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14. CRIMINAL LAW

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I. Introduction

14.1 This review is in three parts. These will examine significant cases decided in 2024 relating to: (a) the general part of the criminal law; (b) cases involving offences under the Penal Code;[1] and (c) cases involving offences under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act,[2] the Endangered Species (Import and Export) Act,[3] and the Employment of Foreign Manpower Act.[4]

II. General part of criminal law – elements and application of defence of duress under section 94 Penal Code

14.2 In *Lim Wei Fong Nicman v Public Prosecutor*[5] ("*Nicman*"), the accused was charged for the offence of possession of (a capital amount of) methamphetamine for the purpose of trafficking.[6] One of the defences raised by the accused was duress under s 94 of the Penal Code.[7] The Court of Appeal thus had the opportunity to offer guidance on the elements and application of the defence. Section 94 prescribes as follows:[8]

> **Act to which a person is compelled by threats**
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> 94. Except murder and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension

1 Cap 224, 2008 Rev Ed.
2 Both Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) and Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (2020 Rev Ed).
3 Cap 92A, 2008 Rev Ed.
4 Cap 91A, 2009 Rev Ed.
5 [2024] 1 SLR 1041.
6 Under s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed).
7 Cap 224, 2008 Rev Ed. The other key defence the accused raised was that the chain of custody of the seized drugs was broken.
8 This case was decided based on s 94 of the Penal Code (Cap 224, 2008 Rev Ed). However, s 94 of the Penal Code 1871 (2020 Rev Ed) remains identically worded.

that instant death to that person or any other person will otherwise be the consequence:

> Provided that the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.
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> *Explanation* 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins gang-robbers knowing their character, is not entitled to the benefit of this exception on the ground of his having been compelled by his associates to do anything that is an offence by law.
>
> *Explanation* 2.—A person seized by gang-robbers, and forced by threat of instant death to do a thing which is an offence by law — for example, a smith compelled to take his tools and to force the door of a house for the gang-robbers to enter and plunder it — is entitled to the benefit of this exception.

14.3 The accused started delivering drugs for a person named "Boss" about a month prior to being caught in respect of the present offence. A few days before he was caught, he had stopped working for "Boss" because he felt it was too dangerous to continue delivering the drugs and he had discovered that his girlfriend was pregnant with their child.[9] The accused did not return the undelivered packets of drugs to "Boss".[10] Thereafter (in chronological sequence):

(a) an unknown man visited the accused's place of residence while the accused was away and demanded (to the accused's mother and his sister) to see the accused regarding money the accused owed to "Boss";[11]

(b) unknown individuals sent the accused text messages to demand that the accused return the undelivered drugs and cash from past deliveries to "Boss", and these messages included a photograph of the accused's residence;[12]

(c) the accused proceeded to return the cash to "Boss" and left the undelivered drugs at some particular locations;[13] and

9 *Lim Wei Fong Nicman v Public Prosecutor* [2024] SGCA 33 at [13]–[14] (this case is partially reported in [2024] 1 SLR 1041).

10 *Lim Wei Fong Nicman v Public Prosecutor* [2024] SGCA 33 at [14] (this case is partially reported in [2024] 1 SLR 1041).

11 *Lim Wei Fong Nicman v Public Prosecutor* [2024] SGCA 33 at [15] (this case is partially reported in [2024] 1 SLR 1041).

12 *Lim Wei Fong Nicman v Public Prosecutor* [2024] SGCA 33 at [15] (this case is partially reported in [2024] 1 SLR 1041).

13 *Lim Wei Fong Nicman v Public Prosecutor* [2024] SGCA 33 at [15] (this case is partially reported in [2024] 1 SLR 1041).

(d) the accused communicated with "Boss" via texting messaging, retrieved some of the undelivered drugs, and continued to make multiple drug deliveries for "Boss" on 11 August 2020.[14]

14.4 The accused was then arrested. His charge for possession of methamphetamine for the purpose of trafficking was in respect of the drugs he was found with on 11 August 2020.[15] The accused did not dispute that he was in possession of the drugs on that day, and that he knew that the drugs were methamphetamine.[16]

14.5 The Court of Appeal affirmed that the elements of the defence of duress are as follows:[17]

(a) the harm that the accused was threatened with was death;

(b) the threat was directed at the accused or other persons (which includes any of his family members);

(c) the threat was of "instant" death, which was "imminent, persistent and extreme";

(d) the accused reasonably apprehended that the threat will be carried out;

(e) the accused had not, voluntarily or from a reasonable apprehension of harm to himself short of instant death, placed himself in that situation; and

(f) the accused must be compelled by the threats to carry out the acts in question for which he is being charged.

14.6 The court, starting with the last-mentioned element, found that none of the threats compelled the accused to continue delivering the drugs for "Boss". In particular, the threats by the unknown persons were merely for the accused to return to "Boss" the cash and undelivered drugs. The accused was not forced by the threats to continue delivering drugs for "Boss". Based on this alone, the accused would not be able to succeed in relying on the defence of duress.[18]

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14 *Lim Wei Fong Nicman v Public Prosecutor* [2024] SGCA 33 at [16] (this case is partially reported in [2024] 1 SLR 1041).

15 *Lim Wei Fong Nicman v Public Prosecutor* [2024] SGCA 33 at [3]–[12] (this case is partially reported in [2024] 1 SLR 1041).

16 *Lim Wei Fong Nicman v Public Prosecutor* [2024] SGCA 33 at [17] (this case is partially reported in [2024] 1 SLR 1041).

17 *Lim Wei Fong Nicman v Public Prosecutor* [2024] 1 SLR 1041 at [39] and [41].

18 *Lim Wei Fong Nicman v Public Prosecutor* [2024] 1 SLR 1041 at [41]–[42].

