Teo Keng Pong
v
Public Prosecutor

[1996] SGHC 183

High Court — Magistrate's Appeal No 39 of 1996
Yong Pung How CJ
16, 26 August 1996

Criminal Procedure and Sentencing *— Sentencing — Outrage of modesty — Accused touching victim's thigh and breasts as well as kissing victim — Benchmark sentence for similar cases — Whether imposition of fine more appropriate than imprisonment — Section 354 Penal Code (Cap 224, 1985 Rev Ed)*

Evidence *— Principles — Bare denial — Prosecution's submission that* prima facie *case made out — Whether bare denial by accused acceptable answer to Prosecution's submission — Whether court should accord weight to bare denial by accused*

Evidence *— Proof of evidence — Onus and standard of proof — Accused charged and convicted on criminal charges — Nature of burden imposed on Prosecution in proving accused's guilt — Whether court applying correct burden or standard of proof in determining accused's guilt*

Facts

The appellant was charged and convicted on seven counts of using criminal force with intent to outrage the modesty of the complainant. At trial, the appellant's defence in relation to the first six charges was a bare denial. In relation to the last charge, the accused denied that he had performed the acts in question with the requisite *mens rea* (*ie*, to outrage the complainant's modesty), and claimed that his actions had been misunderstood by the complainant. Ultimately, the case turned on a question of who to believe, as there had been no one around at the time of the alleged offences.

At first instance, the magistrate convicted the appellant on the basis that the complainant's evidence was unusually convincing while that of the appellant unbelievable.

The appellant appealed on the grounds that: (a) the magistrate erred in failing to consider whether the Prosecution had proven its case beyond reasonable doubt; (b) the Prosecution's case contained many inconsistencies which the magistrate should have regarded as material; and (c) the fact that the charges had been amended during trial showed that the complainant had been inconsistent in her description of what happened.

Held, dismissing the appeal against conviction but allowing the appeal against sentence:

(1) There was nothing in the grounds of judgment which indicated that the magistrate had not applied the correct burden or standard of proof. It was clear from the manner she approached the issues that she was looking for proof

beyond reasonable doubt. The burden on the Prosecution was to prove its case beyond reasonable doubt, and not beyond all doubts. It was only where there were real or reasonable doubts that the Prosecution had not discharged its burden, such that the accused would be entitled to an acquittal: at [67] and [68].

(2) The magistrate was correct in treating the inconsistencies as minor. These related mainly to what one witness said to another and it was not controversial that in such circumstances, minor inconsistencies would arise: at [74].

(3) The amendments made to the charges during the trial were minor and quite inconsequential. This fact alone did not give rise to the inference that the complainant had been inconsistent in her description of what happened: at [75].

(4) Although there were some weaknesses in the complainant's evidence, the magistrate was nevertheless entitled to reach the conclusion that the case had been proven beyond reasonable doubt. This was because the premise behind the appellant's version of events in relation to the last charge – of a misunderstanding blown out of proportion – was so unlikely that the magistrate was entitled to reject it: at [81].

(5) A "bare denial" did not carry the connotation that it could not be true. The submission that a *prima facie* case could not be answered by a bare denial could not be accepted. This was because if nothing happened at all, there would be nothing but a bare denial. It would thus be very dangerous to discount the accused's evidence merely because it was a "bare denial": at [83].

(6) It was trite law that an appellate court would defer to the trial judge's finding of fact, unless it could be shown to be plainly wrong or there remained a lurking doubt. In relation to the first six charges, the complainant had demonstrated to the magistrate what the appellant did to her and the magistrate had made a finding of fact accordingly. On the facts, there was insufficient basis to disturb the convictions: at [85], [86] and [87].

[Observation: There was no basis for the proposition that a parent could not corroborate a child's evidence. There was no rule of law that a parent was not an independent witness merely because he was a parent of the witness: at [71].

In respect of relatively minor acts of molest under s 354 of the Penal Code (Cap 224, 1985 Rev Ed), a fine was generally more appropriate: at [91].]

Case(s) referred to

Khoo Kwoon Hain v PP [1995] 2 SLR(R) 591; [1995] 2 SLR 767 (refd)

PP v Nordin bin Ismail [1996] 1 CLAS News 250 (refd)

Teo Thin Chan v PP [1957] MLJ 184 (distd)

Legislation referred to

Evidence Act (Cap 97, 1990 Rev Ed) s 157

Penal Code (Cap 224, 1985 Rev Ed) s 354 (consd)

Anamah Tan (Ann Tan & Associates) and Singa Retnam (Singa Retnam Kurup & Associates) for the appellant;
Peter Lim (Deputy Public Prosecutor) for the respondent.

