
**HIGHER RIGHTS OF AUDIENCE ASSESSMENT
IN RESPECT OF CRIMINAL PROCEEDINGS**

THE PRACTICAL ASSESSMENT

ANNEXURE A

**THE EVIDENTIAL MATERIAL PRESENTED IN
THE WRITTEN EXAMINATION QUESTION PAPER**

The Case

You are a solicitor advocate briefed to represent John CHAN, aged 32, who has been charged with one count of rape contrary to section 118 of the Crimes Ordinance, Cap.200.

The case against your client is contained in the document below that is headed 'Summary of the prosecution evidence'.

His instructions are contained in the notes of a meeting that you conducted with him, those notes being headed 'Defence notes'.

Summary of the prosecution evidence

Factual background

On 30 December 2016 (Friday) at around 7 p.m., the complainant Mary KWAN (“the Complainant”) and 2 of her friends went for drinks at Club Phoenix (“the Club”) in Lan Kwai Fong, Central, Hong Kong. Inside the Club, the Complainant and her friends came to know the Accused John CHAN when he and a few of his colleagues had invited them to join their company’s annual party at around 10 p.m. that night.

The group, including the Complainant and the Accused stayed at the Club till 2 a.m. in the morning (i.e. on 31 December 2016).

The Complainant left the Club with the Accused. She was drunk at that time.

At around 3:07 a.m. on 31 December 2016, the Accused brought the Complainant back to his rented flat at Flat G, 32nd Floor, Rosy Building, 3456 Nathan Road, Prince Edward, Kowloon, Hong Kong (“the Flat”). The Complainant was semi-conscious when she arrived at the Flat. Once they got into the Flat, the Complainant was taken into the bedroom. The Accused took off her skirt and underpants before he took off his own trousers and underpants. The Complainant saw the Accused take out a condom from the bedside cabinet. She was then raped by the Accused. It lasted for about 10 minutes. Due to her drunkenness, the Complainant was unable to resist or shout for help.

At about 4:15 a.m. on 31 December 2016, the Complainant left the Flat while the Accused had fallen asleep. She took a taxi home.

During a dinner party on 3 January 2017 (Tuesday), the Complainant told her friend Carol LAM (“Carol”) of what had happened on 30 and 31 December 2016 including the rape by the Accused. She was advised by Carol to report the matter to the police.

On 5 January 2017 (Thursday) at around 3 p.m., the Complainant, accompanied by her fiancée Peter FAN, made a report of the rape at Central Police Station. The Accused was then put on the “Wanted and Watch” List.

The investigation

The Complainant was examined by a pathologist (“the Pathologist”) at Queen Mary Hospital on 5 January 2017 at around 7:30 p.m. The Pathologist found no superficial injuries observed on the Complainant’s vagina. The blood test result also showed no sign of drugs being used on her.

CCTV footages in the vicinity of Rosy Building and the Flat were obtained and reviewed.

The CCTV footage from the bakery at Rosy Building showed that the Accused and the Complainant alighted from a taxi outside Rosy Building at 3:04 a.m. on 31 December 2016.

Another CCTV footage from the lift of Rosy Building further showed that the Accused and the Complainant had entered into the lift and got out on 32nd Floor at 3:07 a.m. on 31 December 2016.

The arrest

On 6 January 2017 (Friday) at around 8:20 a.m., a team of four police officers (DSGT 111, DSPC 222, DPC 333 and DPC 444) attached to Central Police Station arrived at Rosy Building in an attempt to arrest the Accused. They had a search warrant Writ No.1234 of 2017 issued by Eastern Magistracy. The team of officers knocked on the door of the Flat for a few minutes but no one answered the door. The team then left at around 8:30 a.m.

At around 11:05 a.m. on 6 January 2017, the Accused was intercepted at Lo Wu Control Point when he was about to leave Hong Kong.

