

# ENHANCEMENTS TO THE MANAGEMENT OF CASES INVOLVING SEXUAL OFFENCES AND THEIR IMPLICATIONS

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## I. Introduction

1 Sexual offences are notoriously difficult to prosecute, with many victims remaining silent due to the fear of confronting the offender, the humiliation, and the destabilising emotional conflict and internal turmoil.<sup>2</sup> To make matters worse, there have been cases where unwarranted allegations or lines of cross-examination laying blame on the victims and alluding to their supposed promiscuity and ill-repute have been raised.

2 The introduction of measures to enhance the management of cases involving sexual offences announced by the Honourable the Chief Justice at the Opening of the Legal Year 2025 is therefore welcomed, to better protect complainants whilst preserving the right of offenders to a fair trial.<sup>3</sup>

3 This article examines how victim-shaming by the Defence may backfire, the implications of the enhanced measures, and how practitioners can best assist the court in sexual offence cases.

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1 While the author is with the Attorney-General's Chambers, the views expressed in this article are her own.

2 *Public Prosecutor v NF* [2006] 4 SLR(R) 849 at [40].

3 Chief Justice Sundaresh Menon, Supreme Court of Singapore, response at the Opening of the Legal Year 2025 (13 January 2025) at para 37(a).

## II. Concerns raised by the courts

4 The courts have in recent sexual offence cases raised concerns about lines of cross-examination during trial that blamed victims for their attire, or submissions during plead guilty mentions that cast aspersions on victims for their sexual history.

### A. *Indecent and scandalous cross-examination based on victim's appearance*

5 In *Public Prosecutor v Xu Jiadong*<sup>4</sup> (“*Xu Jiadong*”), the offender faced a charge of outrage of modesty under s 354(1) of the Penal Code<sup>5</sup> (“*Penal Code 2008*”) which alleged that he had brushed his forearm against the victim’s lower breasts whilst on a train. While cross-examining the victim, the defence counsel stared inappropriately at the victim’s breasts, asked her to stand up and then sit down as he wanted to show a correlation between the victim’s attractiveness – whether “she is wearing a very low cut with a very voluptuous breast protruding out” and “breast size” – and the “temptation” or “motive” to molest.<sup>6</sup> The court censured the Defence’s indecent and scandalous manner of cross-examination of the victim, and highlighted that the improper humiliation of victims of sexual offences could discourage future victims from coming forward.<sup>7</sup>

### B. *Unhelpful submissions directed at the morality of the victim*

6 In *Public Prosecutor v Ong Jack Hong*,<sup>8</sup> the offender committed an offence of sexual penetration of a minor under s 376A(1)(a) of the Penal Code 2008. On appeal, the defence counsel suggested that the victim had not been traumatised as the victim has had sexual relations with her boyfriend. Menon CJ observed that submissions directed at the morality of the victim were seldom helpful in the context of sexual offences. He further highlighted that as officers of the court, counsel should always be mindful of

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4 [2016] SGMC 38.

5 Cap 224, 2008 Rev Ed.

6 *Public Prosecutor v Xu Jiadong* [2016] SGMC 38 at [99] and [101].

7 *Public Prosecutor v Xu Jiadong* [2016] SGMC 38 at [109].

8 [2016] 5 SLR 166.

the importance of ensuring the appropriateness and relevance of any submission made, especially where it impugns the character or integrity of a person who is not only not on trial but is in fact the victim of the crime in question.<sup>9</sup>

**C. *Baseless insinuations that victim was a woman of questionable morals***

7 In *Ng Jun Xian v Public Prosecutor*,<sup>10</sup> the offender pleaded guilty to, amongst other offences, having sexually assaulted the victim by way of penetration and attempting to rape her. He had met the victim, who was in Singapore on a social visit pass to visit her boyfriend, while they were drinking in a club. In submissions, the defence counsel tried to victim-blame and downplay the offender's culpability, insinuating that the victim was a woman of questionable morals who had given the offender "mixed signals" and had "agreed to accompany [him] to the hotel, instead of returning to her hostel", and that she was "not just an ordinary 'tourist'" but was in fact working as a hostess in the club.<sup>11</sup> To make things worse, these insinuations were factually inaccurate and hence without basis. The defence counsel highlighted that the victim was sexually active since a relatively young age, last had sexual intercourse not long before the incident, and was five years older than the offender.<sup>12</sup> The court warned that baseless submissions that disparage the character, integrity or morality of a victim will often be a disservice to the offender, especially one who has pleaded guilty and accepted that he has committed an offence, because they invariably reflect a startling lack of remorse and insight into his behaviour.<sup>13</sup>

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9 *Public Prosecutor v Ong Jack Hong* [2016] 5 SLR 166 at [23].

