Defence's Closing Submissions.

92 Day 1, p 29, line 13 to p 30, line 2; p 58, line 26 to p 59, line 14; p 59, line 32 to p 60, line 9; and p 64, lines 16-20.

93 [5], Exhibit D57.

94 Day 2, p 48, line 24 to p 49, line 13.

(E) MEANS OF COMMUNICATION WITH TEAMMATE

53 In her statement, the Complainant had stated that she "wish[ed] to state that [she did] not have the communication means with [her Teammate] after [she] change[d] school[s]".[95] Yet, she testified that while she did not keep in contact with her Teammate often after she changed schools, they "still…follow[ed] each other on Instagram [and] still comment[ed] on each other's pictures, and all".[96] She said she did not speak or text her Teammate after she changed schools, but also recalled an instance in February 2018 when she had met her Teammate when she visited the Mixed School "for netball" as her previous teammates "kept asking [her] to come back just to…meet the whole team".[97] She also agreed that "even if [she] didn't have…so many things in common to talk about [with her Teammate] anymore [as they] were in different schools, [she was] still able to contact [her Teammate] if [she] wanted to".[98]

54 When confronted with the inconsistency between her statement and her testimony, the Complainant said that she "don't recall exactly saying that [she] didn't communicate at all". Rather, she claimed that she "told the [recorder of her statement] that [she] didn't communicate with [her Teammate]…often on WhatsApp anymore as [she] used to before".[99] When told that this was not what she had stated in her statement, she could only agree.[100] There was therefore no (proper) explanation for this inconsistency.

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95 [6], Exhibit D57.

96 Day 1, p 66, line 27 to p 67, line 3.

97 Day 1, p 67, lines 4-20.

98 Day 2, p 50, lines 4-7.

99 Day 2, p 50, lines 11-17.

100 Day 2, p 50, lines 18-24.

(F) FREQUENCY OF ACCUSED'S ALLEGED BUTTOCKS TAPPING

55 In examination-in-chief, the Complainant testified that "sometimes when [she] walk[ed] past [the accused]", he would "tap" her "butt".[101] According to the Complainant, this happened more than once. However, she could not recall the frequency at which this happened or if it had happened more than five times.[102] In cross-examination, she initially said she could not recall how regularly the accused would pat her on her buttocks. Pressed on this, she then said that this was "not very frequent from what [she could] remember". She also agreed that this only happened "once every few months".[103]

56 This was a marked departure from her statement where she stated that the accused would tap her on her buttock "whenever [she] walked [past] him at home" and that these taps took place "about 4-5 times a week".[104]

57 When confronted with this inconsistency, she said she "likely wasn't able to [re]collect on [how] often it happened, therefore…this was the estimate that [she] gave at that point in time [in her statement]".[105] As the Defence rightly observed, this explanation again holds no water given the Complainant's agreement that one would not forget about "practically daily harassment from [her] stepfather".[106] It also bears highlighting that the Complainant had stated in her statement that the accused was tapping her buttocks after the alleged offence (*ie*, from sometime between August 2017 to December 2017) "till now" (*viz*., at

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101 Day 1, p 34, lines 11-28.

102 Day 1, p 34, lines 23-28; p 53, lines 26-28; and p 54, lines 5-7.

103 Day 1, p 54, lines 5-18.

104 [7], Exhibit D57.

105 Day 2, p 51, lines 2-14.

106 Day 2, p 51, lines 15-20 and [43], Defence's Closing Submissions.

the time her statement was recorded in October 2018). In these circumstances, I had great difficulty accepting the Complainant's claim that she had forgotten the frequency at which the accused was allegedly tapping her buttocks.

(G) OTHER OCCASIONS OF INAPPROPRIATE TOUCHING

58 The Complainant's statement had concluded with the following handwritten words: "I wish to state that my stepfather did not do anything else to me except the massage incident and tapping my buttocks when walking [past] me".[107] It was her evidence that these additional sentences were penned by the recorder of the statement after she had told him to write them.[108] She had also signed against these added words.