At around 12:45 p.m. (on 6 January 2017), DSGT 111 and DPC 333 arrived at Lo Wu Control Point when DSGT 111 declared arrest on the Accused for suspicion of rape. Under caution, the Accused said, “I did have sex with her and she agreed to it.”

The Accused was then brought back to and arrived at Central Police Station at 1:52 p.m. (on 6 January 2017).

The house search

The Accused was then escorted back to the Flat for a house search at around 3:55 p.m. on 6 January 2017. During the search, 5 new condoms were found inside the bedside cabinet in one of the two bedrooms, which were seized in the presence of the Accused. No other suspicious item was found. The search concluded at 5:10 p.m. The team (again consisting of DSGT 111, DSPC 222, DPC 333 and DPC 444) escorted the Accused back to Central Police Station for further investigation.

Post-Recorded Caution Statement and Video Recorded Interview (VRI) under Caution

From 8:15 p.m. to 8:35 p.m., DSGT 111 post-recorded a cautioned statement from the Accused in relation to his earlier arrest at Lo Wu Control Point.

At 9:56 p.m., DSPC 222 signed out the Accused from the Report Room for further investigation.

At 10:47 p.m., DSPC 222 issued and explained a Pol.153 to the Accused. The Accused signed to acknowledge receipt of its copy.

From 10:48 p.m. to 11:55 p.m., DSGT 111 and DSPC 222 conducted a video recorded interview with the Accused under caution. The highlights of the video recorded interview can be summarized as follows:

- (1) the Accused met the Complainant and her friend Carol for the first time during his company's annual party on 30 December 2016 at the Club;
- (2) the Accused and the Complainant left the Club at around 2 a.m.;
- (3) they went back to the Flat in a taxi;
- (4) it was his decision to go back to his flat as the Complainant was very drunk;
- (5) once they got into the Flat, he brought her into his bedroom;
- (6) he had sex with the Complainant;
- (7) during the sexual intercourse with the Complainant, he did put his penis into her vagina;
- (8) he did use a condom at her request;
- (9) he then flushed the used condom into the toilet afterwards;

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- (10) he then fell asleep;
 - (11) he only found out the Complainant had left the Flat when he got up the following morning;
 - (12) he did not try to contact the Complainant as he did not have her mobile number;
 - (13) he was due to go to Shenzhen on 6 January 2017 for a business conference when he was intercepted by immigration officers;
 - (14) he was later arrested by the police for the present charge.

At 00:06 a.m. (on 7 January 2017), the Accused signed to acknowledge receipt of a DVD recording the VRI.

At 00:18 a.m., DSPC 222 handed over the Accused to the Report Room of Central Police Station for detention.

Defence notes

Family Background

John Chan was born in Hong Kong. He was 32 years old at the time of the alleged rape.

He obtained his degree in computer science from the University of Hong Kong when he was 22 years old.

His parents are now retired and live in a public housing unit. He has an elder sister who is married and lives with her own family.

Employment

The Accused first joined his current employer Techno IT Consultancy Company as a Technology Advisor in 2006 after he graduated from the University of Hong Kong.

He was promoted to different positions in the last 10 years. He is now the Sales Director of the company and held the same position at the time of the alleged offence.

His basic monthly salary is \$55,000.

Criminal Record

The Accused has a clear record.

The Plea and the Instructions

The Accused shall plead NOT GUILTY to the offence.

(1) *The night in question – 30 December/31 December 2016*

He admitted that he had sexual intercourse with the Complainant that night. She, however, did agree to it. It was in fact on her suggestion that they went back to the Flat after they left the Club.

His company was holding the annual party at the Club on 30 December 2016. He started drinking at around 7 p.m. The company had one part of the Club reserved for the party.

He noticed the Complainant and her friends arrived at the Club at around 9 p.m. They were not guests of the company but rather just customers of the Club. Being encouraged by his colleagues, he chatted up the Complainant and her friends. He invited them to join their party which they agreed. Throughout the night, they had been drinking Champagne, Whisky, beer etc.

