

Case Comment

**GRANTING A DISCHARGE UNDER SECTION 232 OF
THE CRIMINAL PROCEDURE CODE 2010**

Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor
[2023] SGHC 94

[2023] SAL Prac 23

The High Court recently elaborated on key principles behind the exercise of a court's discretion to grant a discharge amounting to an acquittal when the Prosecution informs the court that they will not further prosecute an accused person on a charge. This article summarises and discusses the decision, and identifies takeaways that may be useful to practitioners.

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I. Introduction

1 The wait that an accused person may face between first being charged for an offence and the conclusion of criminal proceedings against him has often been raised as a source of concern by the accused and their counsel. Yet, it is undeniable that an accused's desire for certainty must be carefully balanced against the broader public interest in ensuring that the State has adequate time to investigate crimes and prosecute those who may be involved in such misdeeds. This is especially so given the increasing complexity of crimes seen today, and the attendant time required to gather evidence in the search for truth.

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

2 One of the options that may be considered in attempting to strike a balance between these competing interests is s 232(1) of the Criminal Procedure Code 2010² (the “CPC”). Under this provision, when the Prosecution informs the court that they will not further prosecute the accused on a charge, proceedings against the accused will be stayed and the court will grant the accused a discharge on the same. This application can be made for a variety of reasons, including cases where the Prosecution needs an especially long time (or an uncertain period of time) to complete investigations. Unless the court directs otherwise, such a discharge will be a discharge not amounting to an acquittal (“DNATA”). Where the application is made for this reason, a DNATA ensures that the Prosecution will continue to have the option of prosecuting the accused on the charge in future once investigations are complete, yet the accused will be released from the more onerous restrictions that come with having been charged.

3 Nonetheless, one question often asked is when the court may decide to exercise its discretion to order a discharge amounting to an acquittal (“DATA”) instead. The High Court’s recent judgment in *Ahmad Danial bin Mohamed Rafa’ee v Public Prosecutor*³ (“*Ahmad Danial*”) has provided some timely clarity on the approach to be taken in determining this issue.

II. Factual and procedural background of *Ahmad Danial*

4 The appellant was produced in the State Courts and charged with murder under s 302 read with s 34 of the Penal Code⁴ on 17 December 2020. He was remanded without bail. The charge arose from a series of events that took place in June 2007, when the appellant’s acquaintance, Ms Felicia Teo Wei Ling (“the victim”), went missing. At the time, the appellant and one Mr Ragil Putra Setia Sukmarahjana (“the co-accused”) were interviewed by the authorities as they were the last two people to see the victim alive. However, they both claimed that

2 2020 Rev Ed.

3 [2023] SGHC 94.

4 Cap 224, 1985 Rev Ed.

they did not know what happened to the victim, and the case remained unsolved. In 2020, the authorities uncovered evidence that suggested that the appellant might have provided an inaccurate account of events when he was first interviewed in 2007. This led to the appellant's arrest on 15 December 2020, and the subsequent murder charge against him.

5 After the appellant's arrest in December 2020, the appellant revealed to the police that the victim had passed away in June 2007. He further admitted that after the victim's death, he deposited her corpse in a public place, misappropriated her property, failed to report her death, gave false statements to the police, and fabricated false evidence to evade suspicion. The appellant, however, maintained that he was not responsible for the victim's death. This claim remained unverified while the police tried to locate the co-accused, who had returned to his home country in the intervening 13 years since the victim's death.

