Published on e-First 18 April 2023

14. CRIMINAL LAW

TAN Ee Kuan[1]
MA (Cantab), LLM (Harvard University);
Advocate and Solicitor (Singapore);
Assistant Registrar, Supreme Court of Singapore.

Sarah **SIAW**
BA (Jurisprudence) (Oxon), LLM candidate (Harvard University);
Advocate and Solicitor (Singapore).

LU Yiwei
MA (Cantab), LLM (Columbia University);
Advocate and Solicitor (Singapore).

I. Introduction

14.1 This review is in three parts. These will examine cases involving offences under the Penal Code 1871,[2] the Misuse of Drugs Act 1973[3] ("MDA") and other statutes respectively.

II. Offences under the Penal Code

A. Common intention in the context of murder

14.2 In *Public Prosecutor v Azlin bte Arujunah*,[4] a five-judge *coram* of the Court of Appeal examined the doctrine of common intention in the context of murder.

14.3 The two accused persons, Azlin bte Arujunah and Ridzuan bin Mega Abdul Rahman, were a couple who inflicted heinous acts of abuse on their young son ("the Deceased"). In particular, on four occasions, Azlin and/or Ridzuan poured very hot water on the Deceased, causing him severe injuries. These constituted a cumulative injury ("Cumulative Scald Injury") that led to the death of the Deceased.

1 Any views expressed in this chapter are the authors' own views, and do not represent the views of the Attorney-General's Chambers or the Supreme Court of Singapore.
2 2020 Rev Ed.
3 2020 Rev Ed.
4 [2022] 2 SLR 825. The High Court's decision was reviewed in 2020: see (2020) 21 SAL Ann Rev 446 at 459–462, paras 14.43–14.51.

14.4 Azlin and Ridzuan were charged with murder by common intention, under s 300(*c*) read with s 34 of the Penal Code. At trial, the trial judge found that Azlin had committed the first and third scalding incidents alone. In the second incident, both Azlin and Ridzuan had scalded the Deceased. In the fourth incident, Ridzuan had performed the acts of scalding, but Azlin had intended these acts as well. These findings were undisputed on appeal.

14.5 The trial judge acquitted Azlin and Ridzuan on their respective murder charges, finding that there was insufficient evidence to infer that Azlin and Ridzun had intended to cause a "s 300(*c*) injury" (that is, an injury that was sufficient in the ordinary cause of nature to cause death). The Prosecution then invited the court to convict Azlin on an amended charge under s 300(*c*) read with s 34 of the Penal Code ("Alternative Charge"). The Alternative Charge read as follows:[5]

> You … are charged that you, between 15 October 2016 and 22 October 2016 … did commit murder by causing the death of [the Deceased], to wit, by intentionally inflicting severe scald injuries on him on four incidents, namely:
>
> a) On or around 15 to 17 October 2016, you poured/splashed hot water (above 70 degrees Celsius) at the Deceased multiple times [Incident 1];
>
> b) On or around 17 to 19 October 2016, together with [Ridzuan] and in furtherance of the common intention of you both, both of you splashed several cups of hot water (above 70 degrees Celsius) at the Deceased [Incident 2];
>
> c) On or around 21 October 2016, you threw 9 to 10 cups of hot water (above 70 degrees Celsius) at the Deceased [Incident 3]; and
>
> d) On 22 October 2016 at about 12 noon, together with Ridzuan and in furtherance of the common intention of you both, Ridzuan poured/splashed hot water (above 70 degrees Celsius) at the Deceased [Incident 4];
>
> which injuries are cumulatively sufficient in the ordinary course of nature to cause death, and you have thereby committed an offence under s 300(*c*) read with s 34 in respect of incidents (b) and (d) above, and punishable under s 302(2) of the [Penal Code].

14.6 The trial judge rejected the Alternative Charge. First, the judge held that s 34 of the Penal Code did not enable the attribution of liability for *specific acts that formed part of the "criminal act"* that was the subject of a common intention charge. Section 34 only provided for constructive liability for *the offence* arising out of the entire "criminal act". Second,

5 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [3].

the judge held that Ridzuan's acts could only be attributed to Azlin to render her liable under s 300(*c*) of the Penal Code if the pair had shared a common intention to inflict a s 300(*c*) injury, relying on the Court of Appeal's decision in *Daniel Vijay s/o Katherasan v Public Prosecutor*[6] ("*Daniel Vijay*"). However, a common intention to cause a s 300(*c*) injury had not been proved.[7] Thus, the judge rejected the Alternative Charge, and instead convicted Azlin and Ridzuan on charges of voluntarily causing grievous hurt by means of a heated substance, and sentenced them accordingly.

14.7 The Prosecution appealed against the trial judge's decision not to convict Azlin on the Alternative Charge. Further, the Prosecution appealed against the trial judge's decision not to sentence Azlin and Ridzuan to life imprisonment. The following paragraphs will focus on the Prosecution's appeal regarding the Alternative Charge.

14.8 The Court of Appeal began its analysis by setting out the law relating to ss 300(*c*) and 34 of the Penal Code respectively:

> (a) **Section 300(*c*)**: There were three elements: (i) death must have been caused by the acts of the accused person; (ii) the bodily injury inflicted by those acts must have been sufficient in the ordinary course of nature to cause death; and (iii) the act resulting in the bodily injury must have been done with the intention of causing the (specific) injury inflicted ("the *Virsa Singh* test").[8]
>
> (b) **Section 34**: There were also three elements: (i) a "criminal act" done by several persons (the criminal act element); (ii) that act must have been done "in furtherance of the common intention of all" (the common intention element); and (iii) the offender must have participated in the criminal act (the participation element).[9]

14.9 Next, the court noted that s 34 could potentially be employed in three scenarios, and laid down the applicable principles in each scenario. The court first considered two established scenarios, namely, the "dual crime" and "single crime" scenarios.

> (a) "**Dual crime" scenario**: This arose where the offenders commonly intended to commit a "primary criminal act", but in the course of carrying out that primary criminal act, one offender

6 [2010] 4 SLR 1119.
7 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [5].
8 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [71]–[72].
9 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [85(a)].

("the primary offender") directly committed a "collateral criminal act". Under existing law, where murder under s 300(*c*) of the Penal Code was committed by a primary offender as the collateral criminal act in a "dual crime" scenario, the secondary offender would only be liable under s 300(*c*) read with s 34 of the Penal Code if he had intended that an injury that was sufficient in the ordinary cause of nature to cause death be inflicted ("the *Daniel Vijay* test").[10] In other words, the common intention element of liability under s 34 of the Penal Code would only be fulfilled in a "dual crime" scenario if the *Daniel Vijay* test was met.

(b) **"Single crime" scenario**: This scenario arose where one criminal act was commonly intended by all the offenders, and was carried out through a variety of different constituent parts by a variety of actors, giving rise to one offence that all the offenders were charged with. This scenario had two configurations: in the first, only one offender directly committed the physical act underlying the offence charged; in the second, the offenders' actions taken together constituted the physical act underlying the offence charged. In the "single crime" scenario, the *Daniel Vijay* test did not apply. In explaining this, the court emphasised that the "single crime" scenario was fundamentally different from the "dual crime" scenario: all the offenders commonly intended to commit the criminal act that was committed. Hence, the premise of *Daniel Vijay*[11] – that it might be unjust to hold a secondary offender liable for a collateral offence in a "dual crime" situation that he did not intend – did not apply in "single crime" cases. Thus, the common intention element of liability under s 34 of the Penal Code would be satisfied in a "single crime" scenario if the *Virsa Singh* test was met.[12]

14.10 Next, the court outlined the third scenario, which reflected the facts of the instant case. This arose where there was a variety of acts committed by multiple offenders, and each act could potentially form a distinct offence because the offenders' intentions in respect of the *aggregate* of the acts might differ, even if they might share the intention to commit some of the acts. Moreover, these acts, when aggregated, potentially formed a different offence.[13]

10 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [87], [96(c)] and [99].
11 See para 14.6 above.
12 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [101]–[103], [109], [113(b)], [118] and [121(b)].
13 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [124].