10 [2017] 3 SLR 933.

11 *Ng Jun Xian v Public Prosecutor* [2017] 3 SLR 933 at [40]–[41].

12 *Ng Jun Xian v Public Prosecutor* [2017] 3 SLR 933 at [45].

13 *Ng Jun Xian v Public Prosecutor* [2017] 3 SLR 933 at [43].

**D. *Victim-shaming tactics to portray the victim as a hypersexualised boy***

8 In *Public Prosecutor v BNO*,<sup>14</sup> the offender was convicted of offences under s 354(2) of the Penal Code 2008 and s 376(1)(b) punishable under s 376(4)(b) of the Penal Code 2008 for touching the nine-year-old victim's penis before causing the victim's penis to penetrate the offender's mouth, without the victim's consent, twice. The Defence went to extremes in trying to paint a picture of a hyper-sexualised nine-year-old boy who had fabricated the offences due to his overactive imagination, his familiarity with sexual matters, his exposure to discussions about oral sex in social media group chats among students at his school, being shaken by the atmosphere at the Halloween sleepover on the night of the offences and his attention-seeking behaviour.<sup>15</sup> The court considered that the offender's lack of remorse was apparent from the bold and extravagant manner in which he chose to conduct his defence, where he engaged in victim-shaming tactics, and that this was clearly aggravating and factored into sentencing.<sup>16</sup>

**E. *Assertions of promiscuity and ill-repute and being the initiator of intimacy***

9 In *GCM v Public Prosecutor*,<sup>17</sup> which involved charges for sexual penetration of a minor under 14 years of age under s 376A(3) of the Penal Code 2008, the court was sufficiently appalled by the manner in which the defence had been conducted at first instance that it even issued a coda to the judgment on the defence counsel's conduct.<sup>18</sup> The court was perturbed by assertions that blamed the victim, alluded to her supposed promiscuity and ill-repute, and being the initiator of intimacy.<sup>19</sup> The court also expressed concern about how the Defence's submissions constituted a blatant and

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14 [2018] SGHC 243.

15 *Public Prosecutor v BNO* [2018] SGHC 243 at [51]–[52] and [170].

16 *Public Prosecutor v BNO* [2018] SGHC 243 at [195].

17 [2021] 4 SLR 1086.

18 *GCM v Public Prosecutor* [2021] 4 SLR 1086 at [90]–[101].

19 *GCM v Public Prosecutor* [2021] 4 SLR 1086 at [91].

unapologetic attempt to foist responsibility, blame the victim and flagrantly tar her character.<sup>20</sup>

**F. *Blaming the victim for leading a “Haram” and “lecherous” lifestyle***

10 In *Public Prosecutor v GED*,<sup>21</sup> the offender had pleaded guilty to an offence of distributing an intimate image under s 377BE(1) and punishable under s 377BE(3) of the Penal Code 2008. He had posted an intimate image of his wife and her work supervisor engaging in sexual intercourse on his Facebook page. The Defence’s mitigation plea included allegations regarding the victim’s “Haram” and “lecherous” lifestyle, that the victim “[had] not come to the police with clean hands” and that the victim had already uploaded licentious photographs of herself in the past. The court cautioned that these allegations were irrelevant and inappropriate, and they belied the offender’s claim that he was truly remorseful for his actions.<sup>22</sup>

**G. *Blaming the victim for a sexually promiscuous lifestyle***

11 In *Public Prosecutor v GFV*<sup>23</sup> (“GFV”), the offender was convicted after trial for, amongst others, outrage of modesty offences under ss 354(1) and 354(2) of the Penal Code 2008 committed against his daughter. The Defence alleged that the victim had fabricated the allegations, in light of the victim’s highly sexualised behaviour and promiscuity, and insinuated that she was of questionable morals. The court held that such victim-shaming demonstrated the offender’s absolute lack of remorse, as he had no compunction about destroying his own daughter’s reputation and character for his own ends, and was an aggravating factor that warranted an uplift in the sentence.<sup>24</sup>

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20 *GCM v Public Prosecutor* [2021] 4 SLR 1086 at [93].

21 [2023] 3 SLR 1221.

22 *Public Prosecutor v GED* [2023] 3 SLR 1221 at [131].

23 [2023] SGDC 147.