59 That said, the Complainant had testified in examination-in-chief that "sometimes when [she was] sitting down on the sofa [in the living room of the Flat], [the accused] would stretch his leg" and "[h]is foot would touch [her] butt".[109] She would then "shift".[110]

60 In cross-examination, she was asked to describe how the accused did so. She said that they would be sitting on the sofa. The accused would be sitting on one side of the sofa, while she would be sitting closer to the edge of the other side of the sofa (with some space between the edge of the sofa and her as she always liked to have a pillow between her and the edge of the sofa). According to the Complainant, the accused would "stretch out his leg…towards [her] and

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107 Page 3, Exhibit D57.

108 Day 2, p 44, lines 16-26.

109 Day 1, p 34, line 11 to p 35, line 1.

110 Day 1, p 35, lines 2-4.

then he would…slowly hit [her] butt" with the "toe part" of his foot.[111] It was her evidence that she was not sure as to how many times this had happened.[112] That said, she agreed that this happened once every few months.[113]

61 When confronted with the inconsistency between her statement and her testimony, the Complainant said that she "only remembered the whole…touching the buttocks incident after [she] made [her] statement".[114] This explanation was difficult to accept, given her evidence that:

(a) the accused's alleged touches/hits had caused her to "shift" each time it happened.[115]

(b) whichever of the two sofas she sat on in the living room, the accused "would come and sit on the [other end of the same] sofa that [she] was sitting on".[116]

(c) she had been "shocked" on all those occasions that the accused did so.[117]

62 In its reply submissions, the Prosecution sought to explain these inconsistencies by arguing that "the details elicited from the [Complainant] at trial were…more extensive than her…statement because of the granularity of

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111 Day 1, p 53, lines 13-25.

112 Day 1, p 53, lines 26-28.

113 Day 1, p 54, lines 5-21.

114 Day 2, p 51, lines 21-31.

115 See [59] above.

116 Day 1, p 74, lines 17-21.

117 Day 1, p 75, lines 7-10.

the questions asked of [her]".[118] It contended that "the so-called additional details [the Complainant] could recall during her court testimony were specifically elicited from her".[119] According to the Prosecution, "[l]ogically, if the [Complainant] had not been questioned [to the same extent] of granularity during the police interview, there should be no legitimate expectation that her…statement would be similarly detailed".[120] I agree with the Defence that there was no basis for such a submission. As the Defence pointed out, no evidence was adduced as to how the statement was recorded from the Complainant. The recorder of this statement was never called to testify as to how the statement was recorded. No reliance can therefore be placed on any alleged differences in the methodology of questioning to explain away the inconsistences between the Complainant's statement and her testimony.[121]

63 I had also reviewed the rest of the Prosecution's submissions in respect of the inconsistencies between the Complainant's statement and her testimony.[122] As the Defence pointed out, these submissions missed the broader and more fundamental point. These inconsistencies did not relate to minor aspects or minute details that could simply be explained away by the passing of time. Rather, they were widespread and material inconsistencies that effectively meant that the Complainant had given two versions as to how the alleged offence happened, including the events leading up to, and the events after, the alleged offence. Both versions were detailed but contradicted one another on many material aspects. The inconsistencies were not peripheral but went to the

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118 [9], Prosecution's Reply Submissions.

119 [9], Prosecution's Reply Submissions.

120 [9], Prosecution's Reply Submissions.

121 [10], Defence's Further Reply Submissions.

122 [59]-[61], Prosecution's Closing Submissions and [7]-[10], Prosecution's Reply Submissions.

crux of the charge against the accused. Given the widespread inconsistencies between the Complainant's statement and her testimony, I agree with the Defence that her credit should be impeached pursuant to s 157(*c*) of the Evidence Act. These inconsistencies severely undermined her credibility.

(3) Teammate's inconsistent evidence on receipt of text message

64 I now come to the Teammate's testimony, which the Prosecution sought to rely on as corroborative evidence. As with the Complainant, the Defence had applied to impeach the Teammate's credibility during the trial pursuant to s 157(*c*) of the Evidence Act.[123]

65 It had been the Complainant's evidence that after the accused left the Bedroom, she "was crying, [and] so [she] texted [her Teammate] from [the Mixed School] because she was the only friend that [she] trusted to share such things about".[124] According to the Complainant, she told her Teammate that "my stepdad molested me". The Teammate responded by telling her to tell her mother (which the Complainant said she did not because she did not think her mother would believe her).[125] It was also the Complainant's evidence that she did not tell the Teammate any "specific details about how [the accused had] molested [her]" although the Teammate did ask her for details. Instead, she only told the Teammate that she had been touched on the "[b]reast, butt and vagina area".[126] It was her evidence that she had messaged the Teammate over WhatsApp.[127]

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123 Day 3, p 58, line 30 to p 59, line 20.