14.11 The court held that the Alternative Charge, which covered this third scenario, was not a s 300(*c*) common intention murder charge. This was because s 34 was only being employed in the Alternative Charge to satisfy *part* of the criminal act forming the *actus reus* of a s 300(*c*) murder (namely, the second and fourth incidents), whereas s 34 was typically used to render an offender liable for *all the elements* of an offence once the requirements of s 34 were satisfied. Thus, the *Daniel Vijay* test was irrelevant to the Alternative Charge. That test went toward the common intention element, but here, the Alternative Charge did not even allege that the entire criminal act – the four scalding incidents – were done by persons in furtherance of their common intention.[14]

14.12 The court turned to consider whether s 34 could be used in the way reflected in the Alternative Charge: namely, to attribute liability for component acts by another person (here, the second and fourth incidents) to the offender (Azlin), so as to aggregate those acts with other acts by the offender (here, the first and third incidents) to form a "larger" criminal act (the four scalding incidents) that formed the basis of the offence charged. The court held that s 34 could be used in this way, for two main reasons:

> (a) First, the text of s 34 permitted this interpretation. Section 34 rendered an offender "liable" for a "criminal act" done by several persons in furtherance of their common intention as if "the act" were done by him alone. It did not render one liable for an "offence" committed by several persons in furtherance of their common intention as if "the offence" were done by one alone.[15]
>
> (b) Second, this interpretation promoted the purpose of s 34, which was to deter group crimes, by expanding the criminal liability of those who intended and participated in group crimes beyond their specific actions, thus holding those who were most culpable liable for the full extent of their intended acts.[16]

14.13 That said, the court observed that it was important to consider, in each case, whether the aggregation of the component acts and intentions would achieve the concurrence of the *actus reus* and *mens rea* of the offence charged.[17]

14 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [128], [129] and [131].
15 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [148] and [158].
16 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [160], [161], [165] and [167].
17 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [172] and [180(e)].

14.14 In the light of these principles, the court examined whether the Alternative Charge was made out. The court found that the Alternative Charge was established:

> (a) First, the requirements of s 34 were satisfied to attribute Ridzuan's acts in the second and fourth incidents to Azlin. The criminal act element was met: there were criminal acts (the second and fourth incidents) done by several persons (Azlin and Ridzuan). The participation and common intention elements were also fulfilled: those two incidents were done in furtherance of Azlin and Ridzuan's common intention, and Azlin participated in those incidents.[18]
>
> (b) Second, the "aggregation" of Azlin's acts and intentions in the four scalding incidents satisfied the *actus reus* (causation of the Cumulative Scald Injury) and *mens rea* (intention to cause the Cumulative Scald Injury) elements of the Alternative Charge.
>
> > (i) ***Actus reus***: Azlin's commission of the first and third incidents, together with her joint commission of the second and fourth incidents with Ridzuan, gave rise to the Cumulative Scald Injury. It was undisputed that this was sufficient in the ordinary course of nature to cause death, and did cause the death, of the Deceased.[19]
> >
> > (ii) ***Mens rea***: It was undisputed that Azlin intended the four scalding incidents. The aggregation of Azlin's intention to commit the first and third incidents with her intention to commit the second and fourth incidents with Ridzuan amounted to an intention to commit all four scalding incidents to cause the Cumulative Scald Injury. This satisfied the *mens rea* requirement for the Alternative Charge, which was the intention to cause the Cumulative Scald Injury.[20]

14.15 For these reasons, the court found that the Alternative Charge was established and convicted Azlin on the said charge.

B. Murder – The partial defence of diminished responsibility

14.16 In *Ahmed Salim v Public Prosecutor*,[21] the Court of Appeal gave its preliminary views on whether the fact that a murder was premeditated

18 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [182].
19 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [183(a)].
20 *Public Prosecutor v Azlin bte Arujunah* [2022] 2 SLR 825 at [183(b)].
21 [2022] 1 SLR 1110.

precluded an accused person from relying on the partial defence of diminished responsibility.

14.17 The appellant was tried under s 300(*a*) of the Penal Code for murdering his ex-fiancée after finding out that she had started seeing another man. He premeditated the murder, selecting a rope as his weapon (because it was soft, easily hidden and not unlawful to carry in public) and choosing a hotel as the place of murder (because of the privacy it offered). Before killing her, he withdrew nearly all the money in his bank account in order to remit to his family abroad. The appellant then brought the victim to the hotel room and killed her using a bath towel and the rope.

14.18 At trial, the appellant sought to rely (amongst other defences) on the partial defence of diminished responsibility, pursuant to Exception 7 to s 300, on the basis that he had been suffering from an adjustment disorder ("AD") at the time of the offence. This partial defence required proof that (a) the appellant was suffering from an abnormality of mind; (b) the abnormality of mind (i) arose from a condition of arrested or retarded development of mind or from any inherent cause; or (ii) was induced by disease or injury; and (c) the abnormality of mind substantially impaired his mental responsibility for his acts and omissions in relation to his offence. The High Court found that the first two requirements of diminished responsibility were satisfied but the third requirement was not. The appellant was sentenced to the death penalty.

14.19 On appeal, the appellant maintained that the AD had substantially diminished his responsibility for the murder. This presented a legal question to the Court of Appeal, namely, whether the fact that a murder is premeditated precludes an accused person from availing himself of the partial defence of diminished responsibility. Though the case could be resolved on its facts, the court set out its views on this issue in order to provide guidance for further consideration in a future case.[22]

14.20 In the court's view, the fact that an offence was premeditated did not preclude an accused person from proving the first two elements of diminished responsibility.[23] An accused person might have an abnormality of mind of the type described in Exception 7 to s 300 of the Penal Code 1871, yet still be able to premeditate a murder. In *G Krishnasamy Naidu v Public Prosecutor*[24] ("*Krishnasamy*"), for instance, the offender had planned to carry out a murder while suffering from morbid jealousy.[25]

22 *Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 at [30]–[31].
23 See para 14.17 above.
24 [2006] 4 SLR(R) 874.
25 *Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 at [33].

14.21 As for the third element of diminished responsibility, there were typically three ways in which a psychiatric condition might substantially impair a person's mental responsibility: if it (a) affected his perception of physical acts and matters; (b) hindered his ability to form a rational judgment as to whether an act was right or wrong; or (c) undermined his ability to exercise will power to control physical acts in accordance with that rational judgment.[26] The court set out its views on the significance of premeditation in relation to these scenarios, as follows:

> (a) Where an accused person killed the victim in accordance with a premeditated plan, his abnormality of mind would typically not have substantially impaired his capacity to understand events, since he must have comprehended what he was doing in order to follow the plan.[27]
>
> (b) Premeditation would also make it more difficult for an accused person to show that his self-control was substantially impaired. An accused person must prove that he *could not* (rather than merely *did not*) resist his impulses. In most premeditated murders, however, there would be a considerable period of time between premeditation and execution, which might afford the accused person the opportunity to regain rational control over his actions. If the accused person took deliberate steps towards executing the plan, despite having moments of rational control where he could have desisted, that would point against a loss of self-control.[28]
>
> (c) Nonetheless, an accused person's abnormality of mind might have impaired his rationality in *coming to the decision* to kill the victim. Even if an accused person knew what he was doing, and to that extent had control over his conscious and deliberate actions, his actions might have flowed from a decision produced by a disordered mind that was not functioning rationally.[29] In *Krishnasamy*, for instance, the offender's abnormality of mind (morbid jealousy) generated an abnormally intense reaction to his wife's perceived infidelity, and led him to believe that the only way to end his personal suffering was to kill her. The morbid jealousy thus substantially impaired his ability to make rational decisions, and caused him to make abnormal and disordered decisions.[30]

26 *Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 at [16] and [34]–[35].
27 *Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 at [36].
28 *Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 at [37].
29 *Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 at [38].
30 *Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 at [45]–[49].

