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Out of Sight, Out of Mind? Not Quite

Ng Kok Wai v Public

Prosecutor [2023] SGHC 306

8 November 2023

LEGAL
UPDATE

In this Update

In *Ng Kok Wai v Public Prosecutor* [2023] SGHC 306, the General Division of the High Court dismissed the Appellant's appeal against conviction for house-breaking and theft committed on board a foreign-registered ship while the ship was sailing on the high seas.

This decision provides guidance on when an accused person may be tried in Singapore for acts committed outside of Singapore.

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INTRODUCTION

In *Ng Kok Wai v Public Prosecutor* [2023] SGHC 306, the General Division of the High Court dismissed the Appellant's appeal against conviction for house-breaking and theft committed on board a foreign-registered ship while the ship was sailing on the high seas.

This decision provides guidance on when an accused person may be tried in Singapore for acts committed outside of Singapore.

BACKGROUND

In December 2021, while on board a Bahamas-registered cruise ship that was sailing in the South China Sea, the Appellant broke into the victim's cabin and took her brassiere without her consent. Upon returning to Singapore, the Appellant was charged with having committed theft and house-breaking under ss 380 and 451 of the Penal Code respectively.

Before the District Judge, the Appellant argued that he could not be held criminally liable in Singapore for his actions which took place outside of Singapore as the Penal Code provisions did not apply to him whilst he was on a foreign-registered ship on the high seas.

The District Judge held that ss 380 and 451 of the Penal Code did have extraterritorial effect by virtue of s 178 of the Merchant Shipping Act.

The Appellant appealed against his conviction, contending that the District Judge had erred in holding that s 178 of the Merchant Shipping Act extended the Penal Code offences with which he was charged extraterritorially to proscribe his acts carried out on board the ship while the ship was sailing on the high seas.

DECISION OF THE GENERAL DIVISION OF THE HIGH COURT

KEYPOINT

An accused person may be tried and convicted in Singapore for acts committed outside of Singapore where there is: (a) an applicable statutory provision that confers on the Singapore courts the authority to try the accused person for the offence in question; and (b) an applicable statutory provision that renders an act committed outside Singapore an offence under Singapore law.

The High Court analysed the issues on appeal by considering several pieces of legislation. First, the Court held that S 50(2)(c) of the State Courts Act empowers the District Court to try offences committed by a Singaporean citizen on the high seas and that the District Court therefore has the power and authority to try the Appellant for the alleged offences he committed while on board the ship.

Secondly, the Court held that S 178 of the Merchant Shipping Act deems acts committed abroad as having been committed wherever the accused person may be located. This provision will be invoked where the accused person is in Singapore.

Finally, the Court held that pursuant to S 3 of the Penal Code (which permits the extraterritorial application of Penal Code offences to cover offending acts committed outside the territory of Singapore, so long as there exists a jurisdictional provision empowering the Singapore court to try a person for an alleged offence committed outside of Singapore) the Appellant's acts on board the ship would be treated as though they occurred in Singapore. The Court therefore held that the Appellant had committed acts that are punishable under ss 380 and 451 of the Penal Code read with s 3 of the Penal Code and s 50(2) of the State Courts Act.

COMMENTARY

The High Court's decision provides useful guidance on when the provisions in the Penal Code may be applied extraterritorially. In coming to its decision, the Court was mindful of the presumption of territoriality and carefully considered different pieces of legislation in deciding to dismiss the appeal. The decision provides a timely reminder that it is possible for criminal liability to be imposed even for acts committed out of Singapore where there is a material nexus to Singapore. Parties should not assume that acts committed beyond our borders will not have repercussions within them.

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