14.7 Next, the court held that the accused was not threatened specifically with the harm of death. The accused argued that the conduct and words of the unknown individuals implicitly threatened death of the accused, his mother or his sister. The court found that on the evidence, the threats were of hurt or harm short of death.[19]

14.8 Importantly, the court then discussed the requirement that the threat must be of "instant" death.[20] By way of background, prior to this case, the meaning of "instant" was considered by the High Court in the case of *Public Prosecutor v Ng Pen Tine*.[21] In that case, the High Court was prepared to adopt a broader definition of "instant" in that there could be a time lapse between an accused's refusal to break the law and the coercer's execution of the threat.[22] The Court of Appeal in *Nicman* rejected this broader definition of "instant".[23] Instead, it held that:[24]

> (a) There can be a very short time interval between an accused's refusal to break the law and the coercer's execution of the threat (because it is unrealistic and impractical to expect that in every case "instant death" will necessarily mean that the threat will be carried out in a matter of mere seconds or even minutes).
>
> (b) However, the threatened harm must still be carried out in a very short time span should the accused fail to comply, such that the accused did not have any opportunity to seek help from the authorities or otherwise avoid doing what he was being coerced to do.

14.9 Additionally, the court noted that in the case of *Public Prosecutor v Nagaenthran a/l K Dharmalingam*,[25] which was decided two years after *Public Prosecutor v Ng Pen Tine*, the High Court had held that in determining whether the defence of duress could apply, a court should examine the thought or mental process going on within the accused's mind based on three specific points: Point A is the time at which the threat was made, Point B is the time at or by which the accused is supposed to commit the crime as instructed by the coercer and Point C is the time at or by which execution of the coercer's threat would have otherwise been the consequence of the accused's failure to commit the

19 *Lim Wei Fong Nicman v Public Prosecutor* [2024] 1 SLR 1041 at [43]–[45].
20 *Lim Wei Fong Nicman v Public Prosecutor* [2024] 1 SLR 1041 at [46]–[53].
21 [2009] SGHC 230.
22 *Public Prosecutor v Ng Pen Tine* [2009] SGHC 230 at [155]–[157].
23 *Lim Wei Fong Nicman v Public Prosecutor* [2024] 1 SLR 1041 at [51]. The court noted that this appears to be consistent with the earlier case of *Public Prosecutor v Nagaenthran a/l K Dharmalingam* [2011] 2 SLR 830 at [28].
24 *Lim Wei Fong Nicman v Public Prosecutor* [2024] 1 SLR 1041 at [51].
25 [2011] 2 SLR 830.

crime as instructed.[26] The Court of Appeal in *Nicman* took the view that the High Court's approach is "unnecessarily technical and would invite fine distinctions to be made as to when 'point B' has occurred (or if it has occurred at all)" and declined to affirm such an approach.[27]

14.10 It therefore appears that in assessing whether the requirement of threat of "instant" death is fulfilled, a court should simply ask itself – after the threat has been made to the accused, did the accused have sufficient time to seek help from the authorities or otherwise avoid doing what he was being coerced to do (for example, by escaping or finding some way to neutralise the threat)? In this case, the answer was a clear no.[28] Consequently, this was a further reason the accused could not succeed in relying on the defence of duress.

14.11 Finally, the court considered the element that the accused had not, voluntarily or from a reasonable apprehension of harm to himself short of instant death, placed himself in that situation. This is based on the proviso and two explanations accompanying s 94 of the Penal Code.[29] In particular, an accused who, of his own accord, joins a criminal enterprise, will not be able to successfully rely on the defence for criminal acts he is then compelled to do by the enterprise.[30] This is based on the deterrent theory that a person would be discouraged from getting involved with criminal activity if he knew he would not be excused for offences committed unwillingly by him as a result of such involvement. If this were not the position, criminal gangs and terrorist organisations could easily resort to the defence to shield their members from criminal liability by threatening their members with death in the event that they refused to comply with orders.[31]

14.12 Returning to the facts of this case, the accused failed to establish this element of the defence. The evidence showed that the accused knew that "Boss" was involved in the drug trade and he still voluntarily agreed to help "Boss" to deliver drugs.[32] The court also stressed that even if an accused did not subjectively know of the risk of being threatened into committing the harm alleged, this element of the defence could still not be made out.[33]

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26 *Public Prosecutor v Nagaenthran a/l K Dharmalingam* [2011] 2 SLR 830 at [28].
27 *Lim Wei Fong Nicman v Public Prosecutor* [2024] 1 SLR 1041 at [53].
28 *Lim Wei Fong Nicman v Public Prosecutor* [2024] 1 SLR 1041 at [47].
29 See para 14.2 above.
30 *Lim Wei Fong Nicman v Public Prosecutor* [2024] 1 SLR 1041 at [55].
31 *Lim Wei Fong Nicman v Public Prosecutor* [2024] 1 SLR 1041 at [57].
32 *Lim Wei Fong Nicman v Public Prosecutor* [2024] 1 SLR 1041 at [58]–[59].
33 *Lim Wei Fong Nicman v Public Prosecutor* [2024] 1 SLR 1041 at [60].

14.13 In Singapore, the defence of duress has, in recent years at least, only been discussed in written judgments by the High Court.[34] *Lim Wei Fong Nicman v Public Prosecutor*, which reached the Court of Appeal, is therefore now the most authoritative case on the defence of duress in Singapore. Considered in the round, it is clear that in the Court of Appeal's view, the defence of duress should be "available only in very limited circumstances".[35] This is very much consistent with the stance taken by the Penal Code Review Committee in 2018, when it was reviewing the scope of the defence.[36] There, the committee had observed that the defence of duress is most frequently raised by offenders who have been charged for serious drug offences,[37] and because the defence "affords a complete defence, a widening of the defence could seriously undermine law enforcement efforts, especially in the area of anti-drug enforcement".[38]

III. Offences under the Penal Code

A. Murder under section 300(c) – whether an accused intended to inflict bodily injuries on the victim

14.14 In *Public Prosecutor v Muhammad Salihin bin Ismail*,[39] the accused was charged for murder of the victim under s 300(*c*) of the Penal Code. The trial decision for this case was reviewed in last year's chapter of the *Singapore Academy of Law Annual Review of Singapore Cases*.[40] The High Court had acquitted the accused of the charge under s 300(*c*).[41] The Prosecution appealed to the Court of Appeal, which found the accused guilty of the charge under s 300(*c*). To recap, the salient facts of the case are as follows:[42]

34 *Public Prosecutor v Ng Pen Tine* [2009] SGHC 230; *Public Prosecutor v Nagaenthran a/l K Dharmalingam* [2011] 2 SLR 830; *Public Prosecutor v Siva a/l Sannasi* [2015] SGHC 73; *Public Prosecutor v Khartik Jasudass* [2015] SGHC 199; *Public Prosecutor v Arun Ramesh Kumar* [2021] SGHC 172.