14.22 The court described the principle as follows: an accused person who kills a victim in accordance with a premeditated plan may be able to prove diminished responsibility if he can prove, on a balance of probabilities, that his mental disorder substantially impaired his ability to make rational or logical decisions, and the disorder caused him to decide to kill the victim. In that scenario, the decision to kill would be the product of a disordered mind, notwithstanding that the accused person followed through on that decision under a veneer of rationality.[31] In such cases, the accused person must also prove the following:

> (a) *But for* his abnormality of mind, he would not have made the decision to kill the victim.[32]
>
> (b) In executing his intention to murder, he had no realistic moment of rationality and self-control that would have enabled him to resile from that intention or plan.[33]

14.23 On the facts, the appellant's AD did not substantially impair his mental responsibility for the murder. He was rational, had self-control, and could fully comprehend events at the moment when he finally decided to kill the victim. He made the rational decision to kill her due to his very real and logical fear that she would call the police if she survived his initial attack. This fear, rather than his AD, was the operative cause behind his decision to kill her. The court found that the partial defence of diminished responsibility was not made out and dismissed the appeal.[34]

C. Constitutionality of sections 299 and 300 of the Penal Code

14.24 In *Teo Ghim Heng v Public Prosecutor*,[35] the Court of Appeal rejected two challenges to the constitutionality of ss 299 and 300(*a*) of the Penal Code – one pertaining to the separation of powers, and the other pertaining to Art 12(1) of the Constitution of the Republic of Singapore[36] ("the Constitution").

14.25 The appellant had been tried under s 300(*a*) of the Penal Code for murdering his wife and daughter. At trial, he sought to invoke the partial defences of diminished responsibility and grave and sudden provocation, and also argued that ss 299 and 300 of the Penal Code were unconstitutional. The High Court found that the defences were not made

31 *Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 at [50].
32 *Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 at [51].
33 *Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 at [52].
34 *Ahmed Salim v Public Prosecutor* [2022] 1 SLR 1110 at [57]–[59] and [70].
35 [2022] 1 SLR 1240.
36 1999 Reprint.

out and that ss 299 and 300(*a*) were constitutional. The appellant was convicted and sentenced to the death penalty.

14.26 On appeal, the appellant did not pursue the defence of provocation but only the defence of diminished responsibility. Upon consideration of the evidence, the Court of Appeal agreed with the High Court that the appellant did not qualify for a diagnosis of major depressive disorder, and diminished responsibility hence did not apply.[37] The court then turned to the appellant's two constitutional challenges.

14.27 The appellant's first challenge was that s 300(*a*) and the first limb of s 299 involved identical "ingredients" but attracted different sentences. Section 300(*a*) pertains to the offence of murder and is punishable with death, whereas s 299 pertains to the offence of culpable homicide and does not carry the death penalty. In the appellant's view, this effectively permitted the Prosecution to select an offender's sentence, thereby encroaching on the Judiciary's sentencing powers and offending the separation of powers doctrine. The two provisions in question are as follows:

> **Culpable homicide**
>
> **299.** Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.
>
> **Murder**
>
> **300.** Except in the cases hereinafter excepted culpable homicide is murder —
>
> (*a*) if the act by which the death is caused is done with the intention of causing death;
>
> …

14.28 The court rejected the appellant's argument. It began by noting that the first limbs of ss 299 and 300(*a*) were not truly identical. Though both provisions required the same act and intention on the part of the accused person, s 300(*a*) *additionally* required that the accused person not satisfy any of the seven enumerated exceptions to murder. Section 300(*a*) was a more serious offence than s 299. An accused person would only be liable under s 300(*a*) if he both (a) satisfied the act and intention elements under s 299; and (b) failed to satisfy any of the exceptions to murder under s 300.[38] While the onus was on the accused person to prove the exceptions under s 300 rather than on the Prosecution to prove that no

37 *Teo Ghim Heng v Public Prosecutor* [2022] 1 SLR 1240 at [109].
38 *Teo Ghim Heng v Public Prosecutor* [2022] 1 SLR 1240 at [118] and [120].

exceptions applied, this was immaterial. The key point was that ss 299 and 300(*a*) did not share the same legal requirements for liability.[39]

14.29 The mere fact that ss 299 and 300(*a*) overlapped did not violate the separation of powers doctrine. There were many other instances of overlapping offences which shared one or more identical actions or intentions, but where one of the offences required an additional fact or element to be proved, and therefore carried a harsher punishment. Examples included ss 323 and 325 of the Penal Code (voluntarily causing hurt, compared with voluntarily causing *grievous* hurt) and ss 406 and 408 of the Penal Code (criminal breach of trust, compared with criminal breach of trust *by employees*). The appellant appeared to accept that such provisions did not violate the separation of powers.[40]

14.30 Sections 299 and 300(*a*) did not encroach on judicial power because they did not enable the Prosecution to choose the *sentence* to be imposed upon the appellant. The Prosecution's discretion was limited to deciding upon the appropriate charge, a function widely recognised to be within its remit. In line with the principle of separation of powers, it was for the Legislature to prescribe the sentence for an offence (as it had done by stipulating the death penalty for s 300(*a*)), and for the court to impose a sentence within the limits prescribed by the Legislature.[41] The present scenario was distinguishable from *Mohammed Muktar Ali v The Queen*,[42] where the Legislature had given the Prosecution discretion to choose the court in which the offender was to be tried (without any change to the charge). As different courts had different sentencing powers, whether the offender could be sentenced to death depended on the Prosecution's choice of court. The effect of that legislation, unlike the legislation here, was to allow the Prosecution (and not the court) to select the offender's sentence. Those facts were fundamentally different from the present case, where the Prosecution could choose only the charge to be brought.[43]

14.31 The appellant's second constitutional challenge was that s 300(*a*) and the first limb of s 299 contravened Art 12(1) of the Constitution, which states: "All persons are equal before the law and entitled to the equal protection of the law." The established test for the constitutionality of legislation under Art 12(1) of the Constitution was the reasonable classification test. This required, amongst others, that the classification prescribed by the statute be founded on an intelligible differentia. The

39 *Teo Ghim Heng v Public Prosecutor* [2022] 1 SLR 1240 at [119]–[120] and [124].
40 *Teo Ghim Heng v Public Prosecutor* [2022] 1 SLR 1240 at [123]–[124].
41 *Teo Ghim Heng v Public Prosecutor* [2022] 1 SLR 1240 at [125]–[131].
42 [1992] 2 AC 93.
43 *Teo Ghim Heng v Public Prosecutor* [2022] 1 SLR 1240 at [126]–[129].

appellant contended that there was no intelligible differentia between the elements required to satisfy ss 299 and 300(*a*) of the Penal Code.

14.32 The court rejected this argument also. The question of contravening Art 12 only arose where persons who were situated similarly in all material respects were nonetheless treated differently. In such cases, it would become necessary to examine the basis for their being treated differently, and whether that was justified. Here, however, the appellant was not in a similar situation to persons charged under s 299 of the Penal Code. The potential availability of a special exception was a material factor that served to differentiate the two classes of persons. There was no basis for any objection under Art 12.[44]

14.33 Having rejected the appellant's constitutional challenges, the court dismissed his appeal against conviction and sentence.