As the night progressed, the Accused and the Complainant became intimate with each other. There came a point when they even started kissing each other inside the Club.

At around 1:45 a.m. in the morning, they were told by the manageress of the Club that they had to leave as the Club would need to close at 2 a.m. because of licensing conditions. They therefore drank up and left the Club at around 2 a.m.

Just before he left the Club, he did ask the Complainant where she lived with a view to sending her home. She then said that he would not want to send her home as her fiancée would find out. Instead, it was the Complainant who had suggested to go back to his flat.

It was not easy to get a taxi in Lan Kwai Fong when everyone more or less left at that time on a Friday night (Saturday morning). The Accused and the Complainant could only get a taxi when they walked all the way to somewhere in Sheung Wan.

While they were walking to Sheung Wan, he remembered someone had called the Complainant's mobile phone. He did not know who called her. He could not hear most of the conversation save the very last part when she said, "Don't worry! I will stay over at Carol's place tonight!"

The Accused did not keep track of the time but agrees that they would have arrived at the Flat at around 3 a.m. in the morning. It is also of no surprise to him that the CCTV footages would have captured him and the Complainant going back to the Flat at around that time.

Once they got into the Flat, he brought the Complainant into his bedroom. They kissed each other for a minute or so. She then took off her skirt and underpants while he took off his trousers. Whilst it is true that he never asked if she would consent to sexual intercourse, it just happened naturally. He remembered that the Complainant did ask him to stop once when he was about to insert his penis into her vagina. He was not wearing a condom at the time. She therefore asked him to stop and to use a condom; which he did. They continued to have sex until he ejaculated. They then fell asleep.

When he woke up at around 10 a.m. the next morning, he discovered that the Complainant had already left the Flat. As he had not asked for the Complainant's mobile number or other contact details, he therefore never called or contacted the Complainant after that day.

(2) *The arrest – 6 January 2017*

The Accused only resumed work on 6 January 2017 when he was due to see a potential client in Shenzhen.

He arrived at Lo Wu Control Point at around 11 a.m. that day. As he was going through the necessary procedures in one of the E-Channels, he realized that the gate did not open. Within seconds, an Immigration Officer arrived and told him that he could not leave Hong Kong.

He was then taken into a room of the Immigration Department where he was detained. He was simply told by another officer that his name had been put on some kind of a "Stop List".

Nonetheless, he met with a team of police officers an hour later. He was shocked when he heard that he would be arrested for rape. He said to the police officers that he had nothing to say and would want to see his lawyer.

(3) *The house search*

The condoms found by the police belonged to him.

(4) *Post-recorded Caution Statement*

The Accused maintains that he had said nothing except to ask to see a lawyer at the time of the arrest.

The Accused accepts that he did sign on the statement later in the evening after he was taken back to the police station. However, it was only after DSGT 111 had said to him that the police would have no choice but to charge him if he was to remain silent. DSGT 111 further added that it would do him no harm by admitting that they did have sex with the consent of the Complainant.

It was in those circumstances that the Accused had agreed to, and did, sign on the Post-Recorded Statement.

(5) *Video Recorded Interview Under Caution*

With what DSGT 111 had said to him, the Accused therefore agreed to be interviewed. As he does not want to explain much in the interview, he also decided not to talk about the telephone call that he had overheard. Instead, he simply said that it was his idea to go back to his flat.

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THE PRACTICAL ASSESSMENT

ANNEXURE B

BUNDLE OF EVIDENTIAL MATERIAL

The evidential material given to you in this practical assessment is based on the evidential material already presented to you in your written assessment.

