

HONG KONG / JUDGMENT

HKSAR v. T.W.

[2025] HKCA 1106

COURT

Court of Appeal

DECIDED

9 December 2025

CASE / FILE NUMBER

CACC115/2025

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CACC 115/2025 [2025] HKCA 1106

On appeal from [2025] HKDC 764

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

CRIMINAL APPEAL NO 115 OF 2025

(ON APPEAL FROM DCCC NO 743 OF 2024)

BETWEEN

HKSAR

Respondent

and

T.W.

Applicant

Before: Hon Zervos JA in Court

Date of Hearing: 9 December 2025

Date of Judgment: 9 December 2025

J U D G M E N T

On 25 April 2025, the applicant, a male in his sixties at the material time, pleaded guilty before Deputy District Judge R Wong (the Judge) to three charges of indecent assault against the victim, X, who was 12 years old when the first two offences took place on or about 4 June 2023 and 17 August 2023, and 13 years old at the time of the third offence on or about 14 January 2024. The applicant was sentenced to a total term of 3 years and 6 months' imprisonment.

On 13 May 2025, the applicant filed a notice of application for leave to appeal against his sentence.

On 15 July 2025, Mr David Boyton, who represented the applicant at trial and on appeal, filed the Perfected Grounds of Appeal outlining a single ground of appeal:

“The sentences passed, both individually and in total were manifestly excessive as the total nominal starting point for the three sentences passed would be 5 years and 3 months' imprisonment and equates to a rape of an adult without aggravating factors.

Particulars

The Court below at AB Page 14-I accept that the breach of trust was not high but the total sentence was nearer HKSAR v Wong Ying Ho [1999] 4 HKC 825 at page 830A-B (4 years' on a plea) which preyed on a 8 year old girl, involving greater depravity and described at page 829-F as 'a gross breach of trust which marks this case out as an indecent assault of a very serious kind'.

The Court below had referred to two cases at AB page 14P-S and at AB page 15-I found they 'were quite similar'. Whereas Defence Counsel, whilst accepting the broader principles articulated in the two Judgments, attempted to distinguish them at AB pages 21-T to 22-F.

The comparison between cases in this area of the Law is of limited value or assistance: see HKSAR v. CHOW Yuen-fai [2011] 4 HKLRD 307 at paragraph 27.

By reference to the circumstances of the offences and authorities Defence Counsel at AB page 31 submitted that individual starting points of 30 months' imprisonment and a global starting point of 48 months' imprisonment were appropriate.

By reason that the sentence passed was manifestly excessive it is therefore also in the alternative wrong in principle.”

The summary of facts

The facts outlined to the judge and admitted by the applicant were as follows. The applicant and X's mother (Y) first became acquainted in 2005 and began an extramarital relationship in August 2019. At the material time, the applicant resided in a flat in Shazui, Futian District, Shenzhen,

China (the flat). Between April 2023 and January 2024, Y entrusted the applicant with the care of X on several occasions. X stayed alone with the applicant at the flat about five or six times, during which the indecent assaults occurred in the early hours of the morning on three of those occasions.

The first incident occurred on 4 June 2023, when X, aged 12, was lying in bed after a bath covered by a blanket. The applicant applied body lotion to her, separated her thighs, and “licked both the outside and inside of X’s private parts”. X felt unpleasant and tried to resist by kicking his head and chest about two to three times (Charge 1).

The second incident occurred on 17 August 2023, when X, also aged 12, was lying in bed using her mobile telephone. The applicant applied body lotion to her, “inserted his fingers inside X’s private parts with back-and-forth motions” and “molested both the inside and outside of X’s private parts”. He also pulled up her clothes, pinched her breasts, and sucked her nipples. X felt unpleasant and kicked him. The applicant stopped after noticing she was menstruating. He then cleaned her private parts and gave her a sanitary napkin (Charge 2).

The third incident occurred on 14 January 2024, when X, then aged 13, was lying in bed under a blanket. The applicant applied body lotion from her feet to her private parts, separated her thighs and inserted his hands inside her shorts and “molested X’s private parts”. He then pulled aside her underpants and “inserted his fingers into X’s private parts with back-and-forth motions”. X felt unpleasant and resisted by kicking his hands and body. The incident lasted about ten minutes. (Charge 3).

X took photographs with her mobile telephone during the first and third incidents and complained to her friend, Z, via WeChat on 25 December 2023 and 14 January 2024 about the indecent assaults.