D. Cheating – The meaning of "dishonest" in the term "dishonest concealment of facts" in Explanation 1 to section 415 of the Penal Code

14.34 In *Poh Yuan Nie v Public Prosecutor*,[45] the Court of Appeal explained the meaning of "dishonest" in the term "dishonest concealment of facts" in Explanation 1 to s 415 of the Penal Code.

14.35 The applicants were, respectively, the principal and a teacher at a private tuition centre. Together with their colleagues, they carried out a scheme to aid their students to cheat in the 2016 GCE "O" Level examinations. After the scheme was uncovered, the applicants were charged with several counts of abetment by conspiracy to cheat. In essence, the charges alleged that the applicants had conspired to cheat the Singapore Examinations and Assessment Board by deceiving the board into thinking that the relevant students were taking the relevant examination papers unaided. The deception specified in the charges was that the applicants had *dishonestly concealed* the fact that their students were receiving assistance from the applicants and their colleagues. This element of the charges was based on Explanation 1 to s 415 of the Penal Code, which is set out together with s 415 below:

> **Cheating**
>
> **415.** Whoever, by deceiving any person, whether or not such deception was the sole or main inducement, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person

44 *Teo Ghim Heng v Public Prosecutor* [2022] 1 SLR 1240 at [133]–[138].
45 [2022] SGCA 74.

> shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation or property, is said to "cheat".
>
> *Explanation* 1.—A dishonest concealment of facts is a deception within the meaning of this section.

14.36 The applicants' main defence was that their conduct was not "dishonest" because, under s 24 of the Penal Code, dishonesty involves the wrongful gain or loss of property, and their conduct did not involve the wrongful gain or loss of property. Sections 23 and 24 of the Penal Code are set out below:

> **'Wrongful gain' and 'wrongful loss'**
>
> **23.** 'Wrongful gain' is gain by unlawful means of property to which the person gaining it is not legally entitled; 'wrongful loss' is loss by unlawful means of property to which the person losing it is legally entitled.
>
> **'Dishonestly'**
>
> **24.** Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing dishonestly.

14.37 The trial judge rejected the applicants' defence and convicted them accordingly. On appeal, the applicants' appeals against conviction and sentence were dismissed. The applicants then applied for and obtained leave to bring a criminal reference to the Court of Appeal, in respect of the following question:[46]

> For the purposes of an offence of cheating under s 415 of the Penal Code … where the accused is charged with committing a 'dishonest concealment of facts' within the meaning of Explanation 1 to the same provision, must the meaning of 'dishonest' be determined with reference to the definition of 'dishonestly' under s 24 of the Penal Code?

14.38 The Court of Appeal held that the answer to the question was "No". In other words, the offence of cheating as defined in s 415 of the Penal Code can be constituted by a concealment of facts that was not made dishonestly within the meaning of s 24 of the Penal Code (that is, by a concealment that was not intended to result in anyone wrongfully gaining or losing property). This was because the word "dishonest" in the phrase "dishonest concealment of facts" in Explanation 1 to s 415 of the Penal Code bears its ordinary sense rather than the special sense given to it by s 24 of the Penal Code.[47] The court explained this by applying

46 *Poh Yuan Nie v Public Prosecutor* [2022] SGCA 74 at [9].
47 *Poh Yuan Nie v Public Prosecutor* [2022] SGCA 74 at [15].

the three-step framework for purposive interpretation laid down in *Tan Cheng Bock v Attorney-General* ("*Tan Cheng Bock*").[48]

14.39 The first step was to consider the possible interpretations of "dishonest" in Explanation 1 to s 415 of the Penal Code. Four possible interpretations arose:[49]

> (a) First, a concealment of facts which is "dishonest" as defined in s 24 of the Penal Code amounts to a deception under s 415, but other types of concealment of facts may suffice as well, such as an intentional or fraudulent concealment of facts ("First Interpretation").
>
> (b) Second, only a concealment of facts which is "dishonest" as defined in s 24 of the Penal Code amounts to a deception under s 415 ("Second Interpretation").
>
> (c) Third, a dishonest concealment of facts is one where the *character* of the concealment is dishonest, in the ordinary sense of the word. On this view, the adjective "dishonest" describes the quality of *the act of concealment*, rather than the accused's state of mind. In other words, "dishonest" applies to the *actus reus* and not the *mens rea* of the offence under s 415 of the Penal Code ("Third Interpretation").
>
> (d) Fourth, a dishonest concealment of facts is one which is done with a *state of mind* that amounts to an intention to deceive. On this view, the adjective "dishonest" describes *the mental state of the accused*, so as to differentiate concealments of facts which would attract liability from those which do not, such as negligent or innocent concealments of facts ("Fourth Interpretation").

14.40 The second step was to consider the legislative purpose of s 415 of the Penal Code. The court turned first to the text of s 415 and observed that it contained two alternative limbs:[50]

> (a) First, whoever, by deceiving any person, whether or not such deception was the sole or main inducement, fraudulently or dishonestly induces the person so deceived *to deliver any property to any person, or to consent that any person shall retain any property*, is said to "cheat" ("First Limb").
>
> (b) Second, whoever, by deceiving any person, whether or not such deception was the sole or main inducement, intentionally

48 [2017] 2 SLR 850.
49 *Poh Yuan Nie v Public Prosecutor* [2022] SGCA 74 at [18].
50 *Poh Yuan Nie v Public Prosecutor* [2022] SGCA 74 at [6] and [21].

induces the person so deceived *to do or omit to do anything which he would not do or omit to do if he were not so deceived*, and which act or omission causes or is likely to cause *damage or harm to any person in body, mind, reputation or property*, is said to "cheat" ("Second Limb").

14.41 The court made two points about s 415:

(a) First, although s 415 was found in Chapter XVII of the Penal Code, which was titled "Offences Against Property", the wording of the Second Limb indicated that the offence extended beyond offences relating only to property.[51] An offence under the Second Limb need not involve property, but could concern damage or harm to any person in *body, mind or reputation*.[52]

(b) Second, the *mens rea* requirements for the First and Second Limbs differed. The First Limb required the accused to have acted "*fraudulently*" or "*dishonestly*". By contrast, the Second Limb only required the accused to have acted "*intentionally*", which was a less stringent fault element.[53]

14.42 Next, at the third step of the framework of purposive interpretation, the court compared the four possible interpretations of "dishonest" in Explanation 1 to s 415 of the Penal Code with the legislative purpose of s 415:

(a) The court rejected the Second Interpretation. First, such an interpretation would be contrary to the purpose of s 415, because it would tie the offence to the wrongful gain or loss of property, whereas the Second Limb did not necessarily involve property. Further, reading the s 24 definition into Explanation 1 would introduce a *mens rea* requirement that Parliament had specifically omitted from the Second Limb. Additionally, the Second Interpretation was problematic because in many cases, a deception could be arbitrarily framed either as a concealment of fact or as a positive action (on the Second Interpretation, the s 24 definition applied to the former but not the latter). Also, the Second Interpretation would limit the scope of the Second Limb to property damage, whereas "Explanations" in the Penal Code were generally intended to clarify provisions, and not to limit their scope.[54]

51 *Poh Yuan Nie v Public Prosecutor* [2022] SGCA 74 at [22].
52 *Poh Yuan Nie v Public Prosecutor* [2022] SGCA 74 at [23].
53 *Poh Yuan Nie v Public Prosecutor* [2022] SGCA 74 at [24].
54 *Poh Yuan Nie v Public Prosecutor* [2022] SGCA 74 at [27] and [29]–[30].