35 *Lim Wei Fong Nicman v Public Prosecutor* [2024] 1 SLR 1041 at [55].

36 Penal Code Review Committee, *Penal Code Review Committee Report* (August 2018) at pp 256–261.

37 Penal Code Review Committee, *Penal Code Review Committee Report* (August 2018) at p 259.

38 Penal Code Review Committee, *Penal Code Review Committee Report* (August 2018) at pp 259 and 263.

39 [2024] 1 SLR 792.

40 Benny Tan Zhi Peng, "Criminal Law" (2023) 24 SAL Ann Rev 364 at paras 14.30–14.42.

41 See *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155.

42 See Benny Tan Zhi Peng, "Criminal Law" (2023) 24 SAL Ann Rev 364 at para 14.31.

(a) On 1 September 2018, the accused was at home with the victim, who was his four-year-old stepdaughter, and his two biological children.

(b) At around 3.00pm on that day, the accused forcefully kicked the victim's abdomen twice, out of anger upon witnessing the victim urinate on the floor.

(c) At around 7.00pm on that day, the accused's two biological children bounced on the victim's abdomen several times.

(d) Between the night of 1 September 2018 and the early morning of 2 September 2018, the victim vomited several times, causing her to experience intra-abdominal pressure.

(e) After vomiting at around 8.00am on 2 September 2018, the victim became unconscious. The accused forcefully performed cardiopulmonary resuscitation (CPR) on the victim, which could have possibly compressed the victim's abdomen and caused her internal injuries.

(f) After multiple resuscitation attempts by the on-scene paramedics and doctors at the hospital, the victim was pronounced dead at 10.12am on 2 September 2018.

14.15 At trial, the High Court dealt at some length with how, as a matter of law, "bodily injury" for the purposes of 300(*c*) was to be identified in a situation where there are multiple contributory causes to the fatal injury.[43] This was because the accused attempted to argue that other than him kicking the victim's abdomen, there were other contributory causes of the victim's abdominal injuries: the accused's two biological children bouncing on the victim's bdomen, the accused performing CPR on the victim, and the victim vomiting.

14.16 The Court of Appeal found that, as a matter of fact, the other alleged contributory causes had no, or a negligible, effect on the victim's intra-abdominal injuries. Accordingly, the case did not in fact involve multiple causes to the victim's fatal injuries.[44] The cause of such injuries could only have been the accused kicking the victim's abdomen.

14.17 The Court of Appeal also affirmed that the intra-abdominal injuries suffered by the victim were sufficient in the ordinary course of nature to cause death.[45]

43 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [39]–[52].
44 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] 1 SLR 792 at [34]–[46].
45 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] 1 SLR 792 at [47]–[50].

14.18 The appeal thus turned on whether the accused intended to inflict the intra-abdominal injuries found on the victim, which is a requirement to establish a charge under 300(*c*), per the test set out in *Virsa Singh v State of Punjab*.[46] To recall, the High Court had concluded that the accused did not intend to inflict those injuries. It found that although the accused did kick the victim forcefully, he had done so spontaneously rather than with the intention of striking the victim with sufficient force as to cause the injuries actually suffered by the victim.[47] In particular, the High Court took into account:[48]

> (a) The fact that the accused kicked the victim as a result of his anger with the victim and those kicks landed on the victim's abdomen only because it happened to be directly in front of the accused's foot.
>
> (b) The whole sequence of events happened very quickly.
>
> (c) Some time after the accused kicked the victim, when the accused applied ointment on the victim's abdomen, he had to ask her where exactly she felt pain, which suggested that he did not know exactly where his kick had landed.

14.19 The High Court therefore acquitted the accused of his charge under s 300(*c*) and substituted a conviction for voluntarily causing grievous hurt under s 325 of the Penal Code.

14.20 The Court of Appeal disagreed with the High Court's assessment of the accused's state of mind. The court first underscored that what is required under s 300(*c*) is that the accused had the requisite intention to cause the particular injury that was in fact inflicted on the victim, that is, the particular injury must not be accidental or unintentional.[49] Pertinently, the court noted that:[50]

> In determining whether the accused person had the requisite intention to cause the particular injury actually inflicted, the focus of the inquiry is directed at the nature and the character of the physical acts done by the accused person. In this case, did he intend to kick the child? Did he intend to do so with the sort of force that he did in fact apply? Once it was established that the accused person had intended to inflict the particular bodily injury found on the victim,

46 AIR 1958 SC 465.
47 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [74]–[78].
48 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [74]–[78].
49 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] 1 SLR 792 at [53].
50 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] 1 SLR 792 at [54]. The Court of Appeal affirmed its position taken in the earlier cases of *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 and *Public Prosecutor v Lim Poh Lye* [2005] 4 SLR(R) 582.

> there was no need for the Prosecution to go further to show that the accused person knew, much less that he intended, the specific medical consequences of his actions.

14.21 In this case, the Court of Appeal held that (it was beyond a reasonable doubt) the accused intended to inflict the intra-abdominal injuries on the victim when he kicked her forcefully. Firstly, the accused had accepted in one of his statements as well as under cross-examination at the trial that when he kicked the victim, he had done so to cause her stomach pain in order to teach her a lesson.[51] Secondly, such an intention could be inferred from the approximate size of the victim, her proximity to the accused and their relative positions at the material time.[52] The court added that even if it accepted that the accused had not intended to target a specific part of the victim's body, the highest case which could be mounted for the accused was that he was indifferent as to which part of the victim's body he struck. The accused's counsel tried to argue that this meant that the accused was at most rash towards causing the abdominal injuries. The court held that if the accused had kicked the victim with force with the victim right in front of him, without regard to which part of her body his kicks would land on, then the accused must have intended to kick the victim wherever his kicks happened to land on.[53] The court reiterated that to establish liability under s 300(*c*), the accused only had to intend to inflict the abdominal injuries on the victim's abdomen, and he did not need to have intended the specific medical manifestations of those injuries.[54]

14.22 Finally, the Court of Appeal observed that the High Court had held that the accused lacked the requisite intention because his kicks were a spontaneous response arising from his anger at the victim. The Court of Appeal stated that:[55]

> … an angry person who kills another spontaneously in a fit of rage is fully liable for his actions unless he can invoke the defences specified in the Penal Code such as private defence or the partial defences of sudden fight or grave and sudden provocation and/or diminished responsibility. … The fact that a crime was committed in a fit of anger does not mean that the person was unable to make rational decisions at that time. The law expects individuals to be in control of their emotions and actions, even when experiencing intense anger, and to accept the consequences if they fail to do so …

51 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] 1 SLR 792 at [60]–[61].
52 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] 1 SLR 792 at [62].
53 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] 1 SLR 792 at [63].
54 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] 1 SLR 792 at [64].
55 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] 1 SLR 792 at [67].