26 August 1996

Yong Pung How CJ:

1 The appellant was convicted by the magistrate on seven counts of using criminal force with intent to outrage the modesty of the complainant ("PW1") contrary to s 354 of the Penal Code (Cap 224). After hearing both learned counsel and the deputy public prosecutor, I dismissed his appeal against conviction, but I reduced the sentence in respect of five of the charges. I now give my reasons.

The charges

2 Four of the charges against the appellant alleged that he caressed PW1's thigh. These incidents happened on 29 March, 31 March, 7 April and 12 April. A fifth charge alleged that the appellant caressed PW1's thigh and squeezed her on the back on 5 April 1995. The sixth charge alleged that the appellant caressed PW1's thigh and touched her left breast on 19 April 1995. The last charge alleged that he caressed her thigh, touched her breasts and kissed her on the cheeks and lips on 21 April 1995. All the incidents took place between 8.30am and 10.30am.

Background facts

3 PW1 was 13 years old at the time of the alleged offences. She is an Indonesian student studying in Singapore. PW1 came to Singapore in August 1989. The appellant's wife ("Mrs Teo") was the principal of PW1's primary school. Since September 1993, PW1 boarded with the appellant's sister ("Madam Teo"). The appellant became PW1's guarantor. In March 1995, he gave her tuition. Until the incidents, PW1's family and the Teo family were on good terms.

4 PW1 and PW6 were friends. PW6 is a Taiwanese student who came to Singapore in 1993. This was upon the recommendation of PW1's father, PW3. PW3 was a friend of PW6's mother. PW1 and PW6 went to the same primary school and were roommates at Madam Teo's flat. The appellant also gave PW6 tuition.

5 The first tuition lesson the appellant gave PW1 was on 22 March 1995. The lessons lasted from 8.30am till 10.30am, on Wednesdays and Fridays. They were held in the dining room of the appellant's flat, which was a Housing and Development Board maisonette. During the lessons, the appellant always sat facing the stairs, which led upstairs. PW1 sat with her back to the stairs. The appellant had a dog, a Pomeranian, which was always in the room.

The Prosecution's evidence

PW1

6 PW1 testified that the first incident took place during the third lesson, on 29 March 1995. The appellant placed his right hand on her thigh. He moved it up and down for about one minute. PW1 did not say anything even though she felt uneasy. She did not know that the appellant intended to outrage her modesty. After the incident, they continued with the lesson.

7 On 31 March, the appellant did the same thing. On 5 April, the appellant caressed PW1's thigh. He also asked her whether she was tired. She replied that she was not. He pressed his hands against her back and rubbed her shoulders. On 7 and 12 April, the appellant stroked PW1's thigh again. PW1 did not protest on any of the occasions.

8 On 19 April, PW1 went to the appellant's home for tuition wearing a tee-shirt with a logo over her left breast. The appellant caressed her thigh on that occasion again. On the pretext of examining the logo, he pressed his hands against her left breast. PW1 was shocked and frightened. However, she did not raise any objection as there was nobody within sight. According to her, this was the first time she realised that the appellant had the intention to outrage her modesty. On that day, she did not tell anyone about the incident as she thought that the appellant would not repeat what he did. Nevertheless, PW1 told Madam Teo that she did not wish to go for tuition. Mdm Teo insisted that she had to go.

9 On 21 April, the appellant caressed PW1's thigh and squeezed her left breast. He then kissed her on the left cheek and tried to make her turn her face to the other side so that he could kiss her on the right cheek. PW1 resisted. The appellant turned PW1's head towards him and kissed her on the lips. After that, he squeezed her right breast.

10 The appellant told PW1, "Don't tell anybody. Don't tell Daddy and don't tell Aunty (Mdm Teo)." He said that otherwise, they would be angry with him. PW1 kept still because she was afraid of the Pomeranian underneath the appellant's chair. When the appellant squeezed her right breast, she shook off his hands. She told him that she had to go to the bank to get some money. The appellant offered to send her there. She refused and rushed out of the flat.

11 PW1 left the appellant's flat crying. She went to the Post Office Savings Bank at the Tampines Bus Interchange and withdrew $100. She bought a $50 phone card. She then went to the flat of her friend, Chew, which was nearby. At the void deck, she telephoned Chew from the public phone to let him know that she was going up to his flat.

12 After this, she called home to Indonesia. PW3 picked up the phone. She asked to speak to her mother ("PW7"). PW1 told PW7 what happened.

PW7 started crying. PW3 took over the call. He told PW1 that he would take a flight to Singapore that very night. After calling home, PW1 went up to Chew's flat. She cried and told him that she had been molested by her tuition teacher.