24 *Public Prosecutor v GFV* [2023] SGDC 147 at [115].

### III. Enhanced measures

12 Given the continued inappropriate behaviour in sexual offence proceedings despite the court's repeated exhortations, the courts have, with effect from 13 January 2025, implemented new measures to enhance the management of such cases:

(a) first, the establishment of specialist lists of judges and judicial officers to hear all sexual offence cases in the General Division of the High Court ("GDHC") and selected sexual offence cases in the State Courts; and

(b) second, a pilot to enhance existing pre-trial procedures, such as introducing mandatory Judge Case Conferences in the State Courts (which have already been implemented in the GDHC), and requiring parties to file pre-trial checklist(s) for sexual offence cases.<sup>25</sup>

#### A. State Courts

13 Where (a) an accused is claiming trial to at least one sexual offence; and (b) certain factors in respect of the characteristics of the complainant or the accused,<sup>26</sup> circumstances of the offence<sup>27</sup> and other considerations<sup>28</sup> are present, the Prosecution will now have to file the State Courts' Specialist Sexual Offences List Emplacement Checklist ("Emplacement Checklist") before the third Criminal Case Disclosure Conference ("CCDC") (for CCDC cases)<sup>29</sup> or before the pre-trial conference where trial dates are

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25 These checklists are for case management purposes only and are not intended to be adduced as evidence at trial.

26 These include whether the complainant or accused was, at the time of the offence, below the age of 16, intoxicated, suffering from a diagnosed learning/mental disability, or at the time of filing the checklist, suffering from a diagnosed psychiatric illness that impacts evidence-giving.

27 These include whether the offence involved a penetrative act, an abuse of a position of trust/responsibility or an offence of employment, a use of deception, or where the accused caused or attempted to cause death, hurt, wrongful restraint, or fear of instant death, instant hurt or instant wrongful restraint.

28 These include (a) a significant duration between commission of offence and date of police report; (b) use of expert evidence; and (c) multiple complainants.

29 See s 159 of the Criminal Procedure Code 2010 (2020 Rev Ed).

given (for non-CCDC cases). The Defence may also separately file the Emplacement Checklist.

14 If the court emplaces the case on the Specialist Sexual Offences List, the court will inform parties to file a Case Conference Checklist for Sexual Offence Cases (“Enhanced Checklist”).<sup>30</sup> The Enhanced Checklist is helpful for parties to apply their minds as to whether to make applications that would be conducive for sexual offence cases, such as:

- (a) shielding measures under s 281A of the Criminal Procedure Code 2010<sup>31</sup> (“CPC”);
- (b) redaction and/or non-identification orders under ss 7(2A) and 7(3) of the State Courts Act 1970<sup>32</sup> (“SCA”) or variation of previous orders;
- (c) evidence to be given in private under s 281B of the CPC or s 7(2) of the SCA;
- (d) joint trial of charges or accused persons under ss 143 to 145 of the CPC; and
- (e) permission to ask the complainant questions and/or adduce evidence about the complainant’s physical appearance or complainant’s sexual behaviour with persons under reg 3 of the Evidence (Restrictions on Questions and Evidence in Criminal Proceedings) Rules 2018 (“Evidence Rules”).

15 Where the accused is represented by counsel, the Enhanced Checklist requires parties to confer on the factual and legal issues, and set out the undisputed elements of the charge, and the agreed and non-agreed list of issues. Where the accused is self-represented, each party should set out a list of issues.

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30 The Enhanced Checklist includes details about the proceeded and stood down charges, the statement of agreed facts, Prosecution and Defence witnesses and their needs (such as whether interpretation, visual aids, breaks, and the witness support programme are required), expert witnesses, written statements and video recorded interviews for ancillary hearings, and hearsay and other evidence.

31 2020 Rev Ed.

32 2020 Rev Ed.

This is intended to help narrow down the areas of dispute, for example, whether there was consent, or whether the victim was intoxicated such that she lacked the capacity to consent, and avoid a long and protracted trial that may re-traumatise the victim. This would enable judges to shut out lines of questioning which are either completely irrelevant to the identified issues in dispute (unless the position has, for some legitimate reason, changed), or which are clearly intended to insult or annoy the victim.<sup>33</sup>

16 Lastly, the Enhanced Checklist has annexes on witnesses to enable the court to better manage vulnerable witnesses.<sup>34</sup>

## **B. GDHC**

17 The Enhanced Checklist will replace the current Judge Case Conference (“JCC”) checklists for GDHC cases, and should be filed twice: (a) at least seven days before the Registrar’s Case Conference where trial dates are given (*ie*, after CCDC procedures are complete); and (b) an updated version to be filed at least seven days before the JCC.

