

QUANTUM OF PROOF UNDER SECTION 304A PENAL CODE

*Mah Kah Yew v. Public Prosecutor**

In *Mah Kah Yew v. Public Prosecutor* the appellant was convicted under section 304A of the Singapore Penal Code.¹ He appealed against the conviction and the High Court allowed his appeal on the ground that there was insufficient and unsatisfactory evidence to support the conviction.

During the hearing, however, an important question of law was raised by the appellant, in his grounds of appeal, namely, that “[t]he District Judge erred in law as to the standard and/or the quantum of proof required under section 304A.” The full bench of the High Court² heard arguments on this point³ and decided, that, by virtue of section 88(3) of the Malaysia Act⁴

“Anything done before Malaysia Day in or in connection with or with a view to any proceedings in the Court of Appeal of the Federation, or of Sarawak, North Borneo and Brunei, or of Singapore, or the Court of Criminal Appeal in Singapore, shall on and after that day be of the like effect as if that court were one and the same court with the Federal Court.”

read with section 13(1) of the Republic of Singapore Independence Act⁵

“Subject to the provisions of this section, all existing laws shall continue in force on and after Singapore Day, but all such laws shall be construed as from Singapore Day with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Act and with the independent status of Singapore upon separation from Malaysia.”

the High Court in Singapore is bound by the decision of the Court of Appeal of Sarawak, North Borneo and Brunei in *Public Prosecutor v. Mills*.⁶ In the latter case it was accepted that the nature and degree of negligence in an act causing death required to support a conviction under section 304A of the Penal Code is

30. Including rights of support.

31. *Ante*. p. 6.

32. National Land Code 1966.

33. National Land Code 1965.

* [1971] 1 M.L.J. 1.

1. Revised Laws of Singapore, 1955 Cap. 119.

2. Constituted pursuant to section 295(8) C.P.C.

3. Mr. Francis Seow (assisted by Mr. Tommy Neo) appeared for the Prosecution; Mr. Lim Chor Pee (with Mr. Hassan Almenoar) for the defendant; and Mr. Graham Hill appeared as *amicus curiae*.

4. No. 26 of 1963.

5. No. 9 of 1965.

6. [1971] 1 M.L.J. 4

the same as that in any other act carried out so rashly or negligently as to endanger human life or the safety of others where that act was the immediate cause of the death. The Court rejected the view that the degree of negligence required under section 304A was the same as that required to support a conviction for negligent manslaughter in England. It is to be regretted that the full bench decided the "important question of law" by holding itself bound by the Sarawak decision on the doctrine of *stare decisis* without also giving substantive legal reasons why this latter decision is to be favoured, in view of the fact that "there are conflicting decisions of the courts of Singapore, of what is now Malaysia and of the then Borneo territories of Sarawak, North Borneo and Brunei on the point...."⁷

In fact the learned Solicitor General in his arguments suggested that the High Court in Singapore is bound by two conflicting decisions namely the decision of the full bench of the Singapore High Court in *Woo Sing and Sim Ah Kow v. R.*⁸ and the decision of the F.M.S. Court of Appeal in *Cheow Keok v. Public Prosecutor*⁹ which was followed in *Anthony Samy v. Public Prosecutor*.¹⁰

From the point of *stare decisis* there is in *Mah Kah Yew* case a welcome reiteration that the doctrine is "necessary and well established... in our system of jurisprudence and of our judicial system."¹¹

In regard to the point that the High Court in Singapore is bound by the decision in *Public Prosecutor v. Mills* and not the decision in *Cheow Keok v. Public Prosecutor*, the writer has elsewhere¹² submitted that this view which results from a reading of section 88(3) of the Malaysia Act with section 13 of the Singapore Independence Act "restricts itself unduly by what appears in written form."¹³ The writer then went on to submit that the decision in *Cheow Keok* was also binding on the High Court in Singapore and that the Court of Criminal Appeal in Singapore is bound to decide which of the two conflicting decisions it will follow.

Another point that arises from the decision in *Mah Kah Yew* is that whereas before Malaysia Day, the High Court in Malaya was bound by the decision of the F.M.S. Court of Appeal in *Cheow Keok* after Malaysia Day the High Court is bound by two conflicting decisions, *Cheow Keok* on the one hand and *Public Prosecutor v. Mills* on the other, in view of section 88(3) Malaysia Act.

The writer therefore respectfully submits that the law relating to section 304A is not satisfactorily resolved in both jurisdictions and that therefore the law will have to be reviewed again.

HARBAJAN SINGH

7. *Mah Kah Yew v. Public Prosecutor* at p. 2.

8. [1954] M.L.J. 200.

9. [1940] M.L.J. 103.

10. [1956] M.L.J. 247.

11. *Mah Kah Yew v. Public Prosecutor* at p. 2.

12. [1971] 1 M.L.J. p. xvi.

13. *Ibid.*, p. xix.