13 After confiding in Chew, she returned to Madam Teo's house. The appellant's shoes were not outside and she thought that he was not inside. She called PW3 to let him know that she had arrived home safely. Madam Teo approached her and asked her to give the appellant a chance. Madam Teo said that the accused wanted to speak to her. PW1 locked herself in her room upon hearing this. The appellant stood outside the room, asking for forgiveness. She only came out after Madam Teo said that the appellant had left. On that day, her friends, Chew, Eunice and Rickson accompanied her to school.

14 PW6 came looking for her at about 5.00pm. PW6 had a letter written by the appellant. PW6 said that the appellant had begged her to see PW1. PW6 asked her what happened. PW1 did not say. PW1 obtained permission to leave school early. The two of them went for a meal. After the meal, they returned to PW1's school. PW1 was concerned that PW3 would look for her there. They waited till 7pm. PW6 went back to Madam Teo's flat and collected a change of clothes. Both of them went to People's Park Centre to rent a room. PW1 asked PW6 to call Madam Teo to let PW3 know that they were at People's Park. PW3 came at 9.30pm.

15 Following this, there were two meetings with the appellant's family at People's Park. PW1 was confused about the date. By this time, PW6's mother had arrived from Taiwan. The appellant did not turn up at the first meeting, which was in the afternoon. The second meeting in the evening was therefore arranged.

16 During the second meeting, PW3 asked the appellant to say what he had done to molest PW1 and to admit the truth. The appellant denied the allegations. Subsequently, the appellant and Mrs Teo left in a hurry.

17 PW3 took PW1 to the police station to lodge a report. PW1 only mentioned about the incident on 21 April in her first information report. This was because this incident was the most recent. It remained freshest in her mind. When she was questioned by the police, she told them about the other incidents.

PW3

18 PW3 said that PW1 called home on 21 April 1995. PW1 was crying. He asked what had happened, but PW1 wanted to speak to her mother. PW3 asked his wife to take the call. After hearing PW1, PW7 started crying as well. From what PW7 asked PW1, PW3 surmised that PW1 had been molested. PW7 handed the phone to him. He told PW1 to take a taxi home and that he would fly to Singapore that day.

19 PW3 called Madam Teo. He asked her why the appellant had molested PW1 during tuition. PW3 told Madam Teo that the appellant had kissed PW1, embraced her, caressed her thigh and touched her breasts. He told her that she had to be responsible and asked her to look for PW1. He made several more calls to Madam Teo to find out if PW1 had arrived home safely.

20 PW3 received a call from the appellant. The appellant said that there was no need for PW1 [PW 3] to go to Singapore as nothing serious happened. The appellant apologised. PW3 hung up the phone. Later, PW1 called to say that she had reached home. He assured her that he would go to Singapore. After this, he made two calls to Taiwan to PW6's mother. However, he could not reach her.

21 PW3 arrived in Singapore at about 7.00pm. He went to PW1's school but did not find her. He went to Madam Teo's flat and was told that PW1 was waiting for him at People's Park Centre. He reached there around 9.00pm. PW3 took PW1 for a medical examination the next day to determine if she had been raped. PW6's mother arrived in Singapore that day.

22 The following day, which was 23 April 1995, PW3 made an appointment to see the appellant at People's Park Centre at 3.00pm. Only Mrs Teo and Madam Teo turned up. PW3 insisted that he wanted to see the appellant. He arranged another meeting for the evening.

23 That evening, PW3, together with PW1, PW6 and PW6's mother met the appellant. The appellant went with his wife and four other family members. PW3 asked the appellant what he had done to PW1. The appellant replied that he had only caressed PW1's thigh and kissed her on the cheeks. The appellant apologised. PW3 asked the appellant whether he had done other things. He specifically asked whether PW3 [the appellant] had squeezed PW1's breasts. The appellant remained silent.

24 PW3 asked PW1 whether the appellant had squeezed her breast. PW1 said, "Yes, with great force." PW3 confronted the appellant, who apologised. The appellant insisted that he had only caressed PW1's thigh and kissed her. PW6's mother then confronted the appellant. Mrs Teo and the appellant's daughter stood up and said, "If that's the case, we will see you in court." PW3 left when he heard that. The meeting ended and PW3 took PW1 to make a police report.

25 A tape recording of a telephone conversion between PW3 and Madam Teo was admitted with the consent of the Defence. In it, Madam Teo said that the appellant had sometimes admitted and sometimes denied that he touched PW1's breasts.

PW6

26 PW6 gave evidence that on 21 April 1995, Madam Teo told her that PW1 said that she was molested by the appellant. Madam Teo asked whether PW6 had also been molested. PW6 remained silent. Madam Teo asked PW6 to speak to the appellant. The appellant asked PW6 to help him. He requested that PW6 go to his flat.