6 On 27 June 2022, the Prosecution applied under s 232(1) of the CPC for a DNATA on the appellant's murder charge. The Prosecution explained that in relation to the murder charge, more time was needed for investigations, specifically, to locate the co-accused. Though proceedings could be adjourned while this was ongoing, in the interests of fairness to the appellant who was in remand, the Prosecution was prepared to apply for a DNATA so that the appellant could be released in the meantime. The Prosecution also concurrently tendered six new charges against the appellant. These charges arose from the appellant's admissions about his conduct after the victim's death and were not disputed by the appellant.⁵

7 The district judge granted the Prosecution's application for a DNATA on the appellant's murder charge. He found that there was strong public interest in ensuring that whoever was responsible for the victim's death could be held to account for

5 The appellant eventually pleaded guilty to four of these charges and consented for the remaining two to be taken into consideration for the purpose of sentencing. He was sentenced to 26 months' imprisonment, and had served this sentence and been released by the time the appeal in *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 was heard.

their actions.⁶ Further, there was no undue delay in the case as the Prosecution had made progress since the appellant's arrest,⁷ and they were entitled to try and verify the facts of the case considering that it was the appellant who had lied at the beginning.⁸

8 The appellant appealed against the district judge's decision. He sought a DATA on the murder charge on the basis that:

(a) The authorities had had ample time to search for the co-accused, and even if the co-accused were located, he was unlikely to incriminate himself by incriminating the appellant.⁹

(b) The Prosecution should not have charged the appellant prematurely when there was insufficient evidence against him, and to grant a DNATA on the murder charge would condone the Prosecution's poor conduct.¹⁰

(c) There was doubt as to whether investigations were being conducted efficiently.¹¹

(d) The appellant and his family had suffered exceptional hardship and unless a DATA was granted, they would remain at the receiving end of negative public opinion.¹²

III. Summary of the High Court's decision

9 It is well established that pursuant to s 232(1) of the CPC, a court must order a discharge when the Public Prosecutor informs

6 *Public Prosecutor v Ahmad Danial Bin Mohamed Rafa'ee* [2022] SGDC 176 at [15] and [16].

7 *Public Prosecutor v Ahmad Danial Bin Mohamed Rafa'ee* [2022] SGDC 176 at [16].

8 *Public Prosecutor v Ahmad Danial Bin Mohamed Rafa'ee* [2022] SGDC 176 at [20].

9 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [16(a)] and [16(c)].

10 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [16(b)].

11 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [16(d)].

12 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [16(e)].

the court that he will not further prosecute an accused person on a charge.¹³ Further, although the court has the discretion to decide whether such a discharge should amount to an acquittal under s 232(2) of the CPC, there is an initial presumption that such a discharge will be a DNATA.¹⁴

10 In *Ahmad Danial*, the High Court went on to consider the basis for the initial presumption that a discharge should be a DNATA, and set out the principles that should guide a court in the exercise of its discretion under s 232(2) of the CPC.

11 In relation to the presumptive position that a DNATA should be ordered, the High Court found that a DNATA strikes the appropriate balance between the accused's interests and the public interest in most cases.¹⁵ While a DNATA means that the Prosecution may revive the charge in the future and the charge may therefore continue to be a source of stress for an accused, this is not remarkable. Any individual who is being investigated for his role in relation to an offence is subject to the possibility that he may be charged at some indefinite point in the future. Hence, when a DNATA is ordered, an accused is simply returned to the position he would have been in had no charge been laid, and freed of the more onerous burdens of being charged. The High Court thus observed that the accused's interests in this regard should not unduly tilt the balance against the public interest in allowing sufficient time for the authorities to complete their investigations where there remains reason to believe that the accused is in some way involved in the offence that is the subject of the charge against him.¹⁶

12 In addition, the High Court noted that the presumptive position in favour of a DNATA is especially strong where the charge is for a serious offence or where the accused has somehow wrongfully contributed to the difficulty in proceeding with the matter. In the former case, the more serious an offence, the

13 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [24].

14 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [25].

15 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [30].

16 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [29] and [30].

stronger the public interest in prosecuting such an offence and accordingly, the stronger the public interest in giving the authorities adequate time to complete investigations.¹⁷ In the latter case, there is added public interest in preventing an accused person from benefitting from his own wrongful conduct.¹⁸

13 As for how the initial presumption may be displaced, the High Court found that this may be so where the specific facts of the case are such that the prejudice to an accused person in facing an uncertain future outweighs the public interest in ensuring that a suspect is not cleared of an offence without trial.¹⁹ The Prosecution should therefore inform the court of its reasons for seeking a discharge and of any other matters that may be relevant to the court's exercise of its discretion.