The bundle contains the following:

Prosecution material

1. The indictment
2. (Extracts of) 1st Witness statement of Mary KWAN
3. (Extracts of) 2nd Witness Statement of Mary KWAN
4. (Extracts of) Witness Statement of Carol LAM
5. (Extracts of) Witness statement of DSGT 111
6. (Extracts of) Post-Recorded Cautioned Statement by the Accused on 6 January 2017
7. Summary of the Video Recorded Interview under Caution by the Accused on 6 January 2017

For the purpose of the practical assessment, it is to be noted that

1. An anonymity order has been made under section 156 of the Crimes Ordinance (Cap.200) with the result that the complainant Mary KWAN should be referred to as X;

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2. The Pathologist Report has been admitted into evidence under section 65C of the Criminal Procedure Ordinance (Cap. 221);
 3. Both the Post-Recorded Cautioned Statement and the Video Recorded Interview under Caution by the Accused has been ruled admissible as a result of the ruling by the trial judge;
 4. The Accused had attended an identification parade during which he was positively identified by Mary KWAN. The identity of the Accused is therefore not in issue.

(For the purpose of the practical assessment, it is to be assumed that the evidence of other prosecution witnesses has been adduced and cross-examined in the usual course of a trial.)

Defence material

1. The statement given by Mr Gilbert TANG, a bartender of Club Phoenix.

Indictment

HCCC 345/2017

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

CRIMINAL CASE NO. 345 OF 2017

HKSAR

v

John CHAN (male)

Charged as follows -

Cap.200

STATEMENT OF OFFENCE

Sec.118

Rape, contrary to section 118 of the
Crimes Ordinance, Cap.200

PARTICULARS OF OFFENCE

John CHAN, on the 31st day of December 2016, at Flat G, 32nd Floor, Rosy Building, 3456 Nathan Road, Prince Edward, Kowloon, Hong Kong, had sexual intercourse with X who at the time of the said intercourse did not consent to it, the said John CHAN either knowing that the said X did not so consent or being reckless as to whether she so consented.

(signed)

Senior Assistant Director of Public
Prosecutions

for and on behalf of the Secretary
for Justice

Date: 23rd June 2017

To: John CHAN (male)

TAKE NOTICE that you will answer to the Indictment
whereof this is a true copy at the High Court,
Queensway, Hong Kong, on the 5th day of July, 2017.

Registrar

(Extract of) Witness Statement of Mary KWAN

(Statement taken by WDSPC 555 on 5 January 2017 from 1610 to 1725 hours.)

1. I am the abovementioned. I am now 28 years old and work as a secretary.
2. On 30 December 2016 at around 7 p.m., I went to Club Phoenix (“the Club”) in Lan Kwai Fong together with 2 of my friends, Carol LAM (“Carol”) and Mimi POON.
3. At around 10 p.m., we met a Chinese male who introduced himself as John (“John”) (I did not know his full name at the time until the police later told me to be John CHAN). John together with 2 to 3 of his colleagues (whose names I cannot remember) came over and chatted with us. He told us that they were having the company’s annual party at the VIP area. They invited us to join them which we agreed.
4. Although we had been drinking during the party, I was still conscious. I remembered we were asked by the manageress of the Club to leave at around 2 a.m. as they had to close.
5. When we were about to leave the Club, John asked me to go to another club nearby for another drink. I said to him that I had to go home as my fiancée was waiting at home. He then offered to give me a lift home back to Mei Foo and said that he lived somewhere not far from there either. I therefore agreed. As my friends are all living on Hong Kong Island, they therefore left on their own.
6. I remembered that we tried to get a taxi from the Landmark but it was simply impossible to get one on a Friday night. John and I therefore walked all the way to Sheung Wan when we finally got a taxi. I believed it was probably 2:30 to 2:45 a.m. at that time.
7. Once we got into the taxi, I soon fell asleep. It was John who woke me up and told me that we had arrived Mei Foo. I was quite sick and tired at the time. I recalled that John helped me to get off the taxi and took me into a building. At the time, I thought he was sending me back to my own flat.