27 When PW6 reached there, the appellant knelt down and begged her to ask PW1 to tell her father not to come to Singapore. The appellant wrote a letter to enable PW6 to see PW1 in school.

28 PW6 reached PW1's school at about 4.00pm. When she met PW1, PW1 cried. PW6 asked PW1 whether she had been molested by the appellant. PW1 said she had. PW6 told PW1 that she too had been molested. It was the first time she told anyone about this.

29 PW6 waited for PW1's lessons to be over. PW1 obtained permission to leave school. Both of them went for a meal. They got wet in the rain. PW6 wanted to change her clothes but PW1 did not want to go back to Madam Teo's flat. PW6 went home to get a change of clothing. They then went to People's Park. PW6 called Madam Teo to let her know where they were.

Other prosecution witnesses

30 Chew was PW1's friend and schoolmate. He testified that on 21 April 1995, PW1 called him on the telephone. She sounded like she was crying. Shortly afterwards, PW1 went to his flat. She was crying. She told him that her tutor molested her. Chew advised her to tell her father or to lodge a police report. She did not tell him where the appellant touched her. Later in the morning, PW1 telephoned again and asked him to accompany her to school as her tutor was downstairs. Chew called Rickson. PW1 came with another girl. They went to school together.

31 PW7 gave evidence that PW1 telephoned her on the morning of 21 April 1995. PW3 answered the call. PW1 was crying. She asked for her mother. When PW7 took over the call, PW1 told her that her tuition teacher had kissed her, touched her thigh and squeezed her breasts. PW1 said that she had run away. PW7 wept when she heard this. PW3 took over the call.

32 That morning, the appellant called too. He admitted touching PW1's thigh and kissing PW1, as well as pressing his hand against her chest. PW7 was very upset. She gave the handset to her husband. PW3 went to Singapore that very day.

33 Two police officers gave evidence that they recorded statements from the appellant. The statements were not challenged by the appellant and were admitted. In them, the appellant denied the first six incidents. He

admitted caressing PW1's thigh and kissing her. The appellant said that he offered to be PW1's god-father. When she agreed, he kissed her on the left cheek. He "rubbed" PW1's thigh during one of the lessons. On that occasion, he advised her to join the "Trim and Fit Club in school to reduce her weight". He denied squeezing PW1's breast and kissing her on the lips.

The Defence's evidence

The appellant

34 The appellant testified that he started giving PW1 tuition on 22 March 1995. He gave PW6 tuition from September 1993 to April 1995. Until 21 April 1995, he had never received any complaint.

35 PW1 arrived for tuition on 21 April 1995 at 8.30am. She told him that she needed to leave early at 9.45am to go to the bank. He agreed. At 9.30am, he sent Mrs Teo to school. On the way, they spoke about adopting a god-daughter. They had been talking about their god-son. Mrs Teo agreed. The appellant went home after dropping Mrs Teo off at the school.

36 The appellant asked PW1 if she would like to be his god-daughter. She happily agreed. The appellant was pleased and gave her a fatherly peck on the cheek as a sign of acceptance. PW1 said that she was fat. He said, "Fat all over is not good." The appellant advised her to join the school Trim and Fit Club. He gave her a tap on the thigh for emphasis. PW1 went off happily.

37 The appellant went to the market. When he returned home, his son told him that Madam Teo had called him. He telephoned Madam Teo and was told that PW3 had called her to complain that the appellant kissed PW1 on the face. The appellant was shocked. He explained to her that PW1 had agreed to be his god-daughter. That was why he gave her a fatherly peck. He called PW3 to explain.

38 The appellant decided to explain to PW1, so he went to Madam Teo's house. When PW1 came back, she locked herself in the room and refused to see him. Madam Teo asked him to go home, which he did.

39 He waited until it was time for PW6 to reach home from school. He telephoned PW6 and explained what happened to her. He asked PW6 to explain what happened to PW1. PW6 reassured him that PW1 would listen to her. She asked the appellant to write her a letter so that she could see PW1 in school. The appellant wrote the note and PW6 took it to PW1's school. After that, he went to work. In the evening, he told Mrs Teo that the "god-daughter business" had gone off badly and there was a misunderstanding.

40 On Sunday, he was told that PW3 wanted to see them. Mrs Teo and Madam Teo suggested that they meet PW3 first to see what he wanted. They came back, saying that PW3 said that if the appellant did not show up

at 7.00pm, PW3 would report the matter to the police. The appellant went to the meeting with his family.

41 PW3 asked the appellant why he had kissed PW1. The appellant said that PW1 agreed to be his god-daughter. PW3 looked at PW1 in surprise. PW1 retorted that she did not give the appellant permission to kiss her. PW3 started to abuse him. When the appellant heard this, he walked away. PW3 did not ask him about anything else apart from the kiss. There was no mention of any incident before 21 April 1995.