14 Some examples cited by the High Court as to when the initial presumption may be displaced are where there is no real or reasonable prospect of a prosecution in the future or where there are grounds to suggest that the charge should not have been brought at all.²⁰ On the latter category of cases, the High Court noted that this does not mean that it would be wrong for the Prosecution to charge an accused before investigations are complete. In fact, as the High Court observed, an accused is typically charged at an early stage when there is sufficient reason to think that he was involved in the offence, and the full investigative process thereafter may take years to complete.²¹

15 In contrast, the High Court observed that considerations irrelevant to a court's exercise of its discretion include past prejudice to an accused.²² Further, it would not typically be for a court to undertake a substantive or detailed assessment of whether intended investigative efforts are likely to succeed. Generally, it would suffice for the Prosecution to confirm that it

17 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [31].

18 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [31].

19 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [33].

20 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [33].

21 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [36] and [37].

22 *Ahmad Danial bin Mohamed Rafa'ee v Public Prosecutor* [2023] SGHC 94 at [39] and [40].

is actively pursuing a live lead and that it has reason to believe that these investigations will bear fruit.²³

16 On the facts of *Ahmad Danial*, there was a strong presumption in favour of a DNATA – the charge of murder was very serious, and the Prosecution’s inability to locate the co-accused was at least partly due to the appellant’s initial lies in 2007.²⁴ The presumption was not displaced as it was not so unlikely that there would be a future prosecution on the charge, and the Prosecution had had sufficient reason to think that the appellant was involved in the offence when the charge was brought.²⁵

IV. Practical implications and observations

17 The High Court’s judgment in *Ahmad Danial* has usefully crystallised the principles behind the exercise of a court’s power under s 232(2) of the CPC, and clarified the approach to be taken in assessing if the general presumption in favour of ordering a DNATA has been displaced in a particular case. In particular, the decision reflects an astute recognition of the inherent tension between an accused’s individual interest in certainty and the broader public interest. This is especially so in light of practical difficulties faced by investigators and the need for due deference and leeway to be given to the State in order to ensure that the conduct of investigations and prosecutions is not compromised.

18 For practitioners, the judgment helps to focus the inquiry on factors that are relevant to the court’s exercise of its discretion under s 232(2) of the CPC, and conversely, to guide the discussion away from factors that are irrelevant for this purpose. In sum, the inquiry is generally forward-looking and concentrates on future prospects of prosecution. Practitioners may therefore wish to advise their clients against delving into

23 *Ahmad Danial bin Mohamed Rafa’ee v Public Prosecutor* [2023] SGHC 94 at [41].

24 *Ahmad Danial bin Mohamed Rafa’ee v Public Prosecutor* [2023] SGHC 94 at [43] and [44].

25 *Ahmad Danial bin Mohamed Rafa’ee v Public Prosecutor* [2023] SGHC 94 at [45]–[47].

details of prejudice felt in the past which the courts are likely to give little weight to. Further, while the Prosecution will inform the court of its reasons for seeking a discharge and may inform the court of intended investigative efforts where relevant, the courts are unlikely to undertake a detailed objective assessment of whether these intended investigative efforts will be successful. The courts, in exercising the discretion under s 232(2) of the CPC, will also be slow to examine or make substantive findings of fact on the charge. Practitioners may therefore wish to concentrate their arguments on other factors in the metric, such as the seriousness of the charge and the general progress of the case.

V. Conclusion

19 The High Court in *Ahmad Danial* has provided helpful guidance on the principles that will guide a court's exercise of discretion on whether to grant a DNATA or a DATA where the Prosecution informs the court that they will not further prosecute an accused person on a charge. This decision offers practitioners greater clarity on the factors that will generally be considered by the courts in such cases, providing guidance in an area of criminal procedure which has hitherto been decided on a largely *ad hoc*, fact-specific basis.