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8. Once I got into the lift, I realised that it was not the lift of the building where I lived. I remembered I did ask John where he was taking me but he did not reply.
 9. Once we got out of the lift, I was then taken into one of the units. I was then taken into a room where he put me on a bed. I asked John where I was but again he did not tell me.
 10. I tried to get up and leave the flat. However, I was too drunk and could barely walk myself.
 11. The next thing I knew was John taking off my skirt. I asked him to stop and tried to push him away without any success. He then took off my underpants. I started crying and begged him to stop. He simply ignored me and started to take off his own trousers and underpants. I could see him putting on a condom and then started raping me. I tried to push him away but I just could not. I also asked him to stop but he simply ignored me.
 12. After he was done, he fell asleep. I left his flat by myself at around 4:15 a.m. by taking a taxi home. By the time I left, he was still sleeping.

Q1: Did you know John before 30 December 2016?

A1: No, I only met him for the first time at the Club.

Q2: How was your physical status when he took you into his flat?

A2: As I said, I was a bit drunk and felt sick. However, I was still conscious and knew what he had done to me.

Q3: When he had sexual intercourse with you, did he put his penis into your vagina?

A3: He did.

Q4: How long did the intercourse last?

A4: I thought it lasted about 10 minutes.

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- Q5: Do you have the address where he lives?
- A5: Yes, it should be Flat G, 32nd Floor, Rosy Building in Prince Edward. I noticed the flat number when I closed the door.
- Q6: Why do you wait till today, namely, 5 January 2017 to make a report to the police?
- A6: I did not know what to do and I was afraid of telling anyone about this. I was worried that no one would believe my story as I was drunk that night. I met my friend Carol again on 3 January 2017. She noticed that I was not well. I then told her what had happened to me that night.
- Q7: When you say that you told Carol “what had happened that night”, what do you mean?
- A7: I told her that I was raped by John, the man who offered to send me home after the party.
- Q8: What did she say?
- A8: She said that I should call the police.
- Q9: Again, why didn’t you complain to the police that day, i.e. 3 January 2017?
- A9: I was still worried that no one would believe my story.
- Q10: Then what made you make a complaint now?
- A10: I am living with my fiancée. Last night, he asked me about my night out with Carol on 3 January 2017. I then couldn’t stop crying. I eventually told him that I was raped by someone whom I met at the Club.
- Q11: What did he say to you?
- A11: He was very angry and said that I should report the matter to the police. I said to him that I needed to think it through. Finally, we decided to make a complain as we do now.

Q12: Are you willing to undergo some examinations by a doctor?

A12: Yes.

- End -

(Extract of) 2nd Witness Statement of Mary KWAN

(Statement taken by WDSPC 555 on 13 September 2017 from 1120 to 1310 hours.)

1. I am the above-mentioned. I now make this statement in supplemental to the previous statement that I made on 5 January 2017 in connection with my complaint of being raped by John Chan in the morning of 31 December 2016.
2. I am now being asked if I ever know a Chinese male by the name of Gilbert TANG (“Gilbert”) who works as a bartender at Club Phoenix (“the Club”) in Lan Kwai Fong.
3. I first met Gilbert in the Summer of 2015 when the Club was first opened. My friends and I went there simply because it was newly opened. We started going there quite often; sometimes 2 to 3 times a week. As Gilbert was mostly there when we went, he soon recognised us and started talking to us.
4. Occasionally, Gilbert would give us free drinks without charging onto our bills. I did not think much of it as I thought it was more of a tactic in keeping regular customers by the Club.
5. I remember there was one evening in November 2015 when I went to the Club by myself. It was a weekday and the Club was not particularly busy. I stayed till around 1 a.m. When I was about to leave, Gilbert said that he was also leaving as he had started his shift slightly early for that day. He invited me to go for late supper which I did.
6. When we arrived at the restaurant nearby, I realised that I had lost my house keys. At that time, I was living at a rented village house in Sai Kung. Gilbert therefore offered to let me stay at his rented flat in Sheung Wan. Knowing that I would not be able to find a locksmith in the middle of the night, I therefore took up the offer and stayed at his flat until the next morning. When we got back to his flat, he let me sleep in his bedroom while he slept on the sofa in the living room. As said, I left the next morning and went to work.
7. Ever since that night, Gilbert started seeing me as his girlfriend. He had asked me out for a couple of times which I never went. Sometimes, he

would also introduce me to some of his customers or colleagues as his girlfriend; which I found so irritating.