42 The appellant denied that anything happened on the other occasions. He had never seen the tee-shirt which PW1 claimed she wore on 19 April 1995. PW1 normally wore a tee-shirt with a hood.

Mrs Teo

43 Mrs Teo gave evidence that Fridays were her "late days". This meant that she would be at home till 9.30am. On Wednesdays, she left home for work at 6.45am. When she was at home, she did housework. According to her, she was a "visible presence". However, she did not observe the tuition lessons.

44 On 21 April 1995, Mrs Teo left home at about 9.30am. As usual, the appellant interrupted the lesson to fetch her to work. On the way to the school, they discussed adopting a god-daughter. The appellant suggested PW1.

45 At about 6.45pm that day, the appellant told her that he had asked PW1 to be their god-daughter. PW1 had agreed. However, things turned out badly after the appellant gave PW1 a peck on the cheek as a fatherly gesture.

46 On Sunday, Mrs Teo and Madam Teo went to meet PW3 in the afternoon because they were concerned that PW3 would bring thugs to assault or intimidate the appellant. PW3 insisted that unless the appellant met with him, he would report the matter to the police. In the evening, they and their children accompanied the appellant to the meeting, so that the appellant would have help if he was intimidated.

47 During the meeting, PW3 asked why the appellant had kissed PW1. The appellant looked at PW1 and said, "I asked you to be my god-daughter and you agreed." PW1 said that she did not give the appellant permission to kiss her. PW3 gave PW1 a quizzical look. PW1 said something inaudible, after which PW3 started to abuse the appellant. The appellant walked off and they followed suit. She denied saying that she would see PW3 in court.

Madam Teo

48 Madam Teo testified that on 21 April 1995, PW1 went for tuition as usual. At about 10.00am, she received a telephone call from PW3. PW3

asked her why the appellant had touched PW1's thigh and kissed her on the cheek. Madam Teo said that the appellant was not that kind of person and said that she would clarify from the appellant. The appellant was not at home the first time she called. PW3 telephoned again. He asked whether PW1 was back and threatened to sue.

49 When the appellant returned Madam Teo's call, she told him about PW3's complaint. The appellant said that it could not be. PW1 had left the flat smiling. Madam Teo asked whether the appellant kissed PW1 on the cheek. The appellant said that it was because PW1 had agreed to be his god-daughter. The appellant asked for PW3's telephone number and said that he would call him. Later, PW1 phoned and said that she was at her friend's house. She confirmed that she had complained to her father. Madam Teo asked her to go home.

50 The appellant went to Madam Teo's home at about 12.00pm. He wanted to see PW1, but she was not back yet. The appellant waited. PW1 came home. She locked herself in her room when Madam Teo told her that the appellant was there.

51 In the afternoon, PW6 came home from school. Madam Teo asked her whether the appellant had touched her during tuition. PW6 replied that the appellant had touched her shoulder. Madam Teo told PW6 that PW1 had complained that the appellant had kissed her on the cheek and touched her thigh. PW6 said that PW1 was too conservative as she came from a conservative family. PW6 offered to explain the matter to PW1. PW6 called her mother. Shortly afterwards, the appellant telephoned PW6. PW6 told Madam Teo that she was going to the appellant's flat. She came back with a letter from the appellant, which she took to PW1's school.

52 At about 7.00pm, PW6 came home. She said that it was not easy to convince PW1. She collected her clothes and left. PW3 called to say that he was at the airport. She told him that PW1 was waiting for him at school. PW6 then called to say that they had rented a room at People's Park. Later in the evening, PW3 came to Madam Teo's flat. She told him that PW1 was at People's Park.

53 On 23 April 1995, PW3 called to say that he wanted to see the appellant. Madam Teo and Mrs Teo went to meet PW3. PW3 insisted on seeing the appellant. PW3 threatened to call the police if the appellant did not show up. Madam Teo and Mrs Teo went home. She did not go to the meeting in the evening.

54 Asked about the recorded telephone conversation with PW3, she said that she made up portions of it. PW3 refused to believe that the appellant had not touched PW1's breast. In order to appease PW3, she told him that the appellant sometimes made admissions.

Madam Teo's daughter

55 Madam Teo's daughter gave evidence that the appellant never touched her during her tuition lesson with him. However, when she got good results, he would tap her on the shoulders to congratulate her. She had seen him kissing his children on special occasions. Under cross-examination, she could only remember one such incident.

56 On 21 April, she heard Madam Teo speaking to PW6 when she came home from school. PW6 said that she was going to the appellant's flat to clear up some misunderstanding.