(b) The court rejected the First Interpretation, reasoning that Explanation 1 would be otiose if it merely stated one type of concealment of facts that would attract liability under s 415, but omitted to state other such types.[55]

(c) Finally, the court preferred the Fourth Interpretation over the Third Interpretation. This was because the plain meaning of "dishonest" connoted a description of an accused's *mental state* (when he concealed the material facts in question), rather than the *act* of concealment.[56]

14.43 Having endorsed the Fourth Interpretation, the court made the following points:

(a) The import of the legislative history of s 415 was limited, save to show that there had been a consistent expansion of the ambit of s 415. This provided some confirmation that s 415 was not intended to be restricted to instances of deception involving property – this supported the Fourth Interpretation.[57]

(b) The term "dishonest" in Explanation 1 to s 415 did not bear the same meaning as the term "dishonestly" as defined under s 24 of the Penal Code. First, although s 7 of the Penal Code provided that every expression explained therein was used in the same sense throughout that legislation, s 7 had to be construed strictly. "Dishonest" and "dishonestly" were different words, relating respectively to nouns and verbs. Second, although s 2(2) of the Interpretation Act[58] provided that where a word was defined in a written law, its cognate forms have corresponding meanings "unless the contrary intention appears", such contrary intention appeared in s 415. Further, s 6A of the Penal Code 1871, which was introduced in 2020, and provided for the consistent application of words defined in the Penal Code, expressly did not apply to "dishonestly" in s 24 – this clarified the underlying legislative intent that the s 24 definition was not meant to be applied to cognate expressions such as "dishonest".[59]

(c) Although s 24 of the Penal Code was amended in 2020 to expressly include an alternative definition of dishonesty based on its ordinary meaning, this did not definitively imply that there had been a lacuna in the Penal Code. Prior to the 2020

55 *Poh Yuan Nie v Public Prosecutor* [2022] SGCA 74 at [32].
56 *Poh Yuan Nie v Public Prosecutor* [2022] SGCA 74 at [33].
57 *Poh Yuan Nie v Public Prosecutor* [2022] SGCA 74 at [39].
58 Cap 1, 2002 Rev Ed.
59 *Poh Yuan Nie v Public Prosecutor* [2022] SGCA 74 at [42]–[44].

amendments, ordinary dishonesty was part of Singapore law in the operation of s 415 and Explanation 1 thereto. The amendment was made out of an abundance of caution and was not intended to change the law.[60]

E. Cheating – Assessing likelihood of harm to financial institutions' reputation under section 417 of the Penal Code

14.44 In *Tang You Liang Andruew v Public Prosecutor*,[61] the High Court decided that a false declaration of the identity of the beneficial owner when opening a bank account caused reputational harm to the bank, thus satisfying one element of the offence of cheating under s 417 of the Penal Code.

14.45 The appellant, under the instructions of the co-accused, provided his services as a nominee director to incorporate companies and open bank accounts in the names of the companies. Pursuant to this arrangement, he opened two accounts in Oversea-Chinese Banking Corporation Limited for two different companies, and an account in Maybank Singapore Limited for a third company. The banks were required to perform a customer due diligence ("CDD") process for the opening of bank accounts, which was one of the core obligations imposed by Notice 626 dated 30 November 2015 ("the Notice") issued by the Monetary Authority of Singapore ("MAS"), pursuant to s 27B of the Monetary Authority of Singapore Act ("MAS Act").[62] One of the crucial pieces of information that the appellant was required to disclose was a declaration of the ultimate beneficial owner ("UBO") of each of the bank accounts (each a "Declaration"). The account opening forms for the banks stated that the banks were entitled to rely on the Declaration on the identity and information relating to the UBO.

14.46 The appellant declared to the banks that he was the UBO for the three companies in applying for the bank accounts. These Declarations were false. He made no effort to state the correct facts at any time. The banks were misled into believing that the appellant was the UBO and the bank accounts were opened on the basis that he was the UBO.

14.47 The appellant was convicted on three charges of s 417 read with s 109 of the Penal Code, for abetting by engaging in a conspiracy with his co-accused person to cheat the banks by deceiving them into believing that he was the UBO of the companies applying for the bank accounts,

60 *Poh Yuan Nie v Public Prosecutor* [2022] SGCA 74 at [49].
61 [2022] SGHC 113.
62 Cap 186, 1999 Rev Ed.

intentionally inducing the banks to omit to consider the UBOs of the companies in their decision to open bank accounts for the companies, which the banks would not have omitted to do otherwise, causing harm to the banks in reputation. The appellant was sentenced to two weeks' imprisonment.

14.48 On appeal, the appellant argued, *inter alia*, that there was a lack of causal connection between the deception caused by the Declarations and the likelihood of harm to the reputation of the banks.

14.49 Kannan Ramesh J rejected the appellant's argument. At the outset, Ramesh J observed that s 415 of the Penal Code requires proof that the deception is likely to cause damage or harm but there is no requirement to show actual harm.[63]

14.50 Ramesh J then turned to analyse the purposes of the CDD process. He referred to s 27B of the MAS Act, citing parliamentary debates that underscored the specific aim of s 27B "to address the dangers posed to global markets by money laundering and terrorism financing, and to safeguard the reputation and integrity of Singapore as a global financial hub and that of its financial institutions".[64] Section 27B(1A)(*a*) addresses these concerns by providing that the MAS may issue directions that "provide for [CDD] measures to be conducted by financial institutions to prevent money laundering and the financing of terrorism".[65]

14.51 Ramesh J further opined that the purpose of the MAS directions was unequivocally captured in the title of the first iteration of the Notice issued in 2007 pursuant to s 27B: "Prevention of Money Laundering and Countering the Financing of Terrorism – Banks".[66] Under the Notice, financial institutions were required to put in place "robust control measures" to detect and deter the flow of illicit funds, of which the CDD process – to identify and ascertain who their customers are – was a key part.[67] Under the Notice, banks had to identify the beneficial owners and take reasonable measures to verify the identities of the beneficial owners.[68] The fact that s 27B carried sanctions for non-compliance further reflected the seriousness with which Parliament sought to address the dangers posed by money laundering and terrorism financing.[69]

63 *Tang You Liang Andruew v Public Prosecutor* [2022] SGHC 113 at [29].
64 *Tang You Liang Andruew v Public Prosecutor* [2022] SGHC 113 at [33].
65 *Tang You Liang Andruew v Public Prosecutor* [2022] SGHC 113 at [34].
66 *Tang You Liang Andruew v Public Prosecutor* [2022] SGHC 113 at [35].
67 *Tang You Liang Andruew v Public Prosecutor* [2022] SGHC 113 at [37].
68 *Tang You Liang Andruew v Public Prosecutor* [2022] SGHC 113 at [39].
69 *Tang You Liang Andruew v Public Prosecutor* [2022] SGHC 113 at [38].

14.52 Based on the parliamentary debates on s 27B of the MAS Act, Ramesh J held that it was clear that failure by financial institutions to detect and deter money laundering and terrorism financing carried the distinct likelihood of, *inter alia*, injury to their reputation.[70] Ramesh J explained that the Declaration was introduced by banks to comply with the requirements in the Notice to identify and verify the UBO. It was thus crucial to the CDD process and a necessary step prior to opening of an account. The importance of the Declaration to the banks was evident.[71]

14.53 Ramesh J reasoned that a truthful UBO Declaration was a prerequisite to mitigating the risk of the banks' system being used for money laundering and terrorism financing, which in turn mitigated the likelihood of risk of reputational harm to the banks.[72] A false Declaration might cause a bank to be seen as opening any account without verifying the true UBO, causing it reputational risk. In addition, the bank might potentially be seen as being associated with money-laundering or fraud cases.[73]

14.54 In conclusion, Ramesh J rejected the appellant's argument. The appellant had defeated the object of s 27B of the MAS Act and the purpose of the measures required by the Notice. The Banks were induced to open the bank accounts, which increased the risk that the Notice and the Declaration were designed to mitigate, and in turn increased the likelihood of risk of reputational harm to the banks.[74] After addressing the appellant's other arguments, Ramesh J dismissed his appeal in its entirety.