8. I never had sex with Gilbert. Nor did I ever develop any romantic or intimate relationship with him.
9. I met my fiancée Peter FAN shortly after the Chinese New Year in 2016. He was (and still is) the CFO of a listed company. I also met him at the Club. I moved into his flat in Mei Foo in August 2016 and have since been living in there.

- End -

(Extract of) Witness Statement of Carol LAM

(Statement taken by DSPC 222 on 9 January 2017 from 1545 to 1745 hours.)

1. I am the above mentioned.
2. I now make this statement in order to provide assistance to an investigation in respect of which my friend a Chinese female Mary KWAN (“Mary”) was raped by a Chinese male John CHAN (“John”) in the morning of 31 December 2016.
3. On 30 December 2016, I went to Club Phoenix (“the Club”) together with Mary and Mimi POON. We arrived at the Club just after 7 p.m. We were on our own drinking until around 10 p.m. when John and his friends invited us to join their party.
4. At around 2 a.m., we had to leave the Club as it had to close. As Mimi and I both live on the Hong Kong side, Mary decided to take a lift home from John.
5. I did not see Mary again after that night until 3 January 2017 when we went to a friend’s party at the Club. As she did not talk much that night, I therefore asked her if she was alright. She then started crying. Later she told me that she was raped by John at his flat.
6. I was shocked upon hearing this. I immediately said to her that she should go to the police and make a complaint. She said that she did not want to as no one would believe what she said. She also said that she was worried as she did not know if John had taken video or photos of her. I asked her if she had told her fiancée. She replied not as he had been on a business trip to Europe and would only come back the following day (i.e. 4 January 2017).
7. I offered to go to the police station with her. However, she said that she would need to think it through before making any decision.
8. On 6 January 2017, I was told by Mary that she did eventually make a report to the police.

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9. During the party on 30 December 2016, I saw that John did kiss Mary. However, it was nothing serious as everyone was in a festive spirit during the party. It only lasted a few seconds.

- End -

(Extract of) Witness statement of DSGT 111

(Statement written by DSGT 111 on 7 January 2017 from 1215 to 1300 hours)

1. I am DSGT 111, I joined the Hong Kong Police Force since 19th October 1997. I am currently attached to Regional Crime Unit (Island) Team 2.
2. On 5 January 2017, I was on duty at Central Police Station. At 1520 hours, our team was briefed to take over the investigation of a rape case from the Report Room by case commander Lau Tat Ming and was given the following details:

Offence: Rape

Date/Time: Early morning of 31 December 2016

Location of offence: Details Unknown

Suspect: A Chinese male by the name of John; other details unknown

Complainant: Mary KWAN, female, aged 30

Case facts: The Complainant was taken back to a flat in Prince Edward by the Suspect. She was then raped by the Suspect.

3. From 1610 to 1725 hours, WDSPC 555 interviewed the Complainant and took a statement from her. From the investigation, we gathered from the Complainant that the Suspect was living at the address of Flat G, 32nd Floor, Rosy Building, 3456 Nathan Road, Prince Edward, Kowloon, Hong Kong ("the Scene").
4. At 1735 hours, I reported the progress of our investigation to the case commander.
5. At 1800 hours, DPC 333 and WDSPC 555 accompanied the Complainant to Queen Mary Hospital for medical examination.
6. On 6 January 2017 at around 0820 hours, I led my team consisting DSPC 222, DPC 333 and DPC 444 and arrived at the Scene with a view to execute a Search Warrant (Writ No.1234 of 2017). We knocked on the door for about 5 minutes but no one answered the door. At 0830 hours, we left the Scene.
7. At 0835 hours, we approached the management office of Rosy Building and obtained the following items:

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- a. a copy of CCTV footage of all 3 lifts of Rosy Building;
- b. Extract of the “Emergency Contact Persons List” kept by the management office in respect of the Scene with the following entry:
- Flat: G Floor: 32*
~~Registered Owner~~/Tenant: John Chan
HKID: P999222(7)
Emergency Contact No.: 9876 1234
8. At 0920 hours, DPC 444 obtained a copy of CCTV footage from “Fresh Bakery” located at Shop A3, Ground Floor, Rosy Building.
9. At 0922 hours, I reported the progress to the case commander over the phone. I was instructed that the Suspect would be put on the “Wanted and Watch” List (“the W&W List”).
10. At 1005 hours, our team reported back to Central Police Station.
11. At around 1115 hours, I was instructed by the case commander that a Chinese male matching the description on the W&W List had been intercepted by the Immigration at Lo Wu Control Point.
12. At 1130 hours, I and DPC 333 headed to Lo Wu Control Point.
13. At 1245 hours, I declared arrest of Chinese male John CHAN (“A/P”) inside Detention Room 2 of Lo Wu Control Point on the suspicion of rape of Chinese female Mary KWAN in the morning of 31 December 2017 inside his flat at Flat G, 32nd Floor, Rosy Building, 3456 Nathan Road, Prince Edward. Under caution, A/P replied, “I did have sex with her and she agreed to it.”
14. At 1352 hours, A/P was taken back to Central Police Station and handed over to the Duty Officer for documentation and detention.
15. From 1555 to 1710 hours, A/P was escorted back to the Scene by me, DSPC 222, DPC 333 and DPC 444 for a house search. 5 new condoms were found seized from the bedside cabinet in the bedroom in the presence of A/P.

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16. At 1830 hours, A/P was handed back to Duty Officer of Central Police Station for detention.
 17. At 1935 hours, I signed out A/P to post-record the earlier arrest.
 18. At 2040 hours, A/P was handed back to Duty Officer for detention.
 19. At 2156 hours, A/P was signed out by DSPC 222 for further investigation.
 20. From 2248 to 2355 hours, I and DSPC 222 conduct a video recorded interview under caution with A/P.
 21. On 7 January 2017 at 0010 hours, A/P was handed back to Duty Officer for detention.

- End -

Extracts of Post Recorded Caution Statement

On 6 January 2017 at 2015 hours in Interview Room 2 of Central Police Station, I DSGT 111 currently attached to Regional Crime Unit (Island) Team 2 post-recorded the details of arresting you Chinese male John CHAN for the offence of rape earlier on the same day at 1245 hours and administering a caution inside Detention Room 2 of Lo Wu Control Point. At that time, I said to you in punti, “I am DSGT 111 currently attached to Regional Crime Unit (Island) Team 2, Central Police Station. It is now 1245 hours on 6 January 2017 in the Detention Room 2 of Lo Wu Control Point. I now arrest you John CHAN for the offence of rape because I have reason to believe that in the morning of 31 December 2016 inside the bedroom of Flat G, 32nd Floor, Rosy Building, 3456 Nathan Road, Prince Edward, you had sexual intercourse with a Chinese female Mary KWAN when you knew that she did not consent to it. I now caution you. You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.” After being cautioned, I arrested you John CHAN and you replied, “I did have sex with her and she agreed to it.”