14.23 Given that all the elements of s 300(*c*) were made out against the accused, the Court of Appeal convicted the accused of his original charge and proceeded to sentence him to life imprisonment and 12 strokes of caning.[56]

14.24 One comment that may be added is that today, the accused could at best argue that he did not have a direct intention to inflict the abdominal injuries on the victim. Nonetheless, he would still have had an oblique intention to inflict those injuries. Section 26C was added to the Penal Code 1871[57] and came into force on 1 January 2020. That provision makes clear that generally speaking, intention in criminal law in Singapore includes both direct and oblique intention. Section 26(C)(2)(*b*), which defines oblique intention, states that a person is said to cause an effect intentionally where that person does an act knowing that that effect would be virtually certain (barring an unforeseen intervention) to result. In this case, even if the accused was not specifically targeting the victim's stomach, given the force of his kick and the fact that he had kicked at the victim who was right in front of him, it could at the minimum be said that he knew that his kick would certainly inflict the abdominal injuries on the victim. Consequently, at the very least, he had the oblique intention to inflict the said injuries. Such an assessment would of course be highly fact dependent. If a person throws an object less forcefully or at someone further away, the same inference of intention may not be made.

14.25 The position taken by the Court of Appeal in *Public Prosecutor v Muhammad Salihin bin Ismail* was applied very shortly after by the High Court in the case of *Public Prosecutor v Tan Sen Yang*.[58] In the latter case, the accused was also charged for murder under s 300(*c*) of the Penal Code. The accused was involved in a group confrontation with the victim. The Prosecution's case was that during this confrontation, the accused inflicted a fatal stab wound on the victim's neck using a *karambit* knife. The accused first tried to argue that he was not the one who inflicted that fatal wound. The High Court considered the evidence and rejected this argument.[59]

14.26 The accused's second argument was that he had only intended to inflict an injury to the victim's face or head and had not intended to attack the victim's neck – therefore the accused did not have the intention to

56 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] 1 SLR 792 at [68]–[70].
57 2020 Rev Ed.
58 [2024] SGHC 201.
59 *Public Prosecutor v Tan Sen Yang* [2024] SGHC 201 at [33]–[65].

inflict the fatal injury on the victim's neck.[60] The High Court too rejected this argument. The court commented as follows:[61]

> The hair-splitting distinction that the Accused sought to draw between the face and neck was far too fine a line to be workable … it would be very surprising if the law were to distinguish so clearly between parts of the body that are actually adjacent to each other. Any other outcome would … leave s 300(*c*) of the Penal Code too easily skirted, as it would open the door to a proliferation of all manner of fine distinctions to be drawn so as to denude the policy under s 300(*c*) of the Penal Code. … On the one hand, it cannot be so narrow so as to be impossible to prove; on the other hand, it cannot be so broad such that the accused is convicted of murder for an injury that he did not intend.

14.27 The court also explained that what is called for in any case is a "broad-based, simple and common-sense approach". On the facts of the case, the court found that common sense and logic pointed towards the victim's face and neck being treated as forming part of the same "limb", such that an intention to attack one must have included an intention to attack the other.[62]

14.28 The High Court then referred to the Court of Appeal's decision in *Public Prosecutor v Muhammad Salihin bin Ismail*,[63] and explained that similar to that earlier case, the accused here "swung his knife at the [victim's] facial region (which included the neck) and did not care which specific part of this region his swing would land on; in the premises, the accused must have intended to slash the [victim] wherever his knife happened to land on".[64] Further, all other elements of s 300(*c*) were proven and none of the defences raised by the accused applied.[65] Accordingly, the High Court convicted the accused of his charge and sentenced him to life imprisonment and 12 strokes of caning.[66]

B. Scope of offence of abetting falsification of accounts under section 477A Penal Code

14.29 In the case of *Gan Hsiao Ching Elizabeth v Public Prosecutor*,[67] the accused was charged for conspiring with other persons to submit

60 *Public Prosecutor v Tan Sen Yang* [2024] SGHC 201 at [66]–[73].
61 *Public Prosecutor v Tan Sen Yang* [2024] SGHC 201 at [69].
62 *Public Prosecutor v Tan Sen Yang* [2024] SGHC 201 at [70].
63 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] 1 SLR 792. See paras 14.14–14.20 above.
64 *Public Prosecutor v Tan Sen Yang* [2024] SGHC 201 at [73].
65 *Public Prosecutor v Tan Sen Yang* [2024] SGHC 201 at [74]–[96].
66 *Public Prosecutor v Tan Sen Yang* [2024] SGHC 201 at [97]–[103].
67 [2024] 5 SLR 596.

falsified invoices under s 477A of the Penal Code.[68] At the material time, the accused was an employee of a company, E. In one set of charges, the accused conspired with her subordinates to submit falsified invoices to E in order to siphon moneys from a fund in E and the moneys were transferred to E's channel partners and third-party marketing agencies.[69] In a second set of charges, the accused conspired with a director of a third-party firm to create and submit falsified invoices to third-party marketing agencies.[70] In both set of charges, it appears to be stated that the falsified invoices were issued by, and belonged to, the respective third-party agencies.[71]

14.30 A preliminary argument the accused raised was that the charges against her were defective. Specifically, she argued that for the offence of abetting falsification of accounts to be made out: (a) the third-party representatives must have had an intention to defraud, in this case, E and (b) the issued invoices had to belong to E. The accused submitted that in this case, the third-party representatives did not have an intention to defraud E (because they were simply acting on the instructions given by the accused or others), and the issued invoices belonged to the third-party representatives rather than E, and therefore the charges against her were defective.[72] Section 477A of the Penal Code stipulates that:[73]

> **Falsification of accounts**
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> 477A.—Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully and with intent to defraud destroys, alters, conceals, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him or on behalf of his employer, or wilfully and with intent to defraud makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in any such book, electronic record, paper, writing, valuable security or account, shall be [guilty of an offence].