The finding below

57 The magistrate approached the case from the position that in relation to the first six charges, the defence was a bare denial. In relation to the last charge, the appellant admitted that he tapped PW1's thigh and kissed her on the cheek. The defence was that it was not done with any intention to outrage PW1's modesty. Therefore the relevant issues were, firstly, in relation to the first six charges, whether the alleged incidents took place at all. In relation to the last charge, whether the appellant touched PW1's breast and kissed her on the lips as well, with the intention to outrage PW1's modesty; or whether he merely touched her on the thigh and kissed her on the cheek without any such intention. In the end, it was essentially a question of who to believe, as nobody else was around.

58 The magistrate was of the view that PW1's evidence was unusually convincing. There were some minor inconsistencies, but this could be explained by her age. That she did not complain about the first five incidents could be explained by the fact that she did not realise the appellant was molesting her. As for the incident on 19 April, she called her mother but she was not in. It was not unnatural for her to be reluctant to confide in her father. PW1's explanation in relation to the first incident report that the events on 21 April remained freshest in her mind was accepted. She revealed the other incidents when the police questioned her that night. No adverse inference was drawn against her for failing to shout or scream as there was nobody within sight. The inconsistencies were not significant. PW1's reaction was consistent with something having happened to her which frightened her.

59 On the taped conversation, the magistrate held that it was unsafe to convict on it because the admission was not that of the appellant's. Neither did it show that the appellant had told PW3 about his defence from the start. The conversation only took place in the later half of May 1995. It was not possible to draw any conclusion from the length of the other telephone calls between Indonesia and Singapore on 21 April 1995.

60 As for Chew, he was an independent witness who gave evidence of PW1's distressed state. PW6's evidence ought to be treated with great care

as she was a complainant in another set of proceedings. Nevertheless, it did not make sense for her to volunteer to mediate to resolve the misunderstanding and then turn around to accuse the appellant of molest as well. The appellant has said himself in his police statement that he had begged PW6 to help him.

61 So far as the defence evidence was concerned, the magistrate held that the possibility that the appellant wanted to adopt a god-daughter could not be discounted. However, it did not explain why the appellant had to come into physical contact with PW1. In her view, it was a convenient excuse used to exonerate himself. The appellant knew that he had to be careful with his actions when giving lessons to a student of the opposite sex. PW1 was a new student and he had not yet built a trusting relationship with her.

62 The explanation given by the appellant for touching PW1's thigh was unbelievable. There was no reason for PW1 to raise the topic of her physique, especially when they were talking about something totally unrelated to this.

63 Even if Mrs Teo and the appellant's son came downstairs frequently, this was of little weight. The appellant could see them when they go downstairs. The appellant had been consistently maintaining his defence. However, this "did not lead inevitably to the conclusion" that the appellant was innocent. Furthermore, the appellant in his statement had said that he had "rubbed" PW1's thigh, instead of a mere tap.

64 As for the other defence witnesses, the magistrate held that they were not reliable. She formed the impression that Mrs Teo was tailoring evidence to back up the appellant's defence. The evidence of Madam Teo's daughter did not throw much light on the case. Madam Teo's evidence could not be given much weight. The magistrate was of the view that Madam Teo did not appear to be objective when giving evidence.

65 In the end, much of evidence revolved around surrounding events rather than the alleged incidents. However, viewing the evidence in totality, the magistrate was convinced that the Prosecution's evidence represented the truth. The Defence's version was disbelieved. The appellant was convicted on all seven charges.

The appeal

66 Counsel for the appellant raised several grounds of appeal. First, I shall deal with the submission that the magistrate erred in failing to consider whether the Prosecution had proven its case beyond reasonable doubt. The magistrate merely said that she was convinced that the Prosecution's version represented the truth. Counsel submitted that the test is whether the defence case casts a doubt on a balance of probabilities (presumably what counsel intended to say was whether there was a

reasonable doubt), even if the magistrate was of the view that the Prosecution's case represented the truth.

67 In my view, there was nothing in the grounds of judgment to indicate that the magistrate did not apply the correct burden or standard of proof. No doubt, the magistrate did not use the words "beyond reasonable doubt", however, it was clear from the manner she approached the issues that she was looking for proof beyond reasonable doubt. Hence, she addressed herself to the question whether PW1's evidence was "unusually convincing". It is pertinent to note that she made a finding that it was, before proceeding to examine the defence evidence. This showed that the magistrate was aware that even if the Defence's evidence was disbelieved, the onus was first and foremost on the Prosecution to prove its case beyond reasonable doubt. The magistrate said that she was convinced that the Prosecution's evidence represented the truth. This was simply another way of saying that she had no reasonable doubt.