124 Day 1, p 32, lines 10-12.

125 Day 1, p 32, lines 27-32 and p 33, lines 16-18.

126 Day 1, p 33, lines 1-9.

127 Day 1, p 66, lines 1-3.

66 At trial, the Teammate testified that the Complainant had texted her over WhatsApp sometime in late 2017 stating "something about being touched by her stepfather".[128] She was not able to remember the words the Complainant used. She also did not remember if the Complainant had informed her "how she had been touched or what parts [had] been touched". It was her evidence that the Complainant had given her some details, but she was no longer able to remember these details. That said, she testified that the Complainant did not inform her of the "circumstances under which [this had] happened" and "when it had happened".[129] She confirmed that apart from the Complainant none of her friends had told her that they have been molested. She also agreed that such a revelation would be something very unusual.[130] She further agreed that:[131]

(a) "being told by a friend that she is being molested by her family is not something that [she] would forget easily"; and

(b) "not something anyone would forget easily especially if it's the only time that [she had] ever been told this".

67 The Teammate's testimony that the Complainant had texted her over WhatsApp sometime in late 2017 stating "something about being touched by her stepfather" was, however, completely inconsistent with her statement recorded on 24 July 2019. This inconsistency was all the more glaring given her confirmation that such a revelation would be something very unusual and not

128 See [37] above. See also Day 3, p 51, lines 25-26.

129 Day 3, p 55, lines 3-32.

130 Day 3, p 58, lines 7-14.

131 Day 3, p 63, lines 12-18.

something that anyone would forget easily.[132] The key aspects of the Teammate's statement read as follows:

> …
>
> The following questions were posed to be by IO Tan Wan Ting:
>
> Q1: Do you know why [you are] here today?
>
> A: To talk about [the Complainant].
>
> **…**
>
> **Q4: [Has the Complainant told] you anything about her being molested?**
>
> **A4: No.**
>
> **Q5: [Has the Complainant] sent you any text messages or [WhatsApp] messages about her being molested?**
>
> **A5: No.** We lost contact after she changed school.
>
> …
>
> **Q7: Do you have anything else to say?**
>
> **A7: [The Complainant] and I are just normal friends. I have never heard about her being molested.** We did not contact each other since she changed school.
>
> (emphasis added in bold)

68 When confronted with this stark inconsistency, the Teammate first testified that she "didn't really remember at that point [when her statement was recorded] until [the recorder of this statement – IO Tan Wan Ting ("IO Tan")] was more specific"[133] when IO Tan interviewed her on 1 August 2019[134] (*viz.*, eight days later). She "[t]hen…thought about it then [she] did remember that [the Complainant had], in fact, told [her] about her being molested". When asked to explain how IO Tan had been more specific the second time round, I

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132 See [66] above.

133 Day 3, p 62, line 28 to p 63, line 5.

134 Day 3, p 67, lines 1-18.

noted that she struggled somewhat to do so before saying that IO Tan "just said about---something about [the Complainant] then [she] had time to think about it". She similarly struggled with her explanation during re-examination:[135]

> Q: So, on the first time that [IO Tan] spoke to you, what was her explanation to you regarding why she had to ask you questions about this case?
>
> A: Um, I don't remember. I only remember that she asked me questions about [the Complainant], yah. It was quick.
>
> Q: Okay. And what was the further explanation on the second time round?
>
> A: Um, she became more specific with the details of what was happening to [the Complainant].
>
> Q: And what were these details she told you?
>
> A: Um, I'm not---I don't remember.
>
> Q: Now, what was it that triggered your memory that [the Complainant] had indeed sent you a text message that she was molested?
>
> A: I wasn't sure how it came to me. But, I, in fact, yes, did remember that she mentioned to me through a text message.