II. Offences under the Misuse of Drugs Act

A. Defence of "bailment" for offences of drug trafficking

14.55 In *Arun Ramesh Kumar v Public Prosecutor*,[75] the Court of Appeal clarified the scope of the defence of "bailment" for offences of drug trafficking, elaborating on the principles laid down in *Ramesh a/l Perumal v Public Prosecutor*[76] ("*Ramesh*") and *Roshdi bin Abdullah Altway v Public Prosecutor*[77] ("*Roshdi*").

70 *Tang You Liang Andruew v Public Prosecutor* [2022] SGHC 113 at [42].
71 *Tang You Liang Andruew v Public Prosecutor* [2022] SGHC 113 at [43].
72 *Tang You Liang Andruew v Public Prosecutor* [2022] SGHC 113 at [44].
73 *Tang You Liang Andruew v Public Prosecutor* [2022] SGHC 113 at [44].
74 *Tang You Liang Andruew v Public Prosecutor* [2022] SGHC 113 at [45].
75 [2022] 1 SLR 1152.
76 [2019] 1 SLR 1003.
77 [2022] 1 SLR 535.

14.56 The appellant ("Arun") was arrested by officers from the Central Narcotics Bureau ("CNB"). The officers found a key in Arun's possession, which was used to open his locker at his workplace. Plastic bags containing large quantities of methamphetamine and diamorphine were found in the locker. Arun was, accordingly, charged with two counts of possessing the said drugs for the purpose of trafficking.

14.57 At trial, Arun testified that one "Sara" had asked Arun for a favour in return for a loan. According to Arun, Sara told him to collect a bag from a dustbin, and to wait for someone who would collect the bag from Arun and return it to Sara. But no one showed up and Arun thus decided to place the bag in his locker. He realised that the bag contained drugs when he opened it and saw the three plastic bags of drugs inside.

14.58 Arun was convicted on the charges and sentenced to life imprisonment and 24 strokes of the cane. He then appealed against his conviction and sentence. The central issue on appeal was whether Arun had possessed the three plastic bags of drugs for the purpose of trafficking, which turned on whether the defence of "bailment" applied.

14.59 The Court of Appeal began its analysis by reaffirming two propositions laid down in *Ramesh* and *Roshdi*.

> (a) First, an accused person who takes custody of drugs cannot, without more, be liable for drug trafficking if he intends to and in fact returns the drugs to the person who initially entrusted him with the drugs. This is because such a transfer would not necessarily form part of the process of distributing drugs to end users, which is what underlies the principal legislative policy of the MDA.[78]
>
> (b) Second, where a "bailee" receives drugs intending to return them to the "bailor", the key inquiry as to whether the "bailee" is liable for (possession for the purpose of) trafficking is whether he knew or intended that the "bailment" was in some way part of the process of supply or distribution of the drugs.[79]

14.60 Applying these principles, the court found that the defence of "bailment" did not apply. On his own case, Arun did not *receive* the drugs from Sara but had instead *collected* the drugs on Sara's behalf (with the purpose of delivering the drugs to someone). In such circumstances, the accused person would generally know or intend that the arrangement was part of the supply or distribution of the drugs (although this

78 *Arun Ramesh Kumar v Public Prosecutor* [2022] 1 SLR 1152 at [26].
79 *Arun Ramesh Kumar v Public Prosecutor* [2022] 1 SLR 1152 at [27].

would ultimately depend on the facts of the case).[80] This scenario was distinguishable from the typical situation attracting the defence of "bailment", where drugs are *deposited* with the accused for the purpose of *safekeeping*, with the accused returning or intending to return the drugs to the person who originally deposited the drugs with him.[81]

14.61 Next, the court held that the defence of "bailment" would not ordinarily apply to a purported "bailee" who claims that he intended to return the drugs *via a third party*. On the facts, even assuming that there was an arrangement between Arun and Sara to safekeep the drugs, his intended act of passing the drugs to a third party presumptively formed part of the process of moving the drugs along the chain of supply and distribution, which came within the definition of "traffic" in s 2 of the MDA.[82]

14.62 Further, the court found that, in any event, the defence of "bailment" did not apply because the evidence showed that Arun knew Sara was involved in supplying and distributing drugs.[83] The court also dismissed an allegation that Arun advanced against his previous counsel, finding that the allegation was baseless and, in any event, immaterial, since Arun's conviction rested on evidence in his investigation statements, which were recorded before his counsel was involved in his case.[84]

14.63 Hence, the court dismissed Arun's appeal against conviction. Further, the court found no basis for the appeal against sentence, noting that Arun had received the mandatory minimum sentence, and dismissed the appeal against sentence.[85]

B. Assessing whether the presumption under section 18(2) of the Misuse of Drugs Act has been rebutted

14.64 In *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor*,[86] the Court of Appeal considered the relevance of trust or suspicion in the context of assessing whether the presumption in s 18(2) of the MDA has been rebutted.

80 *Arun Ramesh Kumar v Public Prosecutor* [2022] 1 SLR 1152 at [28] and [30].
81 *Arun Ramesh Kumar v Public Prosecutor* [2022] 1 SLR 1152 at [28]–[29].
82 *Arun Ramesh Kumar v Public Prosecutor* [2022] 1 SLR 1152 at [34].
83 *Arun Ramesh Kumar v Public Prosecutor* [2022] 1 SLR 1152 at [35].
84 *Arun Ramesh Kumar v Public Prosecutor* [2022] 1 SLR 1152 at [37]–[38].
85 *Arun Ramesh Kumar v Public Prosecutor* [2022] 1 SLR 1152 at [39].
86 [2022] 2 SLR 79.

14.65 On the day of his arrest, the appellant drove a car to meet one Khairul Nizam bin Ramthan. He received an orange plastic bag containing a box that in turn contained two packets of crystalline substances, and three "ziplock" bags, each containing one bundle wrapped in brown paper ("the three bundles") from Khairul. Specifically, Khairul placed the orange plastic bag and the "ziplock" bags on the floorboard of the front passenger seat of the appellant's car. In return, the appellant handed Khairul an envelope containing $7,000 that had been left in the appellant's letter box the day before. While waiting for a call with further instructions as to whom he should deliver the three bundles, the appellant was arrested. He was then charged with a capital charge of possessing the diamorphine in the three bundles for the purpose of trafficking under s 5(1)(*a*) read with s 5(2) of the MDA.

14.66 The appellant's sole defence at trial was that he did not know that the three bundles contained diamorphine and had believed that they contained uncustomed cigarettes. He claimed that he had agreed to undertake a delivery for one "Bai" who had told him that the package was of two and a half cartons of uncustomed cigarettes. He claimed he was just following Bai's instructions. According to the appellant, he had known Bai in 2008 while they were in prison together before they lost contact. Subsequently, in 2014, the appellant went to Kranji Turf Club to place bets with Bai who was working as an illegal bookmaker. The appellant claimed that his cousin had known Bai since the 1990s and had told him that Bai could be trusted. As a result of placing bets with Bai, the appellant accumulated debts to Bai. The appellant started taking on delivery jobs for Bai to settle his debt.