18 Parties should similarly indicate any intended applications, such as redaction and/or non-identification orders under ss 8(2A) and 8(3) of the Supreme Court of Judicature Act 1969<sup>35</sup> (“SCJA”) and in private proceedings under s 8(2) of the SCJA.

## **IV. Implications for practitioners**

19 There are at least three implications that these recent developments may have for practitioners.

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33 *Thangarajan Elanchezian v Public Prosecutor* [2024] 6 SLR 507 at [64].

34 The annexes contain a detailed breakdown of the list of witnesses and witness schedule, with estimated durations of the examination-in-chief and cross-examination, date(s) on which the witnesses are likely to give evidence, and interpretation, communication and support needs.

35 2020 Rev Ed.



**A. Sanctions for scandalous cross-examination or submissions**

20 First, the courts have made clear that they will not condone indecent and scandalous cross-examination. Such behaviour may be sanctioned as grossly improper conduct and conduct unbecoming an advocate and solicitor under ss 83(2)(b) and 83(2)(h) of the Legal Profession Act 1966,<sup>36</sup> and may expose counsel to a personal costs order.

21 In *Law Society of Singapore v Wong Sin Yee*<sup>37</sup> (“*Wong Sin Yee*”), the Court of Three Judges suspended the defence counsel in *Xu Jiadong* for five years, as his use of offensive and insulting language during cross-examination had crossed the line and amounted to grossly improper conduct under s 83(2)(b) of the Legal Profession Act.<sup>38</sup> Moreover, in the Magistrate’s Appeal from *GFV*,<sup>39</sup> the High Court issued a personal costs order against the defence counsel for engaging in victim-shaming tactics.

22 The Court of Three Judges in *Wong Sin Yee* emphasised that a balance must be struck between giving the cross-examiner sufficient latitude to challenge and discredit a witness’s evidence and protecting the witness from abuse or personal attack.<sup>40</sup> Where questions may damage the character or reputation of a witness, the law grants latitude to counsel to ask these questions if they are based on reasonable grounds and are necessary to determine the issues before the court.<sup>41</sup> However, questions which are “intended to insult or annoy”, or which are “needlessly offensive in form” are to be absolutely forbidden even if they may have some bearing on the issues before the court.<sup>42</sup> In particular, questions that rely on harmful stereotypes, such as alleging that victims who dress

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36 2020 Rev Ed.

37 [2018] 5 SLR 1261.

38 Cap 161, 2009 Rev Ed. See para 5 above and *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [45].

39 See para 11 above.

40 *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [28].

41 Evidence Act 1893 (2020 Rev Ed) ss 150–152.

42 Evidence Act 1893 (2020 Rev Ed) s 154. See also rr 12(5) and 14(7) of the Legal Profession (Professional Conduct) Rules 2015, which state that legal practitioners must not make statements, ask questions or make allegations which are scandalous, or intended or calculated to vilify, insult, or annoy any person, or are otherwise an abuse of the function of the legal practitioner.

in a certain way invite the commission of sexual offences, will generally fall foul of s 154 of the Evidence Act<sup>43</sup> (“EA”).

23 With the Enhanced Checklist, defence counsel should indicate whether they intend to apply for permission to ask the complainant questions and/or adduce evidence about the complainant’s physical appearance or complainant’s sexual behaviour with persons under reg 3 of the Evidence Rules.

**B. *Victim–shaming can be detrimental to the offender’s case***

24 Second, practitioners should be wary about advancing submissions that disparage the character, integrity or morality of a victim in an attempt to shift the blame to the victim. Such submissions will often be a disservice to the offender, especially one who has pleaded guilty, because they suggest that the offender was not genuinely remorseful.<sup>44</sup>

25 Moreover, the Courts may view scandalous allegations as aggravating,<sup>45</sup> and even impose an uplift to the sentence to reflect the offender’s clear absence of remorse, where it is clear that these had been made on the offender’s instructions.<sup>46</sup>

**C. *How best to assist the court in cases involving sexual offences***

26 Third, practitioners should heed the court’s guidance on best practices in handling sexual offence cases.

**(1) *Cross–examining victims of sexual offences***

27 Cross–examination should elucidate the facts without resorting to intimidation or re–traumatisation of witnesses,<sup>47</sup> and the courts will apply a two–step framework in assessing the permissibility of cross–examination questions: (a) relevance;

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43 2020 Rev Ed. *Thangarajan Elanchezhian v Public Prosecutor* [2024] 6 SLR 507 at [70]–[72].