69 Neither was IO Tan able to properly explain why her questions to the Teammate in this statement somehow lacked precision.[136] In my judgment, there was nothing imprecise in the questions posed by IO Tan to the Teammate at the time this statement was recorded. The questions posed by IO Tan were clear. The Teammate's answers to these questions were clearer.

70 I noted that the Teammate did say that she "didn't want to be involved with any of these cases [the first time] so [she] didn't think [and] just said like,

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135 Day 3, p 69, lines 4-18.

136 Day 4, p 29, lines 2-20.

no, [she] didn't---[she] didn't know what was going on".[137] She also said that she "didn't really think much of it [and] didn't want to [be] nosy with whatever was happening with [the Complainant]".[138] That said, when pressed as to whether she had actually lied in her statement, the Teammate denied this and claimed that she "kind of have a short-term memory". She also said that she was "kind of slow to things [and that] [i]t takes [her] a while before it sinks in".[139] Having observed the Teammate as she testified during the trial, she struck me as a reasonably intelligent person who had little, if any, difficulty understanding the thrust of the questions by the Defence. She clearly did not appear to me to be one who was "slow to things". Neither did it appear to me that she was a person who required some time to process matters before they sank in. In addition, no medical evidence was adduced by the Prosecution as to the Teammate's alleged "short-term memory" or her intellectual functioning.

71 Looking at the totality of the Teammate's evidence, and bearing in mind the parties' submissions, I did not find her explanations for the inconsistency between her statement and testimony at all convincing. I agree with the Defence that her credit should be impeached pursuant to s 157(*c*) of the Evidence Act. Her unpersuasive attempts to explain away this inconsistency severely undermined her credibility.

(4) Classmate's and Teacher's evidence not corroborative

72 The Prosecution submitted that the Complainant's accounts to the Classmate and the Teacher "serve as strong corroborative evidence to bolster

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137 Day 3, p 63, lines 6-11.

138 Day 3, p 63, lines 19-24.

139 Day 3, p 63, lines 25-29.

any weaknesses in the [Complainant's] evidence".[140] But, a reading of the notes of evidence show that they were not at all corroborative but inconsistent in many aspects. These have been largely dealt with in the Defence's submissions[141], which I agree with to a good extent. In any event, subsequent repeated complaints by the Complainant cannot, in and of themselves, constitute corroborative evidence so as to dispense with the requirement for "unusually convincing" testimony.[142]

Reasonable doubt had arisen on the totality of the evidence

73 A reasonable doubt may also arise on an assessment of the totality of the evidence.[143] The assessment of the Prosecution's evidence under the "unusually convincing" standard must be made with regard to the totality of the evidence. The "totality of the evidence necessarily includes a holistic assessment of both the Prosecution's and the Defence's cases ["both as a matter of the assertions put forth by the accused person, and the evidence he has adduced"], and the interactions between the two" (*GCK* at [135] and [144]). The court in *GCK* also observed that:

> 144 …The evaluative task here is not just *internal* to the Prosecution's case, but rather, also *comparative* in nature…At this stage of the inquiry, regard may be had to weaknesses in the case mounted by the Defence as part of the assessment of the totality of the evidence.
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> 145 Conversely, **what the Defence needs to do to bring the Prosecution's case below the requisite threshold is to point to such evidence that is capable of generating a reasonable doubt…If the Prosecution fails to rebut such evidence, it will necessarily fail in its overall burden of**

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140 [24]-[28] and [63], Prosecution's Closing Submissions.

141 [99]-[100] and [102], Defence's Closing Submissions and [31]-[33], Defence's Further Reply Submissions.

142 See [13] above.

143 See [15(b)] above.

> **proving the charge against the accused person beyond a reasonable doubt. We would add that such evidence need not necessarily be raised (in the sense of being asserted, or being made the subject of submissions) by the Defence in order for it to give rise to a reasonable doubt. What matters is that a reasonable doubt arises (in whatever form) from the state of the evidence at the close of the trial.**
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> …
>
> 148 **In the context of the uncorroborated evidence of [a witness], whether his or her account is considered unusually convincing (and therefore capable of discharging the Prosecution's burden of proving the case against the accused person beyond a reasonable doubt) requires an assessment of the internal and external consistencies of the account, and of any other evidence that the court is bound to consider. Such other evidence necessarily requires a consideration of the Defence's case and the evidence adduced by the accused person (or the lack thereof).**
>
> [emphasis added]

74 I was of the view that a reasonable doubt had also arisen on an assessment of the totality of evidence. This was for at least five reasons.

