

**MEDIA STATEMENT**  
**18 April 2016**

**CRIMINAL CASE NO. 41 OF 2015**  
**PROSECUTION FILES A NOTICE OF APPEAL**

1 The accused in Criminal Case No. 41 of 2015 pleaded guilty on 7 December 2015 to the following seven charges:

- a) two counts of sexually penetrating a minor under 14 under section 376A(1)(b) of the Penal Code and punishable under section 376A(3);
- b) four counts of sexually penetrating a minor under 16 under section 376A(1)(b) of the Penal Code and punishable under section 376A(2); and
- c) one count of sexually exploiting a young person under section 7(a) of the Children and Young Persons Act.

2 She agreed to have the remaining 14 charges under section 376A(1)(b) of the Penal Code taken into consideration for the purpose of sentencing.

3 Senior Judge Kan Ting Chiu accepted the accused's plea of guilt. However, after calling for arguments from both the Prosecution and the defence, Senior Judge Kan subsequently decided to reject the accused's plea of guilt on the six charges under section 376A(1)(b) of the Penal Code and to acquit the accused on these charges. On the remaining charge under section 7(a) of the Children and Young Persons Act, he sentenced the accused to a term of 8 months' imprisonment. The accused was allowed a deferral of the start of her sentence till 24 May 2016, to attend to personal matters. Senior Judge Kan has delivered a written judgment setting out the reasons for his decision.

4 The ruling on section 376A(1)(b) is a matter of public interest. In the arguments before Senior Judge Kan, the Prosecution had submitted that section 376A of the Penal Code was clearly intended by Parliament to be gender-neutral. In so submitting, the Prosecution had set out the legislative history of section 376A(1)(b) and the relevant legislative materials. The Prosecution had also submitted that an analysis of the wording of section 376A(1)(b) in the context of the Penal Code as a whole showed that the provision was clearly intended to apply to both male and female accused persons. These arguments were rejected by

Senior Judge Kan who held that section 376A(1)(b) could not apply to female accused persons.

5 Having reviewed the written grounds of decision, the Prosecution has concluded that an appeal is merited against Senior Judge Kan's finding that section 376A(1)(b) does not apply to female accused persons, as well as his decision not only to set aside the accused's plea of guilt on these six charges but also to record an order of acquittal on all six charges; and finally, the sentence imposed on the remaining charge under section 7(a) of the Children and Young Persons Act. A Notice of Appeal has been filed accordingly.

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