68 It bears repeating that the burden on the Prosecution is to prove its case beyond reasonable doubt. It is not to prove the case beyond all doubts. That standard is impossible to achieve in the vast majority of cases. In almost all cases, there will remain that minutiae of doubt. Witnesses, apparently independent, could have conspired to "frame" an accused. Alternatively, an accused could be the victim of some strange, but unfortunate, set of coincidences. 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 belong to the former category that the Prosecution had not discharged its burden, and the accused is entitled to an acquittal.

69 Counsel relied on the consistency with which the appellant maintained his defence. However, this was already taken into account by the magistrate. There was therefore no error in this respect, as it does not mean that a consistent defence must always raise a reasonable doubt. In this respect, how PW3 came to know about this contention, as revealed in the taped teleconversation, was not material.

70 Likewise, the magistrate was entitled to disbelieve the appellant's allegation that he kissed PW1 on the cheeks because she agreed to be his god-daughter, notwithstanding that the magistrate accepted that it was possible that he wanted to adopt a god-daughter. I agreed with the magistrate that accepting the latter proposition does not in any way mean that the former must also be accepted or that it must necessarily raise a reasonable doubt. The circumstances in which the incident happened and the way it happened are all relevant considerations, which the magistrate rightly took into account.

71 It was also argued that the evidence of PW3 and PW7 could not corroborate PW1's evidence as they were her parents. In my view, there is no basis for the proposition that a parent cannot corroborate a child's

evidence. There is no rule of law that a parent is not an independent witness merely because he is a parent of the witness. *Teo Thin Chan v PP* [1957] MLJ 184 was relied on by the appellant. However, that case merely revealed that the mother of the child complainant there was "very much of an interested party". There was no mention of what sort of interest the mother had in the case. I did not find that case persuasive.

72 In any event, it was quite clear that the magistrate did not treat PW3 and PW7's evidence as corroboration by independent evidence. Likewise, even though she regarded Chew as an independent witness, she did not treat his evidence as corroboration. The same was true of Chew's evidence that PW1 appeared distressed. The magistrate's attention was specifically directed to *Khoo Kwoon Hain v PP* [1995] 2 SLR(R) 591. If she had regarded any of these witnesses' evidence as corroboration, she would have said so, instead of looking to see if PW1's evidence was unusually convincing. The words "unusually convincing" are used in situations where the trial judge considered that there was no corroboration.

73 I would add that there is nothing magical about the words "unusually convincing". They are but another way of saying that the witness's testimony was so convincing that the Prosecution's case was proven beyond reasonable doubt, solely on the basis of that evidence.

74 I come next to the argument that the Prosecution's evidence contained many inconsistencies, which the learned magistrate ought to have held were material. I agreed with the magistrate that these were indeed minor inconsistencies. They related mainly to what one witness said to another. It is not controversial that in such circumstances, minor inconsistencies are only natural. On the contrary, if there were no such inconsistency at all, it could be argued that this suggested that the evidence was fabricated.

75 Then, it was argued that the fact that the charges were amended during trial showed that PW1 was not consistent in her description of what happened. I could not agree with this submission. The original charges stated that the offences occurred at around 9.00am. The amendment merely changed this to "between 8.30 to 10.30am", which was the duration of the tuition lessons. The amendments were minor and quite inconsequential. In any event, whether or not to amend the charge was within the discretion of the prosecuting officer. It cannot be inferred from the mere fact that the charges were amended that the witness had made a previous inconsistent statement.

76 As for the taped teleconversation between PW3 and Madam Teo, the magistrate held that it was unsafe to convict solely on the basis of this evidence. It would have been more accurate to say that this evidence cannot be relied on at all. It was an out of court statement by Madam Teo in which

she said that the appellant "sometimes" admitted to her that he did the alleged acts and sometimes did not. It is hearsay.

77 Even though the taped conversation could be admitted to impeach Madam Teo's credit under s 157 of the Evidence Act, it could not be used as evidence of the facts stated therein. In any event, there was no attempt to impeach her credit. Nevertheless, nothing much turned on this. The learned magistrate was aware that there was no admission by the appellant in the taped conversion. She had also accepted Madam Teo's explanation as plausible. It was merely a slip of the pen.

78 Turning to the absence of a prior complaint in relation to the earlier alleged incidents, in my view, this issue was addressed by the learned magistrate. In relation to the first five incidents, the answer was simply that PW1 did not know until 19 April 1995 that the appellant intended to molest her. In relation to the incident on 19 April 1995, the magistrate found as a fact that PW1 attempted to call home on 19 April 1995.

79 A related aspect of this question was the reason given as to why she did not resist or shout when the appellant molested her. The magistrate was of the view that this was because she did not see anyone around at the time. This finding did not quite agree with the undisputed evidence that Mrs Teo was often in the same flat during tuition. Nevertheless, the magistrate was prepared to accept that Mrs Teo was in the flat.