(1) Testimony on when alleged offence happened contradicted by Boyfriend

75 First, the Boyfriend had testified, consistently, that the Complainant had told him that the alleged offence had taken place in 2018, about two months before her birthday in August that same year.[144] This was a significant difference from the Complainant's evidence that the alleged offence had occurred sometime between August and December 2017. I had observed the Boyfriend closely as he testified. There was no hesitation at all on his part or any indication that he was unsure as he steadfastly maintained his position on this material aspect in his examination-in-chief; cross-examination; re-examination; and

144 Day 8, p 19, lines 9-18; p 20, line 22 to p 21, line 20; p 24, line 23 to p 25, line 17; p 32, line 6 to p 33, line 14.

finally, upon further questioning by this court. I agree with the Defence's submissions on this aspect, which were grounded on the evidence adduced before this court.[145] As for the Complainant's evidence in response when she was recalled, I also agree with the Defence that the Boyfriend's evidence should be preferred instead.[146] Indeed, when the Complainant's WhatsApp exchange with her Boyfriend was put before her, I observed that she did not appear to even want to review the exchange (p 27 in **Exhibit D70**) to refresh her memory before going on to initially state that she did not recall what she and her Boyfriend had been talking about and what led to the exchange.[147]

(2) Testimony on cutting contradicted by documentary evidence

76 Second, the Instagram Stories exchange between the Complainant and her mother on 21 April 2017 (**Exhibit D68**) provided clear documentary evidence that the Complainant's testimony that she had started to cut her arms slightly after the alleged offence (which she claimed happened between August and December 2017) was not credible and should not be believed. It also contradicted her testimony that nobody in the Flat was aware that she had ever cut herself. The relevant extracts from the notes of evidence in support of these points appear in the Defence's submissions.[148] As the Defence noted:[149]

> [The Complainant's] testimony as to why she had started cutting her arms (which is relevant to the issue of whether the [alleged offence] did occur) [was] clearly littered with inconsistencies against the extrinsic evidence. Her evidence on

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145 [112]-[119], Defence's Closing Submissions; [20]-[27 and Defence's Reply Submissions.

146 [120]-[125], Defence's Closing Submissions.

147 Day 9, p 25, line 18 to p 26, line 6.

148 [126]-[134], Defence's Closing Submissions. See also [40], Defence's Reply Submissions.

149 [141], Defence's Closing Submissions.

> this issue add[ed] to the serious question marks over her credibility.

(3) Testimony on conversation leading to alleged massage contradicted by mother

77 Third, the Complainant's testimony that the accused had offered to massage her, in the presence of her mother, was contradicted by her mother herself. The Complainant had testified that she had told the accused and her mother, who were in the living room of the Flat[150], that she "was having bad cramps". She had also clarified with them that it was her "calves that were cramping".[151] The accused then "offered to give [her] a massage".[152] It was the Complainant's evidence that her mother did not say anything when the accused offered to give her a massage (although she also confirmed that her mother was listening to her conversation with the accused[153]). According to the Complainant, her mother "allowed [her] to follow [the accused]" and "just let [her] go".[154] According to the Complainant, she was sure her mother "knew [the accused] was bringing [her] to have a massage" because her mother "was there when [the accused] offered [to give her a massage]".[155] It was her position that her mother, having heard the accused's suggestion of a massage, did not object to this suggestion and let her and the accused walk off to the Bedroom.[156]

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150 Day 1, p 18, lines 5-9.