14.67 The appellant further claimed that he had done another delivery for Bai before his arrest, and on this first occasion, Khairul had similarly placed a plastic bag in his car. The appellant then delivered the bag to another man, who asked if the plastic bag contained cigarettes which Bai had asked him to deliver. Upon the appellant's confirmation, the man took the bag and paid the appellant $200.

14.68 The Prosecution was able to rely on the presumption of knowledge as to the nature of the drug under s 18(2) of the MDA since the appellant's possession of the three bundles was undisputed. In this regard, the appellant bore the burden of proving that he did not know the nature of the drugs in his possession, and it was incumbent on him to adduce sufficient evidence establishing that subjective state of mind.[87]

87 *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 at [21] and [25].

14.69 The trial judge found that the appellant had failed to rebut the presumption for three reasons:[88]

> (a) The appellant did not have a particularly close relationship with Bai, and it was difficult to accept the high level of trust he had allegedly placed in Bai when the circumstances were suspicious.
>
> (b) The appellant had omitted to mention important aspects of his defence in his investigation statements, including the alleged confirmation by the recipient of the plastic bag on the first occasion that the bag contained cigarettes; the appellant's cousin allegedly having known Bai since the 1990s; as well as the cousin's alleged assurance that Bai could be trusted.
>
> (c) The appellant's account was contradicted by the evidence of a CNB officer, who testified that he had found the orange plastic bag beside the three bundles on the floorboard of the car's front passenger seat when the appellant was arrested, and since the three bundles were left exposed, the appellant would have caught sight of their round and irregular shapes.

14.70 Hence, the trial judge convicted the appellant on the charge, and sentenced him to death. The Court of Appeal dismissed the appeal against conviction and sentence.

14.71 First, the Court of Appeal agreed with the trial judge's finding that the three bundles were not inside the orange plastic bag by the time of the arrest. Given the irregular shapes of the bundles, this finding made it unviable for the appellant to maintain his primary contention that he believed at all times that the bag contained cigarette cartons and not bundles of diamorphine.[89]

14.72 Second, the Court of Appeal held that the trial judge was correct to find that the appellant's claim that he had believed what Bai had allegedly told him, because he trusted Bai, was untenable. The Court of Appeal opined that it would rarely, if ever, be sufficient for an accused person to rebut the s 18(2) presumption by stating simply that he believed whatever he was told in relation to what was in his possession. The court would have to consider the entire factual matrix and context, including the relationship between the parties and all the surrounding circumstances, to determine whether it believed the bare claim.[90] On the facts, the Court of Appeal agreed with the trial judge that the relationship

88 *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 at [12].
89 *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 at [30].
90 *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 at [32].

between the appellant and Bai was "transactional and superficial", and that it was "simply implausible" that he believed whatever Bai had told him especially given that he knew Bai had been involved in various illegal activities, and even more so given the suspicious circumstances of the transaction.[91]

14.73 The Court of Appeal turned to address the argument advanced by the appellant's previous counsel that the trial judge had conflated the concepts of wilful blindness and actual knowledge by considering the evidence of suspicious circumstances.[92]

14.74 The Court of Appeal rejected the argument. In an inquiry into whether the presumption of knowledge under s 18(2) of the MDA has been rebutted, a finding that the accused person's claim that he believed what he was told was untenable, because there were so many suspicious circumstances, did not necessarily mean that the court was analysing the case as one of wilful blindness. Rather, the court could simply be saying that the accused person's story was incredible.[93] The Court of Appeal explained that while questions of trust could arise in the context of considering whether an accused person was wilfully blind (such as in *Khor Soon Lee v Public Prosecutor*[94] and *Gobi a/l Avedian v Public Prosecutor*),[95] they could also arise in the assessment of the credibility of an accused person's purported belief as to the nature of the drug, in the context of the presumption of knowledge.[96] These two inquiries were different. In the case of wilful blindness, it was for the Prosecution to establish beyond reasonable doubt that the accused person had a clear, grounded and targeted suspicion that what he was told or led to believe about the nature of the thing he was carrying was untrue. In contrast, in the latter context, it was for the accused person to establish what he in fact believed he was carrying.[97]

14.75 The Court of Appeal elaborated that, in the present case, the nub of the inquiry was whether the appellant was speaking the truth when he explained his basis for his belief that the three bundles were not diamorphine. This was a straightforward inquiry as to the appellant's credibility and had nothing to do with wilful blindness.[98]

---

91 *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 at [35]–[41].
92 *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 at [43].
93 *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 at [45].
94 [2011] 3 SLR 201.
95 [2021] 1 SLR 180. See *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 at [49].
96 *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 at [51].
97 *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 at [51].
98 *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 at [53].

III. Offences under miscellaneous statutes

A. Meaning of "assembly" in section 15(2) of the Public Order Act

14.76 In *Wham Kwok Han Jolovan v Public Prosecutor*,[99] the General Division of the High Court ("High Court (General Division)") examined the meaning of "assembly" for the purposes of an offence under s 15(2) of the Public Order Act[100] ("POA").

14.77 The appellant had posted a photograph on Facebook showing him standing in front of the entrance to the building of the former State Courts, holding an A4 piece of paper which read, "Drop the charges against Terry Xu and Daniel De Costa". The spot where the appellant was standing was a prohibited area specified in Part III of the Schedule to the Public Order (Prohibited Areas) Order 2009. The appellant was subsequently tried under s 15(2) of the POA for taking part in an assembly which he ought reasonably to have known was prohibited by an order under s 12(1) of the POA. He was convicted and sentenced to a fine of $3,000. He appealed against his conviction and sentence.

14.78 On appeal, the appellant contended (amongst others) that an "assembly" ought only to encompass actions which posed more than a *de minimis* risk to public order. As his posing outside the State Courts with the A4 piece of paper had not engendered a risk to public order, he had not taken part in an "assembly" for the purposes of s 15 of the POA.

14.79 Vincent Hoong J rejected the appellant's argument, applying the three-step framework for purposive interpretation of a statute as set out in *Tan Cheng Bock*.[101] Hoong J reasoned as follows:

> (a) The first step of the *Tan Cheng Bock* framework was to ascertain the provision's possible interpretations, having regard to its text and context. This was done by determining the ordinary meaning of the provision's words, aided by rules and canons of statutory construction. In this case, "assembly" was defined in s 2(1) of the POA, the plain wording of which made no mention of a requirement that the gathering or meeting pose a risk to public order and/or public safety. Instead, s 2(1) of the POA defined an "assembly" with respect to its purpose. If a gathering or meeting was held for a purpose that fell within the statutorily enumerated purposes, that gathering or meeting constituted an

99 [2022] SGHC 241.
100 Cap 257A, 2012 Rev Ed.
101 See para 14.38 above.

assembly. The appellant's proposed interpretation of "assembly" read limits into s 2(1) of the POA that were not linguistically provided for.[102]

(b) The second step of the *Tan Cheng Bock* framework was to ascertain the legislative purpose of the statute. Here, the purpose of the POA was to preserve and maintain public order. However, this could not justify rewriting the statute in the manner suggested by the appellant. Indeed, the parliamentary debates confirmed that, in enacting the definition of "assembly" in s 2(1) of the POA, Parliament was focused on the *purpose* animating a gathering or meeting (rather than its effects).[103]

(c) Finally, the appellant's interpretation of "assembly" sat uncomfortably with the permit regime set out in ss 5–11 of the POA. While that regime was not directly relevant to the appellant's offence, a single definition of "assembly" applied throughout the POA. Pursuant to s 7(2)(*a*) of the POA, the commissioner could refuse a permit for a proposed public assembly if he had reasonable ground for apprehending that it might "occasion public disorder, or damage to public or private property". The inclusion of this consideration would be illogical if, as the appellant contended, *every* assembly invariably caused public disorder.[104]

14.80 Hoong J thus held that an "assembly" under the POA is not confined to gatherings or meetings which pose a risk to public order and/or public safety. That being the case, there was no basis to interpret s 15(2) of the POA as requiring an individual's actions to pose more than a *de minimis* risk to public order and/or public safety.[105] Hoong J also rejected the appellant's other arguments and dismissed his appeal.