At 2020 hours on 6 January 2017 the post-recording completed. At 2021 hours, in front of Chinese male John CHAN, I invited you to read the above post-recorded statement and asked you if there was anything to be added on or altered. At 2025 hours you Chinese male John CHAN read the above post-recorded statement and replied that you had nothing further to add or alter. [Signed by John CHAN] [Signed by DSGT 111]

Summary of the Video Recorded Interview under Caution

From 10:48 p.m. to 11:55 p.m., DSGT 111 and DSPC 222 conducted a video recorded interview with the Accused under caution. The highlights of the video recorded interview can be summarized as follows:

- (1) the Accused met the Complainant and her friend Carol for the first time during his company's annual party on 30 December 2016 at the Club;
- (2) the Accused and the Complainant left the Club at around 2 a.m.;
- (3) they went back to the Flat in a taxi;
- (4) it was his decision to go back to his flat as the Complainant was very drunk;
- (5) once they got into the Flat, he brought her into his bedroom;
- (6) he had sex with the Complainant;
- (7) during the sexual intercourse with the Complainant, he did put his penis into her vagina;
- (8) he did use a condom at her request;
- (9) he then flushed the used condom into the toilet afterwards;
- (10) he then fell asleep;
- (11) he only found out the Complainant had left the Flat when he got up the following morning;
- (12) he did not try to contact the Complainant as he did not have her mobile number;
- (13) he was due to go to Shenzhen on 6 January 2017 for a business conference when he was intercepted by the Immigration officers;
- (14) he was later arrested by the police for the present charge.

Statement given by Gilbert TANG

1. I am Gilbert Tang, aged 28.
2. I joined Club Phoenix (“the Club”) as a bartender in June 2015. I am still employed by the Club in the same position.
3. Sometime in mid January 2017, I came to know that a regular customer by the name of John CHAN (“John”) was arrested by the police for raping another regular customer Mary KWAN (“Mary”) after their party on 30 December 2016.
4. In the end of June 2017, I met John again at the Club. He was drinking by himself at the bar. He talked to me about his case. Feeling sorry for him, I therefore decided to tell him what I know about Mary.
5. I first met Mary in around June 2015 shortly after the Club was newly opened. At the beginning, she would always come to the Club with some of her friends. Occasionally, she would come drinking by herself. We later became friends.
6. Mary always had a good time at the Club. Very often, she would end up leaving the Club with some men that she did not know before.
7. One night in November 2015, I finished my shift early and was about to head home. Just when I was leaving the Club, Mary came up to me and asked if I would want to have late supper. As I also planned to get something to eat on my way, I therefore agreed to go with her.
8. We ate at a nearby restaurant. Just after we had ordered the food, Mary said that she had lost her house keys. She then asked me if she could stay at my flat that night as she was living quite far away. I said it was fine with me.
9. After we went back to my flat, we chatted and drank another bottle of whisky. We then had sex. When I woke up the following morning, she was already gone.

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10. After that night, we developed into a relationship of boyfriend and girlfriend. She would often wait for me to finish my shift. We would then go back to my rented flat in Sheung Wan. However, our relationship did not last long. About a month or so later, she broke up with me. At the time, she did not tell me the reason why she broke up with me. It was until later I found out that she was seeing some senior executive of an investment bank. After we broke up, I simply see her as one of our customers.
 11. On 30 December 2017, John's company was hosting their annual party. I remembered Mary and her friends came to the Club at around 7 p.m. When they realised the VIP area of the Club had been reserved, she started asking me who they were. I simply told her that the company was a very successful IT firm.
 12. I did not pay much attention to Mary that night as the Club was packed with customers. I left the Club at 1:45 a.m. before Mary did.
 13. Just when I was sitting inside a restaurant in Sheung Wan near where I live, I saw Mary and John walk past. It was probably around 2:20 a.m. Both of them were in high spirits. I could see them obviously enjoying each other's company. They were holding hands and kissing each other while awaiting to cross the road.
 14. I saw Mary and her friend Carol again on 3 January 2017 when they came to the Club for their friend's party. There was a time when they left the group and sat by the bar. Suddenly, I saw Mary started crying. I did not know what it was about but I overheard her asking Carol to help her. However, I did not hear much of the rest of their conversation.
 15. I am willing to testify in court for John if required.

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