151 Day 1, p 49, line 31 to p 50, line 2.

152 Day 1, p 17, lines 11-12.

153 Day 1, p 19, lines 2-4.

154 Day 1, p 18, line 26 to p 19, line 4.

155 Day 1, p 19, lines 15-17.

156 Day 1, p 51, lines 14-21.

78 However, the Complainant's mother was not able to recall any such conversation. She also testified, forcefully, that she would not have allowed the accused to massage the Complainant's legs in her Bedroom even if the accused had suggested this:[157]

> Q: Now, I am going to ask you what your responses are to the details of the purported incident that happened between August and December 2017. Okay? According to [the Complainant], she came home one evening from netball and both you and your husband were there. Alright. Now, that is possible, right?
>
> A: Yes.
>
> Q: Okay. She said that she complained of leg muscle cramps and that [the accused] offered to massage her in her room to deal with the…leg muscle cramps and you did not object to this and you allowed them to go into…her bedroom for this massage to take place, alright? Now, I'll…move on to the…other allegations later on, but do you have any comments about this alleged episode?
>
> A: **I do not recall an incident where she had mentioned a cramp that [the accused] would want to bring her to the room and massage her in my presence. That conversation did not take place, as far as I recall**…and the probability of it occurring in a time and space where everybody is busy and hands on…with prayers and…dinner and catching up with each other…I do not think that would have been possible.
>
> **Q: Now, assuming that [the accused] had suggested to massage [the Complainant's] legs in her bedroom, what would your response have been?**
>
> **A: I would not have allowed it.**
>
> **Q: Why?**
>
> **A: It's inappropriate and Islamically, it's not allowed that they are to touch the daughter that is not biologically his daughter.**
>
> [emphasis added]

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157 Day 7, p 7, line 15 to p 8, line 12.

79 As the Defence correctly noted:[158]

> [The Complainant's mother's] response in full raised two points: first, that she could not recall any incident where [the Complainant] had complained to her and [the accused] about cramps, and second…and in any event, [the Complainant's mother] unequivocally stated that she would not have permitted a massage. Notably, unlike the circumstances of the [alleged molest during the alleged massage] itself, [the Complainant's mother] was in a position to **give direct evidence on the former point**. On this point of whether [the Complainant] had complained to her parents about her leg cramps, therefore, it is not just a matter of [the Complainant's] word against [the accused's] but [the Complainant's] word against both the persons she had purportedly [told about her alleged cramps].
>
> [emphasis in original]

80 I noted that the Complainant's mother's evidence on these aspects were also consistent with that of the accused.[159]

81 The Prosecution never suggested nor put to the Complainant's mother that she had not been truthful in her testimony on these aspects – which relate to the very events that purportedly led the alleged massage in the Bedroom (and the alleged offence). This, to my mind, severely undercut its case theory.

82 The Prosecution had submitted that the "possibility that [the Complainant's mother] may not have even heard the conversation between them at all (despite being present) cannot be discounted".[160] However, as the Defence correctly noted, this material fact was never put to the Complainant's mother. This was also not the evidence of the Complainant herself.[161]

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158 [190], Defence's Closing Submissions.

159 Day 5, p 8, line 10 to p 13, line 8; p 15, lines10-21; and p 88, line 29 to p 89, line 9.

160 [91], Prosecution's Closing Submissions.

161 [58], Defence's Reply Submissions. See also [77] above.

(4) Difficulty in touching pubic area in manner described by Complainant

83 It was the Complainant's evidence that after the accused closed the door to the Bedroom, he had asked her to lie down on her back on the bed (*viz*., with her face facing upwards).[162] She did so, lying in a direction that was parallel to the headboard of the bed (**Exhibit D1**).[163] The accused then "kneel[ed] on top of [her] and started with [her] shoulders".[164] According to the Complainant, the accused had put one of his feet on one side of her torso and the other on the other side of her torso.[165] His legs were pointing in the same direction as hers and his face was facing towards her head.[166] It was the Complainant's evidence that this was the position the accused had maintained during the part of the massage when she was lying on her back (**Exhibit P3**).[167]

84 According to the Complainant, the accused had then massaged her shoulders before molesting her on her breasts. It was her evidence that the accused then "went down" after "touching her breast". By this, she meant that one of his hands went to her shorts, "went in", and "rubbed" her "pubic area" under her panties for "slightly more than 10 seconds".[168] The Complainant also indicated the area where the accused had allegedly touched her on a diagram of the female anatomy (**Exhibit P2**). It was the Complainant's evidence that this had happened when the accused was straddling her across her torso while she was lying on her back on her bed. On this aspect, the accused had testified that