14.31 The High Court held that for an offence of abetting falsification of accounts under s 477A to be disclosed:

68 One set of charges was in relation to s 477A of the Penal Code (Cap 224, 1985 Rev Ed) while the second set was in relation to s 477A of the Penal Code (Cap 224, 2008 Rev Ed). The only material difference between these two versions of s 477A was the prescribed punishment.

69 *Gan Hsiao Ching Elizabeth v Public Prosecutor* [2024] 5 SLR 596 at [4]–[5].

70 *Gan Hsiao Ching Elizabeth v Public Prosecutor* [2024] 5 SLR 596 at [6].

71 *Gan Hsiao Ching Elizabeth v Public Prosecutor* [2024] SGHC 159 at [17] and [49] (this case is partially reported in [2024] 5 SLR 596).

72 *Gan Hsiao Ching Elizabeth v Public Prosecutor* [2024] 5 SLR 596 at [16]–[19].

73 Section 477A of the current version of the Penal Code, *ie*, the Penal Code 1871 (2020 Rev Ed), reads materially the same.

(a) There was no need to prove that the third-party representatives (who are not named in the charge as the principal offender and not employed by the accused's employer as a "clerk, officer or servant") also had an intent to defraud. What the offence requires to be proven is that the person charged is an employee acting in the capacity of a "clerk, officer or servant" and that person had an intent to defraud. Where the charge alleges abetment of falsification, the person abetted must also be an employee acting in the capacity of a "clerk, officer or servant" and possess an intent to defraud. This interpretation is based on a plain reading of s 477A and is supported by case law[74] and commentaries on the Indian Penal Code 1860.[75]

(b) Section 477A can be disclosed so long as the falsified document "belongs to" or be "in the possession of" the accused's employer. There is no requirement that the falsified document has to originate from or be issued by the said employer. This is based on a plain reading of s 477A and supported by Indian case law.[76]

14.32 Moreover, the High Court noted that the accused's interpretation would potentially lead to the absurd result that any "clerk, officer or servant" of an employer can easily evade liability for the offence by simply tricking unsuspecting third parties to create and submit false documents, on the pretext that this practice was approved by the employer. The legislature could not have intended for such a convenient means to circumvent s 477A.[77]

14.33 In this case, the various third-party representatives did not have an intent to defraud, but as held by the High Court, this was not a requirement to establish the offence of abetting falsification of accounts under s 477A. Additionally, although the falsified invoices were issued by and belonged to the third-party representatives, the invoices were meant to and did in fact physically come into E's possession.[78] By then, the invoices belonged to E. The charges against the accused were hence not defective. The High Court also agreed with the lower court that all

74 Such as *Phang Wah v Public Prosecutor* [2012] 1 SLR 646 at [58] and *Public Prosecutor v Li Weiming* [2014] 2 SLR 393 at [3] and [7].
75 *Gan Hsiao Ching Elizabeth v Public Prosecutor* [2024] 5 SLR 596 at [20]–[23].
76 *Gan Hsiao Ching Elizabeth v Public Prosecutor* [2024] 5 SLR 596 at [24].
77 *Gan Hsiao Ching Elizabeth v Public Prosecutor* [2024] 5 SLR 596 at [25].
78 *Gan Hsiao Ching Elizabeth v Public Prosecutor* [2024] SGHC 159 at [24] and [49] (this case is partially reported in [2024] 5 SLR 596).

other elements of the offence were made out against the accused and thus affirmed the conviction of the accused in respect of all the charges.[79]

IV. Offences under other statutes

A. Meaning of "possession" in Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act

14.34 *Merlur Binte Ahmad v Public Prosecutor*[80] was a criminal reference by the accused. She was convicted by the District Court on, among other charges, seven counts under s 47(3) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act[81] ("CDSA") for having in her possession moneys in her bank account (between July to August 2018), having reasonable grounds to believe that such moneys were benefits from M's criminal conduct.

14.35 The accused became acquainted with M soon after the accused's divorce in 2012. In October 2015, M caused moneys to be transferred into and out of the accused's bank account. In 2016, the accused was informed by the police that the moneys circulating through her bank account were derived from fraud transactions. The police also advised the accused to refrain from receiving or dealing with funds from "unknown and/or dubious sources" and warned the accused that doing so could render her liable to prosecution for offences under the Penal Code or the CDSA.[82] Thereafter, between July to August 2018, she continued to allow or help M to transfer moneys out into various foreign accounts on seven separate occasions.[83]

14.36 The District Court convicted the accused of all her charges. The accused appealed to the High Court, which dismissed the appeal. The accused then sought to refer four questions of law of public interest to the Court of Appeal. The first question that the accused sought to refer was – what is the definition of possession for the purposes of the CDSA?[84] The accused argued that possession could only be made out if there was some additional element of personal benefit or a greater degree of involvement

79 *Gan Hsiao Ching Elizabeth v Public Prosecutor* [2024] 5 SLR 596 at [27]–[49].
80 [2024] SGCA 8.
81 Cap 65A, 2000 Rev Ed. This offence is now found in s 53(3) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (2020 Rev Ed).
82 *Merlur Binte Ahmad v Public Prosecutor* [2024] SGCA 8 at [2], [6]–[9] and [25].
83 *Merlur Binte Ahmad v Public Prosecutor* [2024] SGCA 8 at [5] and [24].
84 *Merlur Binte Ahmad v Public Prosecutor* [2024] SGCA 8 at [18].

with the moneys,[85] and given that these were not proven, she was never in possession of the illicit funds in her bank account.