B. Interpretation of sections 340(1) and 340(5) of the Companies Act

14.81 In *Lim Jun Yao Clarence v Public Prosecutor*,[106] the High Court (General Division) considered the interpretation of ss 340(1) and 340(5) of the Companies Act.[107]

102 *Wham Kwok Han Jolovan v Public Prosecutor* [2022] SGHC 241 at [21]–[23].
103 *Wham Kwok Han Jolovan v Public Prosecutor* [2022] SGHC 241 at [24]–[25].
104 *Wham Kwok Han Jolovan v Public Prosecutor* [2022] SGHC 241 at [26]–[27].
105 *Wham Kwok Han Jolovan v Public Prosecutor* [2022] SGHC 241 at [22] and [28].
106 [2022] SGHC 252.
107 Cap 50, 2006 Rev Ed.

14.82 The appellant and his co-accused were convicted for offences of fraudulent trading under s 340(1) read with s 340(5) of the Companies Act. They had used three companies to defraud approximately 1,317 foreign jobseekers, deceiving them into paying a total of approximately $831,049 in fees for non-existent employment and sham employment-related services. Sections 340(1) and 304(5) of the Companies Act reads as follows:

> (1) If, in the course of the winding up of a company or in any proceedings against a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs.
>
> …
>
> (5) Where any business of a company is carried on with the intent or for the purpose mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business with that intent or purpose shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $15,000 or to imprisonment for a term not exceeding 7 years or to both.

14.83 On appeal against his conviction, the appellant argued, *inter alia*, that the offences of fraudulent trading under s 340(5) were not made out. The appellant advanced two arguments in this regard:

> (a) The application of the *ejusdem generis* principle of statutory construction required that the "fraudulent purpose" in s 340(1) be perpetrated against creditors, and there were no creditors involved in this case.
>
> (b) The preconditions in s 340(1), namely, that the company either had to be in the course of winding up or had to have proceedings brought against it, were also preconditions to s 340(5) and they were not satisfied.[108]

14.84 On the argument based on the *ejusdem generis* principle, the appellant submitted that the wider phrase "or for any fraudulent purpose" in s 340(1) must be restricted by, and implied from, the preceding narrower phrase "intent to defraud creditors of the company or creditors of any other person".

108 *Lim Jun Yao Clarence v Public Prosecutor* [2022] SGHC 252 at [41].

14.85 Vincent Hoong J rejected the appellant's argument. Hoong J first explored the application of the *ejusdem generis* principle. It is a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character.[109] Citing *Public Prosecutor v Lam Leng Hung*[110] and commentaries, Hoong J reasoned that, for the principle to apply, there must be a sufficient genus or common thread that runs through all the items in the list.[111]

14.86 Turning to s 340(1), Hoong J disagreed with the appellant's identification of "creditors" as the genus of the provision because the narrow phrase "intend to defraud creditors of the company or creditors of any other person" would operate such as to exhaust the said genus.[112] The phrase "creditors of any other person" was broad enough to cover all other creditors who were not creditors of the company. If the provision was read in the manner submitted by the appellant, the narrower phrase would exhaust the class, making the general words unnecessary.[113]

14.87 Hoong J added that the *ejusdem generis* principle was simply a tool to ascertain the ordinary meaning of a disputed term or phrase as part of the purposive approach to interpretation laid down in s 9A of the Interpretation Act. The appellant's reading of the provision was inconsistent with the legislative intent. Referring to *Marina Towage Pte Ltd v Chin Kwek Chong*,[114] Hoong J opined that the ultimate purpose of the provision was to set and maintain standards of commercial morality by deterring natural persons from using the corporate form to trade fraudulently. It would be contrary to this purpose and arbitrary to limit the ambit of civil liability in s 340(1) and the criminal liability in s 340(5) to fraudulent trading just in so far as it affected creditors.[115] Hoong J concluded that the term "fraudulent purpose" in s 340(1) was not limited to fraudulent purposes perpetrated against creditors.

14.88 On the argument regarding the preconditions for criminal liability under s 340(5), the appellant argued that the prerequisites contained in s 340(1) must be read into the requirements for criminal liability under s 340(5).

---

109 *Lim Jun Yao Clarence v Public Prosecutor* [2022] SGHC 252 at [48], citing Diggory Bailey & Luke Norbury, *Bennion on Statutory Interpretation* (LexisNexis, 7th Ed, 2017) section 23.2.

110 [2018] 1 SLR 659.

111 *Lim Jun Yao Clarence v Public Prosecutor* [2022] SGHC 252 at [49]–[50].

112 *Lim Jun Yao Clarence v Public Prosecutor* [2022] SGHC 252 at [51].

113 *Lim Jun Yao Clarence v Public Prosecutor* [2022] SGHC 252 at [51].

114 [2021] SGHC 81.

115 *Lim Jun Yao Clarence v Public Prosecutor* [2022] SGHC 252 at [54].

14.89 Hoong J rejected the appellant's argument. First, on the plain reading of s 340(5), it was difficult to see how the prerequisites contained in s 340(1) should be read into it; the prerequisites had not been explicitly incorporated. The plain wording was clear and unambiguous and could bear no other interpretation.[116]

14.90 Second, Hoong J emphasised that civil liability under s 340(1) was separate and independent from criminal liability under s 340(5). Section 340(6) of the Companies Act, specifying that "[s]ubsection (5) shall apply to a company whether or not it has been, or is in the course of being, wound up", clarified that the prerequisites in s 340(1) are not incorporated into s 340(5).[117] Hoong J cited *Phang Wah v Public Prosecutor*[118] for support. In that case, the Court of Appeal held that the effect of s 340(5) was to "create separate criminal liability independent of the civil liability embodied in s 340(1)".[119]

14.91 Third, Hoong J rejected the appellant's reasoning that the legislative intention behind the provisions in s 340 of the Companies Act was to protect creditors of a company on the verge of liquidation, as evidenced by the re-enactment of the provisions in the Insolvency, Restructuring and Dissolution Act 2018[120] ("IRDA"). Hoong J held that just because the fraudulent trading provisions were situated amidst provisions concerning the liquidation or winding up of companies in the Companies Act or in the current IRDA did not necessarily mean that they were meant to apply solely in circumstances of liquidation.[121]

14.92 Hoong J concluded that for criminal liability to arise in this case, only two requirements had to be satisfied: (a) the business must have been carried on with any fraudulent purpose; and (b) the appellant must have knowingly been a party to the carrying on of that business with that fraudulent purpose.[122] Since the appellant did not challenge the trial judge's findings on these two requirements, Hoong J found no reason to set aside his conviction.

---

116 *Lim Jun Yao Clarence v Public Prosecutor* [2022] SGHC 252 at [69].
117 *Lim Jun Yao Clarence v Public Prosecutor* [2022] SGHC 252 at [70].
118 [2012] SGCA 60.
119 *Phang Wah v Public Prosecutor* [2012] SGCA 60 at [19].
120 Act 40 of 2018.
121 *Lim Jun Yao Clarence v Public Prosecutor* [2022] SGHC 252 at [71].
122 *Lim Jun Yao Clarence v Public Prosecutor* [2022] SGHC 252 at [72].