On 21 March 2024, the applicant was arrested upon entering Hong Kong. In a video recorded interview, the applicant denied the offences, claiming that X had an allergic reaction after eating seafood and he applied body lotion on her to alleviate her symptoms.

The psychological report of X

A clinical psychologist’s report on X dated 28 March 2025 noted that X claimed to have forgotten details of the incidents and displayed detachment towards her body, denying fear of the flat or interactions with men. Y reported significant behavioural and emotional changes in X after the sexual abuse, including oppositional behaviour, deterioration in their relationship, concerns about self-harm, and declining academic performance. The psychologist concluded that X’s avoidant and defensive responses suggested underlying psychological distress. Given X’s young age and position as the child of the applicant’s partner, the offences involved not only sexual exploitation, but also abuse of power, trust, and innocence.

The applicant's background and mitigation

At sentencing, the applicant, aged 65, was a cross-border driver earning about HK\$25,000 per month, with a clear record. He was divorced, lived alone in China, and had two adult sons. He had a history of heart disease and two strokes, requiring long-term medication.

Defence counsel referred to HKSAR v Tsang Chiu Tak and HKSAR v Lee Hon Wah on sentencing for indecent assault involving children. He submitted that the starting point should not be enhanced, relying on the following: (i) the breach of trust was not serious, as the applicant and X did not live in the same household and Y only entrusted X to the applicant's care for short periods; (ii) there was no evidence of threats or inducements; (iii) the duration of Charge 1 was unclear, and Charge 2 was short, with the applicant ceasing his conduct voluntarily; (iv) the psychological report contained mixed findings, given that while X's lack of recollection of the incidents was accepted as a defensive reaction indicating potential long-term effects, psychotherapy was not provided to her; and (v) the applicant posed a low risk of reoffending.

Counsel urged the judge to impose a global sentence of 30 months' imprisonment. He distinguished this case from HKSAR v Chan Ching Ho and HKSAR v HYS, noting that it involved a less serious breach of trust, as the victims in those two cases were much younger, and HYS involved violence.

The reasons for sentence

Having considered X's age, the number of occasions, the duration of the incidents, the breach of trust (albeit not of a high degree), the psychological report on X, the applicant's clear record and mitigation, the judge adopted a starting point of 3 years and 3 months' imprisonment on Charges 1 and 3, and 3 years and 9 months' imprisonment on Charge 2.

The judge noted that there is no sentencing tariff for indecent assault and referred to the three considerations articulated in Chan Ching Ho: the need for deterrence, to mark public abhorrence, and to redress the grievance suffered by the victim, her relatives, and friends. He referred to Chan Ching Ho and HYS, which involved victims aged 6 and 17 respectively, and found certain facts of this case to be analogous.

After giving a one-third discount for the applicant's guilty plea, the judge reduced the sentence on Charges 1 and 3 to 2 years and 2 months' imprisonment, and Charge 2 to 2 years and 6 months' imprisonment. Applying the totality principle, the judge ordered that 6 months of the sentence on Charge 1 run consecutively to the sentence on Charge 2, and 6 months of the sentence on Charge 3 run consecutively to the combined sentences on Charges 1 and 2, resulting in a total of 3 years and 6 months' imprisonment.

The respondent's submissions

Ms Fu submits that the sentences imposed, both individually and collectively, were neither wrong in principle nor manifestly excessive. She emphasises that comparisons with other cases are of limited value, and that the judge properly identified the relevant aggravating factors.

By reference to the sentencing principles set out in *Tsang Chiu Tak*, Ms Fu highlights numerous aggravating features, including: (i) a significant age gap between the applicant and X; (ii) offences on three separate occasions over seven months, with the third lasting about ten minutes; (iii) psychological distress to X; (iv) significant emotional and social repercussions for X, resulting in a deteriorated relationship with her mother; (v) repeated offending that ceased only after X's disclosure; and (vi) premeditation and planning, with the applicant using X's purported seafood allergy as a pretext to apply body lotion and perpetrate the assaults during her vulnerable moments, including her first menstruation.

Ms Fu argues that the breach of trust involved in this case is not less serious than in *HKSAR v Wong Ying Ho*. She submits that, given the longstanding relationship between the applicant and X's mother, his duty of protection arising from being entrusted with X's care, and X's trust in him, the level of trust cannot be said to be low. The applicant took advantage of his caretaker role to commit multiple offences, each time when X was alone with him in a private domestic setting, which underscores the exploitation of that trust. Ms Fu further notes that X's continued visits to the applicant's residence after the first two incidents demonstrated her ongoing trust and vulnerability.