14.37 The Court of Appeal first noted that s 2 of the CDSA defines possession, in relation to any property, to mean actual or constructive possession of the property.[86] The Court of Appeal agreed with the commonsensical position taken by the High Court that there need not be personal benefit from or greater involvement with moneys in order to be in "possession" of the moneys.[87] The court added that these relate to the purposes of possession and are not intrinsic to the very act of possession.[88] Moreover, the High Court's interpretation was consistent with the CDSA's legislative intent and with existing case law. There were no conflicting decisions and no legal controversy over what "possession" in the CDSA meant.[89] Additionally, the court observed that in any event, by the time of July to August 2018, the accused was not a mere passive possessor of the moneys in her bank account, considering that she had helped M to transfer the moneys out into various foreign accounts.[90] The Court of Appeal concluded that the first question was not one of public interest and consequently refused to answer it.[91] It further took the view that in the circumstances of the case, there was obviously no need to answer the accused's remaining three questions.[92]

B. Meaning of "benefits from criminal conduct" in Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act

14.38 In *Public Prosecutor v Gumede Sthembiso Joel*,[93] the accused was charged for, among other charges, facilitating another person (J1) in the control of J1's benefits from criminal conduct, under s 51(1)(*a*) of the

85 *Merlur Binte Ahmad v Public Prosecutor* [2024] SGCA 8 at [13].
86 *Merlur Binte Ahmad v Public Prosecutor* [2024] SGCA 8 at [27]. The court also noted there that s 2 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) defined "property" to mean money and all other property, movable or immovable, including things in action and other intangible or incorporeal property.
87 *Merlur Binte Ahmad v Public Prosecutor* [2024] SGCA 8 at [33].
88 *Merlur Binte Ahmad v Public Prosecutor* [2024] SGCA 8 at [28].
89 *Merlur Binte Ahmad v Public Prosecutor* [2024] SGCA 8 at [33].
90 *Merlur Binte Ahmad v Public Prosecutor* [2024] SGCA 8 at [28].
91 *Merlur Binte Ahmad v Public Prosecutor* [2024] SGCA 8 at [33].
92 *Merlur Binte Ahmad v Public Prosecutor* [2024] SGCA 8 at [20]–[22] and [34]. The court at [29] also distinguished and discredited the English High Court decision of *R v Haque (Mohammed)* [2020] 1 WLR 2239, which concerned the interpretation of the phrase "acquires criminal property" (rather than "possession of criminal property").
93 [2024] 4 SLR 378.

Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992[94] ("CDSA 1992"). The accused became acquainted with J1 and got to know about J1's involvement in the illegal rhinoceros horn trade. The accused agreed to help J1 transport some rhinoceros horn from South Africa to Laos through Singapore in exchange for return air tickets and cash. On 3 October 2022, the accused took possession of the horns from J1 at an airport in South Africa and flew to Singapore. At the airport in Singapore, the authorities discovered the horns and arrested the accused.[95] Prior to meeting the accused on 3 October 2022, J1 had received the horns which were already packed in boxes from J2. This last fact was not mentioned by the lower court in its grounds of decision and was highlighted only at the hearing before the High Court.[96] The accused claimed trial to the CDSA 1992 charge and was acquitted of the charge by the lower court. The Prosecution appealed to the High Court, which dismissed the appeal.

14.39 In the appeal before the High Court, the pivotal issue was whether the rhinoceros horns which the accused helped to transport were considered the primary offender's (J1) "benefits from criminal conduct" of illegal sale and export under s 51(1)(*a*) of the CDSA 1992. Section 51(1)(*a*) reads as follows:

> **Assisting another to retain benefits from criminal conduct**
>
> 51.—(1) Subject to subsection (3), a person who enters into or is otherwise concerned in an arrangement, knowing or having reasonable grounds to believe that, by the arrangement —
>
> > (*a*) the retention or control by or on behalf of another (called in this subsection that other person) of that other person's benefits from criminal conduct is facilitated (whether by concealment, removal from jurisdiction, transfer to nominees or otherwise) …

14.40 The salient points made by the High Court were as follows:

> (a) When reading the plain words of s 51(1)(*a*) in its grammatical and ordinary sense and in the context of the Act as a whole, it is apparent that the phrase "benefits from criminal conduct" requires the "benefits" (that is, advantage, profits or gains) to be gained, obtained or acquired by the primary offender as a consequence of the criminal conduct of the primary offender.[97]

94 2020 Rev Ed.
95 *Public Prosecutor v Gumede Sthembiso Joel* [2024] 4 SLR 378 at [5]–[10].
96 *Public Prosecutor v Gumede Sthembiso Joel* [2024] 4 SLR 378 at [9].
97 *Public Prosecutor v Gumede Sthembiso Joel* [2024] 4 SLR 378 at [24] and [26]–[27].

(b) The primary purpose of the CDSA 1992 is to ensure that criminals are deprived of the ability to enjoy the fruits of their criminal conduct. The Act also aims to combat and criminalise the laundering of ill-gotten gains and benefits derived from criminal conduct into other property to avoid detection and to preserve Singapore's reputation as an international financial hub. These purposes affirm the abovementioned interpretation of the phrase "that other person's benefits from criminal conduct".[98]

(c) Depending on the facts of a case, the subject matter of criminal conduct, that is, cash, money or property in respect of which a predicate offence is committed, may also qualify as the benefit of criminal conduct. One possible example is where a director misappropriates his company's property for personal gain and then passes the property to a friend for safekeeping. The property is both the subject matter of the director's criminal conduct as well as the director's benefit from the criminal conduct.[99]

(d) Section 51(1)(*a*) does not impose a source requirement. There is no need for the benefits to be something extrinsic to the primary offender (that is, something which is not in his possession or control). The ultimate question in any case is whether the benefits resulted from the primary offender's criminal conduct. The source of a benefit would be an important aspect which goes towards a finding of whether the benefit resulted from criminal conduct.[100]

14.41 In this case, J1 had obtained the horns from J2 as a result of his criminal conduct in relation to the illegal export of the horns. So the relevant issue is whether given J1's receipt of the horns for the purpose of the illegal export, the horns could be considered benefits to him, *ie*, whether the horns represented advantage, profits or gains to J1.[101] The High Court held that on the evidence, the horns were merely the subject matter of J1's criminal conduct of illegal export. Although the subject matter of a predicate offence may count as benefits to a primary offender, in this case, the court was not convinced that the horns represented any form of advantage, profit or gain to J1. When J1 collected the horns for the purpose of export, the sale to J2 had already been concluded. Thus, J1 had merely regained physical possession and control of the horns which J1 had already sold off and passed to J2. The only reason J1 regained