80 Similarly, there was the issue of why PW1 had continued to go for tuition after the alleged incident on 19 April 1995. PW1's explanation was that she did not think that the appellant would do the same thing again. She also said that Madam Teo insisted that she must go for tuition. As was mentioned above, PW1 said that she called her mother on 19 April, but she was not in. The magistrate was of the view that it was not unnatural for her to be reluctant to confide in her father.

81 These are some of the weaknesses in PW1's evidence. However, I was of the view that the magistrate was nevertheless entitled to reach the conclusion that the case had been proven beyond reasonable doubt. This is because the premise behind the appellant's version, of a misunderstanding blown out of proportion, was so unlikely that the learned magistrate was entitled to reject it for the reasons stated by her. The magistrate had certainly taken these matters into consideration when assessing the evidence.

82 This left only the possibility that the alleged god-daughter incident did happen in the way the appellant said it did, and that PW1 understood the nature of the alleged fatherly peck and innocent tap on the thigh but nevertheless chose maliciously to blow the matter up. Alternatively, the god-daughter story was concocted by the appellant out of fear that the court would not believe his bare denial, though he did not do what PW1 alleged he did.

83 In this respect, a "bare denial" does not carry the connotation that it cannot be true. On this point, I could not accept the learned deputy public prosecutor's submission that a *prima facie* case cannot be answered by a bare denial. This is because if it was really the case that nothing at all happened, there would be nothing but a bare denial. It is in the very nature of such offences that they are often committed when no one else is around. Just as it is difficult for the Prosecution to produce corroborative evidence in the case of a guilty accused, it is equally difficult for an innocent accused to produce in court anything more than a bare denial. It would be very dangerous to discount the accused's evidence merely because it is a "bare denial".

84 Both possibilities would imply that all the allegations were concocted by PW1. They envisage that PW1 made the accusations maliciously against the appellant for hidden reasons. However, it was inconceivable that such a possibility did not cross the magistrate's mind when assessing PW1's credibility, even though they were not expressly referred to in the grounds of judgment. This was especially so in the light of *Khoo Kwoon Hain v PP*, which was specifically brought to her attention. It is therefore unnecessary for me to dwell at length on this.

85 It is trite law that an appellate court will defer to the trial judge's finding of fact. The trial judge enjoys the advantage of observing the demeanour of the witnesses as they give evidence. An appellate court will not lightly disturb the finding unless it can be shown to be plainly wrong or, in the case of a criminal appeal, that there remains a lurking doubt.

86 There could hardly have been a more vivid example of why this is so in the present case. Counsel informed me that PW1 demonstrated to the magistrate what the appellant did to her. Counsel argued that what PW1 had demonstrated could not amount to a molest. This was not an argument that was open to counsel. The demonstration was not done before me. Unlike the magistrate, I did not see anything. I could not overturn the magistrate's clear finding of fact on the basis of what counsel said from the bar.

87 In the circumstances, there was insufficient basis for me to disturb the convictions. The magistrate had meticulously identified all the relevant issues and had directed her mind towards them. I therefore dismissed the appeal against conviction.

Sentence

88 Counsel made no submission on the sentence even though the notice of appeal was against both conviction and sentence. Nevertheless, I was obliged to interfere as I was of the view that some of the sentences were manifestly excessive.

89 The appellant was sentenced to one month's imprisonment for each of the first five charges. He was sentenced to three and four months' imprisonment for the charges relating to the incidents on 19 and 21 April 1995 respectively. The sentences for the first three charges were ordered to run concurrently and those for the last four were to run consecutively, making a total of nine months' imprisonment.

90 In *PP v Nordin bin Ismail* [1996] 1 CLAS News 250, the appellant was a police corporal who molested a woman police constable at the police station. Two of the charges were that he placed his hand on her shoulder and on her waist respectively. Like the present case, the appellant there had no previous conviction. He was originally sentenced to three and four months' imprisonment for each of these two offences. On appeal, I reduced the sentence to $500 fine, in default one week's imprisonment, for each of the two offences.

91 No grounds of judgment was delivered for that case, and it is unfortunate that it is not better known. I take this opportunity to reiterate that in respect of relatively minor acts of molest under s 354, a fine is generally more appropriate. So far as the seriousness of the first five charges in the present case are concerned, they were, in essence, much the same as that in *PP v Nordin bin Ismail*. Accordingly, I reduced the sentence on each of the first five offences to a $500 fine, in default one week's imprisonment. Hence, the appellant's total sentence was seven months' imprisonment and fines of $2,500, in default, a further five weeks' imprisonment.

Headnoted by Charlene Tay Mei Woon.