Discussion

As enunciated by the courts, indecent assaults on young children are serious offences. In addition to the considerations outlined in *Chan Ching Ho*, the sentencing court should also take into account three further factors identified in *Secretary for Justice v Huang Long Wei*:

“(1)

Even if no psychological assessment report on the abused victim is available, the court cannot overlook the possibility of the victim suffering psychological damage as a result of sexual abuse: see *HKSAR v. See Tak Man* [1998] 1 HKLRD 794 and *HKSAR v. Kong Yun Chiu* [2007] 4 HKC 391;

(2)

It is rather difficult to detect this type of offences because child victims of sexual abuse would normally be at a loss and feel too embarrassed to complain to their parents or teachers about the molestation: see *Secretary for Justice v. Wong Tsz Kin* [1998] 4 HKC 32; and

(3)

In dealing with this type of offences, the courts will regard the protection of children as the most important consideration: see *HKSAR v. Kam Wing Yin* CACC 515/2005.”

The Court in *HKSAR v Kong Yun Chiu* made the following remarks regarding the trauma suffered by child victims and their parents in cases of indecent assault and the relevant sentencing considerations:

*“It should go without saying that children are particularly vulnerable members of society. It is too easy for those who would prey on their naivete and trust to succeed, for children are by nature trusting and the deliberate invasion of a child’s innocence by an act of sexual abuse bears a repulsive character of its own and must be treated accordingly. The trauma caused to a child by an indecent assault, and the long-term adverse impact, is difficult to calculate but trauma may safely be assumed in the vast majority of cases, perhaps all. Similarly, the trauma and distress, immediate and long-term, is not confined to the child. Parents of child victims will almost certainly be haunted by images of what has been done to the child and, in addition, will nurture a deep sense of guilt either for having entrusted the child to the company of someone who breaches that trust or, in other cases, for having left the child unguarded for the odd moment. It should be remembered too, particularly in cases of breaches of trust, that children are much more likely than adults to suffer the trauma in silence rather than report, and in cases where there are threats levelled at the child not to report, whether the threats are express or implicit, fear is added to the initial offence and the culpability is that much the greater. Whilst the range of offences within the category of indecent assault is wide, the fact that the victim of such an offence is a child is always a severely aggravating feature. Viewed in the light of these factors, offences of the kind in this case call for substantial terms of imprisonment and one is bound to say that some of the sentences imposed in the past for indecent assault on children, for example those in *Wong Tsz Kin*, above, and *HKSAR v See Tak Man* [1998] 1 HKLRD 794, have been remarkably low.*

Of course there will be a range of offences against children the facts of which are more serious than the present, including for example – and these are only examples – where there has been violence additional to that constituted by the indecent assault, where there have been previous convictions for the same type of offence, and where there have been a number of victims. Yet the absence of such factors in a particular case should not be permitted to derogate from the inherent seriousness of any indecent assault on a child.”

I consider the mitigation, particularly the submission that this was not a serious breach of trust, totally unconvincing. This was nothing but a serious breach of trust. The applicant, a man in his sixties and the partner of X’s mother, was entrusted with the parental care of X, a 12-year-old girl. He grossly abused that trust and responsibility by sexually interfering with X in a grotesque manner. He digitally penetrated X on each occasion and subjected her to serious sexual abuse. On each occasion, X tried to resist the applicant’s sexual assault on her by kicking him, but this did not deter him. This shocking experience has left X physically and psychologically traumatised by the repeated sexual abuse that the applicant inflicted on her over a period of seven months.

The applicant has no cause for complaint about the sentence that he received, which was not a day too long.

The ground of appeal is devoid of merit and plainly not reasonably arguable. Leave to appeal against sentence is refused.

The applicant is reminded of his right to renew his application for leave to the Court of Appeal, but he is also informed of the consequences of doing so, which may include a direction for any loss of time spent in custody pending his appeal, if the Court were to come to the view that there was no justification for renewal of his application.

(Kevin Zervos)

Justice of Appeal

Ms Betty Fu, SADPP (Ag.), of Department of Justice, for the respondent

Mr David Boyton and Ms Gretal Wong, instructed by Kong & Lam Solicitors, for the applicant

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