98 *Public Prosecutor v Gumede Sthembiso Joel* [2024] 4 SLR 378 at [28]–[30].
99 *Public Prosecutor v Gumede Sthembiso Joel* [2024] 4 SLR 378 at [25].
100 *Public Prosecutor v Gumede Sthembiso Joel* [2024] 4 SLR 378 at [32]–[33].
101 *Public Prosecutor v Gumede Sthembiso Joel* [2024] 4 SLR 378 at [36].

possession of the horns was to facilitate the export as per his agreement with J2 to assist in the export of the horns. Accordingly, the horns were not J1's benefits from his criminal conduct of illegally exporting them.[102]

14.42 The Prosecution tried to argue in the alternative that the benefit of J1's criminal conduct was the increase in the intrinsic value of the horns as they moved in transit.[103] The High Court rejected this argument on the basis that:[104]

> (a) the charge against the accused particularised the horns (and not the increase in the intrinsic value of the horns) as the benefit's of J1's criminal conduct;
>
> (b) there was no convincing evidence that the horns transported by the accused in this case increased in intrinsic value; and
>
> (c) even assuming there was an increase in intrinsic value of the horns, it was entirely unclear on the evidence how that represented any actual advantage, profit or gain to J1. The horns were already sold to J2, and thus an increase in intrinsic value of the horns (if any) would accrue to J2 as the owner of the horns.

C. Meaning of "employment" in Employment of Foreign Manpower Act

14.43 In *Alka v Public Prosecutor,*[105] the High Court allowed the appellant's appeal against her conviction under s 22(1)(*d*) read with s 22(1)(ii) of the Employment of Foreign Manpower Act[106] ("Act"). The appellant had been charged for making a false statement by declaring that she was employed as a foreign domestic worker by one Anil Tripathi, despite having no intention to be so employed. However, the High Court found that the statement was not false because the appellant was employed within the meaning of the Act.

14.44 The appellant had worked in Singapore as a foreign domestic worker since 2014, but her employment was terminated in October 2017. Wishing to remain in Singapore, she was introduced by her boyfriend to Anil. Prior to 22 December 2017, she signed an "Application for a Domestic Helper Declaration" form, listing Anil as her employer and his

102 *Public Prosecutor v Gumede Sthembiso Joel* [2024] 4 SLR 378 at [37].
103 *Public Prosecutor v Gumede Sthembiso Joel* [2024] 4 SLR 378 at [38].
104 *Public Prosecutor v Gumede Sthembiso Joel* [2024] 4 SLR 378 at [39]–[41].
105 [2024] 5 SLR 1071.
106 Cap 91A, 2009 Rev Ed. The provisions are now s 22(1)(*d*) and s 22(1)(*i*) of the Employment of Foreign Manpower Act 1990 (2020 Rev Ed) respectively.

residence as her workplace. This form was submitted to the Controller of Work Passes. However, on 15 October 2018, she was arrested by the Ministry of Manpower for working as a sales assistant at a shop without a valid work pass, for which she separately pleaded guilty to under s 5(2) read with s 5(7) of the Act and did not appeal.[107] The Prosecution argued that the appellant had falsely declared that she would be employed by Anil as his foreign domestic worker. The court below found that there was an arrangement between them for mutual benefit – Anil would be listed as her employer, allowing her to remain in Singapore, while she would cook for him several times a week. As a result, the lower court held that the charge was made out.[108] On appeal, however, the High Court ruled that the charge was not proven as the appellant was indeed employed within the meaning of the Act. The case ultimately hinged on the definition of "employment" under the Act and whether the appellant's statement was materially false.

14.45 The High Court began its analysis by referring to the definition of "employ" under s 2 of the Act.[109] The definition of "employ" under s 2 of the Act is as follows:[110]

> In this Act, unless the context otherwise requires —
>
> …
>
> "employ" means to engage or use the service of any person for the purpose —
>
> (a) of any work, or
>
> (b) of providing any training for that person,
>
> whether under a contract of service or otherwise, and with or without salary.

14.46 The court held that it was important to note the broad nature of this definition which includes engagement or use of service for "any work" without prescribing any type or characteristic, duration or degree of supervision needed. The definition also makes clear that payment of salary is entirely irrelevant when determining whether there is "employment". The court thus viewed that this definition would encompass occasional cooking or other minor work without pay.[111]

107 *Alka v Public Prosecutor* [2024] 5 SLR 1071 at [1] and [4]–[5].
108 *Alka v Public Prosecutor* [2024] 5 SLR 1071 at [6].
109 *Alka v Public Prosecutor* [2024] 5 SLR 1071 at [15].
110 The same definition is now found in s 2 of the Employment of Foreign Manpower Act 1990 (2020 Rev Ed).
111 *Alka v Public Prosecutor* [2024] 5 SLR 1071 at [16].

14.47 The Prosecution submitted that the appellant was not employed by Anil because both of them had breached various regulations under the Employment of Foreign Manpower (Work Passes) Regulations 2012,[112] which, among other things, required an employee to only work for the employer specified in the work permit.[113]

14.48 The Prosecution submitted that the Regulations guide the interpretation of "employment" and indicate features of employment as a foreign domestic worker. The High Court rejected this argument. The court held that subsidiary legislation such as the Regulations cannot modify or delineate the definition used in primary legislation enacted by Parliament. The only exception would be if there is a specific empowering provision in the latter, though the court noted that even that may raise other problems.[114]

14.49 Accordingly, the court held that the broad interpretation of "employment" under s 2 of the Act should be applied without regard to the Regulations. The charge against the appellant, which did not refer to the Regulations, cannot be construed to include a violation of the Regulations, because this would improperly expand a narrowly framed allegation to encompass matters not specified in the charge. The court viewed that such an approach would unfairly alter the nature of the case and require the appellant to present a completely different defence.[115]

14.50 Applying the above definition, the court found that the Prosecution's evidence did not support a finding that there was no employment, noting that by the Prosecution's own case at trial and appeal, the appellant had cooked for Anil on an *ad hoc* basis.[116] Thus, the High Court allowed the appellant's appeal against conviction and acquitted the appellant of the charge against her. The court further declined to substitute any other charge, leaving it instead to the prosecuting agency to consider if any charge under the Regulations could be made out.[117]

112 S 569/2012.
113 *Alka v Public Prosecutor* [2024] 5 SLR 1071 at [17].
114 *Alka v Public Prosecutor* [2024] 5 SLR 1071 at [18]. The court cited the Court of Appeal case of *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Company)* [2022] 1 SLR 771 in support of its position.
115 *Alka v Public Prosecutor* [2024] 5 SLR 1071 at [19].
116 *Alka v Public Prosecutor* [2024] 5 SLR 1071 at [21].
117 *Alka v Public Prosecutor* [2024] 5 SLR 1071 at [23].