44 *Ng Jun Xian v Public Prosecutor* [2017] 3 SLR 933 at [43] and [49].

45 *Public Prosecutor v BNO* [2018] SGHC 243 at [194]–[195].

46 *GCM v Public Prosecutor* [2021] 4 SLR 1086 at [100]; *Public Prosecutor v GFV* [2023] SGDC 147 at [115].

47 *GHI v Public Prosecutor* [2024] 5 SLR 607 at [77].

and (b) whether specific prohibitions in the EA or Evidence Rules apply.<sup>48</sup> Courts may also consider the specific phraseology and tone of the questions, the demeanour of counsel, and the overall duration of the cross-examination process.<sup>49</sup>

28 For example, the practice of asking victims about their clothing at the time of the alleged offence is acceptable *if this sheds light on how the offence was committed*, such as whether the touching was above or under clothes, and whether there was skin-on-skin contact, as this is relevant to the facts in issue.<sup>50</sup> However, the inquiry becomes objectionable when it is premised on, or leads to, the submission that the victim's attire had in some way invited the sexual assault. The unwarranted questioning of the victim's credibility, delving into irrelevant personal history or insinuating blame could not only re-traumatise the victim, but also perpetuate harmful stereotypes about sexual violence and dissuade other victims from coming forward for fear of being subjected to a similar ordeal.<sup>51</sup>

29 Moreover, s 154A(1) of the EA provides that questions that may be asked of a sexual assault victim are subject to restrictions as set out in the Evidence Rules, and counsel who wish to ask questions about the victim's physical appearance or sexual behaviour should raise this early in the Enhanced Checklist and apply for permission. This will hopefully avoid a re-occurrence of counsel posing distressing and irrelevant questions when cross-examining a victim,<sup>52</sup> and uphold the decorum of the court.<sup>53</sup>

## (2) *Shielding measures and other protections*

30 Shielding measures enable witnesses below 18 years old, who were victims of a sexual offence or child abuse, or who are afraid of the accused or who will be distressed such that the reliability of their evidence will be diminished, to give evidence

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48 *Thangarajan Elanchezhian v Public Prosecutor* [2024] 6 SLR 507 at [65]–[68].

49 *Thangarajan Elanchezhian v Public Prosecutor* [2024] 6 SLR 507 at [73]–[74].

50 *GHI v Public Prosecutor* [2024] 5 SLR 607 at [69].

51 *GHI v Public Prosecutor* [2024] 5 SLR 607 at [69] and [73].

52 Singapore Parl Debates; Vol 94, Sitting No 69; [19 March 2018] (Indraneel Rajah, Senior Minister of State for Law).

53 *GHI v Public Prosecutor* [2024] 5 SLR 607 at [77].

without having to see the accused. This seeks to strike a balance between the presumption of the accused's innocence, and the rights of the witness, mitigating any trauma that witnesses associate with the experience of giving live testimony in the same physical environment as the accused.<sup>54</sup>

31 Moreover, s 425 of the CPC provides for the automatic prohibition against the publication of information that is likely to lead to the identification of an alleged victim of sexual or child abuse, while s 281B of the CPC provides that all alleged victims of sexual or child abuse offences will give testimony in a closed-door hearing, unless they wish to give evidence in open court. These measures are intended to help provide victims with a safe space to give reliable and accurate evidence.

32 Furthermore, where intimate images are referred to in court, parties can apply for proceedings to be heard in private in the interests of public propriety under s 7(2) read with s 7(6)(b) of the SCA or s 8(2) read with s 8(6)(b) of the SCJA.

33 The Enhanced Checklist is a useful reminder for parties to apply their minds to such protections and enables proceedings involving sexual offences to be conducted in a manner that is most conducive for witnesses to give reliable evidence and best assist the court.

## V. Conclusion

34 The introduction of a specialist docket of experienced and specially trained judges, and enhanced case management of sexual offence cases, are to be welcomed. These help to ensure that justice is served whilst balancing the need to protect witnesses and maintain the integrity of the judicial process, against the fundamental rights of the accused and the presumption of innocence. Counsel should also be mindful of their duty as officers of the court, and conduct their cases in a measured and

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54 *GHI v Public Prosecutor* [2024] 5 SLR 607 at [80] and [88].

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respectful manner, as that will best advance the interests of their clients and assist the court.