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162 Day 1, p 17, lines 12-14; p 20, lines 1-3; and p 54, lines 22-27

163 Day 1, p 54, line 32 to p 55, line 31.

164 Day 1, p 17, lines 14-15 and p 54, lines 28-31.

165 Day 1, p 20, lines 11-22.

166 Day 1, p 55, line 32 to p 56, line 8.

167 Day 1, p 56, lines 9-11.

168 Day 1, p 22, lines 4-23; p 27, lines 17-32; and p 60, line 22 to p 62, line 19.

it would have "extremely difficult for [him] to do so…to reach out…behind and touch her…at the [pubic] area as [Exhibit P3] showed…that [he] was straddling her across the tummy".[169]

85 The Prosecution evidently also recognised this difficulty in doing so. In her statement, the Complainant had stated that before sliding one of his hands under her shorts and panties, the accused had shifted his position from one where he had been kneeling on top of her with his legs beside her waist to one where he was kneeling beside her on her left.[170] This shift in position had been inconsistent with the Complainant's testimony, and in attempting to explain away this inconsistency the Prosecution had submitted that:[171]

> [i]n fact, it made sense that the accused would be *beside* the [Complainant] while touching her pubic area – as she described in [her statement] – **because it would be more difficult for the accused to touch her in that manner while kneeling about her torso**.
>
> [emphasis in original; emphasis added in bold]

169 Day 5, p 19, lines 17-23.

170 [4], Exhibit D57.

171 Page 30, Prosecution's Closing Submissions.

(5) Accused was candid and forthcoming

86 Having observed the accused over the course of the trial and having heard his testimony, I found him to be a candid and forthcoming witness. I noted that the Prosecution had contended that he was otherwise.[172] For the reasons stated by the Defence in its submissions[173], I would disagree. In this regard, the Court of Appeal's observations in *Muhammad Nabil bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 bear reiterating:

> 52 …that there is no principle of law that the evidence of an accused person must be treated as inherently incredible or being of suspect value merely because it advances his defence and is, in that sense, self-serving. If the presumption of innocence means anything at all, it must mean that an accused person who testifies to exonerate himself may be telling the truth. The assessment of whether or not he is doing so must, in the final analysis, depend on the totality of the evidence…

87 It was the Prosecution's position that the Complainant had no motive to fabricate the allegations against the accused.[174] Leaving aside the issue as to whether the evidence adduced was conclusive on this issue, I would refer to the following observations of the High Court in *Roger Yue*:

> 50 …[W]hile the presence of [a] motive to fabricate may raise reasonable doubt as to the guilt of the accused person under the charges, that there is an absence of motive is not sufficient for the case against the accused to be proved beyond reasonable doubt. In other words, the fact that there was no evidence of any motive or reason for the Victim [in *Roger Yue*] to mount fabrications against the Accused in this case was not sufficient on its own to render the Victim's testimony unusually convincing and corresponding sufficient to prove the case against the Accused beyond reasonable doubt.

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172 [104]-[111], Prosecution's Closing Submissions.

173 [65]-[69], Defence's Closing Submissions.

174 [79]-[87], Prosecution's Closing Submissions.

Conclusion

88 The case for the Prosecution hinged, effectively, on the Complainant's evidence. It therefore had to be "unusually convincing", or so convincing that the Prosecution's case is proven beyond reasonable doubt solely on the basis of her evidence. In my judgment, reasonable doubt arose within the Prosecution's case, and on the totality of the evidence. Against this backdrop, the Complainant's evidence was hardly "unusually convincing". In these circumstances, I find that the Prosecution has failed to establish the charge against the accused beyond a reasonable doubt. I therefore order a discharge amounting to an acquittal. A conviction would have been plainly wrong and against the weight of the evidence adduced before the court in this case.

Prem Raj Prabakaran
District Judge

Goh Yi Ling (Attorney-General's Chambers) for the Public Prosecutor;
Derek Kang Yu Hsien and Lim Shi Zheng, Lucas (Cairnhill Law LLC) for the Accused.