D. Meaning of "import" and "consent" in Endangered Species (Import and Export) Act

14.51 The case of *Dao Thi Boi v Public Prosecutor*[118] involved a company which brought into Singapore, as a freight forwarder and consignee, a container containing elephant tusks, from Nigeria, without a valid permit.[119] The accused is the director of the company, who is charged for consenting to the said importing of the elephant tusks (which is a scheduled species), an offence under s 4(1) read with s 20(1)(*a*) of the Endangered Species (Import and Export) Act[120] ("ESA"). The accused claimed trial to the charge, arguing firstly that there was no "importing" of the elephant tusks because she was not aware that the containers contained elephant tusks; secondly that she had not consented to the importing; thirdly, that she could rely on the statutory defence of reasonable care under s 6(1) of the ESA.[121] The District Court convicted the accused of the charge, and she appealed to the High Court.

14.52 The relevant provisions in the ESA are as follows:

> **Restriction on import, export, etc., of scheduled species**
>
> 4.—(1) Any person who imports, exports, re-exports or introduces from the sea any scheduled species without a permit shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $50,000 for each such scheduled species (but not to exceed in the aggregate $500,000) or to imprisonment for a term not exceeding 2 years or to both.
>
> "Import" is defined in s 2 of the ESA to mean to bring or cause to be brought into Singapore by land, sea or air any scheduled species other than any scheduled species in transit in Singapore.
>
> **Defence to offence under section 4 or 5**
>
> 6.—(1) Subject to subsection (2), in any proceedings for an offence under section 4 or 5, it shall be a defence for the person charged to prove —
>
> (*a*) that the commission of the offence was due to the act or default of another person or to some other cause beyond his control; and
>
> (*b*) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or by any person under his control.

118 [2024] 6 SLR 277.
119 *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 at [1]–[15].
120 Cap 92A, 2008 Rev Ed.
121 *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 at [16]–[59].

> **Offences by bodies corporate, etc.**
>
> 20.—(1) Where an offence under this Act committed by a body corporate is proved —
>
> (*a*) to have been committed with the consent or connivance of an officer; or
>
> (*b*) to be attributable to any neglect on his part,
>
> the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

14.53 The High Court dealt first with the issue of the meaning of "import" under the ESA. The accused argued that the element of "import" can only be established if the Prosecution is able to prove that the accused had knowledge of the nature of the thing being imported. The High Court rejected this argument and held instead that there is importation once a shipment enters Singapore physically. The court's principal points were as follows:

> (a) The plain wording of s 4 of the ESA does not require knowledge of the nature of the thing being imported, and the definition of "import" in s 2 of the ESA refers only to a physical act.[122]
>
> (b) Although there is a presumption that the Prosecution is required to prove some form of fault for any offence-creating statutory provision, that presumption may be displaced. This includes situations such as where the offence relates to issues of social concern, or where strict liability will be effective in promoting the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act and the accused persons can do something to avoid committing the offence.[123]
>
> (c) The relevant extrinsic material supports the interpretation that "import" in this context does not require proof of knowledge (*ie*, the presumption of fault is displaced). In particular, the relevant parliamentary debates suggest that offences relating to illegal wildlife trade give rise to social concern.[124]

122 *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 at [62].

123 *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 at [62], citing cases such as *Tan Cheng Kwee v Public Prosecutor* [2002] 2 SLR(R) 122 and *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554.

124 *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 at [63]–[67].

(d) Section 6 of the ESA provides for a statutory defence of reasonable diligence. Given that Parliament provided for such a defence, its intention is not merely to deter a person from engaging in proscribed conduct but also to compel the person to take enough care to avoid the occurrence of the elements of the offence. If s 4 of the ESA is read to require proof of knowledge, then s 6 would become practically otiose – it would make it too easy for a person to evade liability simply by denying knowledge.[125]

(e) Section 6 of the ESA mitigates potential harshness or unfairness which might result from interpreting the s 4 offence as being one of strict liability. Even where a person brings into Singapore a scheduled species without knowing the nature of what was brought it, the person will not be guilty of an offence under s 4 so long as he can show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.[126]

14.54 In this case, the accused could therefore be said to have imported the elephant tusks into Singapore, even though she was not aware that the seized containers contained the elephant tusks.[127]

14.55 The High Court next dealt with the issue of whether the accused had consented to her company's importation of the elephant tusks. The court held that the test of consent under s 20(1)(*a*) of the ESA is "whether the offender can be shown to have known the material facts that constituted the offence by the body corporate in which he is an officer and to have agreed to its conduct of the business on the basis of those facts".[128] In particular, given that the court had held that s 4 of the ESA did not require proof of knowledge, it cannot be right that the Prosecution does not have to prove that the accused knew of the contents of the seized containers if she was acting in her own name, but somehow has to prove such knowledge if she was acting in the name of her company.[129] The court added that where an offence does not include knowledge as a requirement, the Prosecution needs to prove only that the secondary offender under s 20(1) of the ESA has knowledge of the act which subsequently turns out to constitute the offence.[130] On the evidence, the company was a one-person operation – the one person

125 *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 at [68]–[70].
126 *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 at [71].
127 *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 at [73].
128 *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 at [74].
129 *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 at [75].
130 *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 at [75].

being the accused. Thus, whatever the company knew and did, it was the accused's knowledge and act, and so the accused did consent to the company's importing of the elephant tusks.[131]

14.56 Finally, the High Court dealt with the issue of whether the accused could rely on the statutory defence in s 6 of the ESA. It emphasised that this is a highly context-dependent inquiry. The court held that on the evidence the accused did not take all reasonable precautions or exercised all due diligence to avoid the commission of the offence under s 4(1) of the ESA.[132]

131 *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 at [76]–[77].
132 *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 at [78]–[80].