

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

Appeal from Criminal Case No. 324243 of 2016

[ELINE DEGREN]
...[Appellant]

v

[PUBLIC PROSECUTOR]
...[Respondent]

RESPONDENT'S MEMORANDUM

For hearing on 10 September 2016

Submitted by:
Sean Lim Zhan Hui
Counsel for the Respondent

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Table of Contents

I. Statement of Facts.....	3
II. Respondent’s Contentions.....	3
III. Submissions.....	4
A. A literal reading of S109 supports the proposition that a person’s instigations directed at a group of people amounts to an abetment within that provision.....	4
B. A purposive reading has the same effect.....	5
C. Using the in pari materia provision section 4 of the Offences Against the Person Act 1861 (“OAPA”) to interpret S109 of the PC supports the proposition that a person’s instigations directed at a group of people amounts to an abetment within that provision.....	6
i. The OAPA can be used to interpret S109 of the PC.....	6
ii. The OAPA has been interpreted to include solicitations of murder at a group of persons.....	7
IV. Conclusion.....	8

I. STATEMENT OF FACTS

1. The Appellant and Lao Hor Cha (“Lao”) were romantically involved since 2005. In 2015, the Appellant caught Lao in his apartment with his co-worker, Irma Neech (“Neech”) in extremely compromising circumstances. The Appellant had to be forcibly removed by the police. Following the incident, the Appellant retreated to Taipei and made Instagram posts in no uncertain terms that she was willing to pay S\$500,000 for somebody to murder Neech.

2. On 4 August 2015, Tai, one of the Appellant’s fans, stabbed Neech multiple times. After Neech died on the spot, Tai pleaded guilty to murder. On 5 August 2015, the Accused instructed her business manager to transfer exactly S\$500,000 to the Tai’s mother’s bank account. The accused was charged with instigating Neech’s murder under S109 read with S300 of the Penal Code (“**PC**”).¹

II. RESPONDENT’S CONTENTIONS

3. In the High Court, Wan Gao Er-Fu J held that S109 applies to cases where the accused instigates a group of persons to commit an offence, even though the accused does not know the specific identities of any person in that group. As the accused had deliberately instigated her fanbase of 700,000 Instagram followers in Singapore, and one of those followers had resolutely acted on her request, she was convicted.

¹ *Penal Code* (Cap 224, 2008 Rev Ed).

4. The Respondent's sole contention is that the judge in the trial court adopted the correct interpretation of S109, read with S107 and 108 of the PC. The Respondent rests this contention on three submissions.

5. First, that the literal reading of S107 - S109 in the overall PC scheme suggests that a person instigating the commission of an offence to a group of persons unknown to that individual would fall within the ambit of S107 - S109 should be adopted.

6. Second, that a purposive interpretation of the aforementioned provisions points to the same conclusion.

7. Third, that section 4 of the United Kingdom Offences Against the Person Act 1861 ("OAPA")² may guide the interpretation of S109, and the English cases have accepted that the accused's instigation of the commission of an offence to a group of persons unknown to the accused falls within the ambit of section 4.

III.SUBMISSIONS

A. A literal reading of S109 supports the proposition that a person's instigations directed at a group of people amounts to an abetment within that provision

² *Offences Against the Person Act 1861* (c100).

8. Purely on the basis of the words in S109, there are two reasons why this provision should be read to include an abetment where a person instigates a large group of persons, in which the person does not know the individual identities.

9. First, the plain words of S107-109, its explanations, and its illustrations do not refer to a requirement that the accused must direct instigation at a specific person in order for the case to fall within the ambit of the Act. This was recognized by the trial court.³

10. Second, the scheme of the Act suggests that S109 should be read broadly to include such abetments.⁴ The preamble of the PC states that it is “An Act to **consolidate** the law relating to criminal offences.” Within the PC, S107-109 are the only provisions which deal with instigation type offences. Beyond the PC, other criminal statutes deal with specific subject matters, such as drugs or firearms. They do not deal the offence of instigation. Thus, S107-S109 are the sole criminal provisions relating to the instigation of offences. This militates in favour of a broader reading of the statute to include persons instigating large groups of people.

B. A purposive reading has the same effect

11. The conclusion arrived at through a literal reading of the statute is further verified by a purposive reading of the PC.

³ *PP v Eline Degren* at [16].

⁴ *Constitutional Reference No 1 of 1995* [1995] SGCT 1 at [22], [44].

12. In accordance with section 9A of the Interpretation Act,⁵ the Singapore court adopts a purposive approach to statutory interpretation. Statutory provisions must be interpreted in a manner that gives effect to the drafter's intention. In order to ascertain the purpose of the statute, the court may refer to extrinsic aids.

13. The Respondent submits that the drafter's intention may be discerned through Macaulay's comments on the abetment sections found in "*A Penal Code Prepared by the Indian Law Commissioners*". These comments state: "We also propose a punishment for instigations to crime which are addressed to **large bodies of people**, even when no evil consequences follow."⁶ Clearly, the mischief of the abetment provisions are also directed at persons instigating large groups of people, even when that person does not know the identities of individuals in that group. Therefore, S109 should be interpreted to include such cases.

C. Using the in pari materia provision section 4 of the Offences Against the Person Act 1861 ("OAPA") to interpret S109 of the PC supports the proposition that a person's instigations directed at a group of people amounts to an abetment within that provision

i. The OAPA can be used to interpret S109 of the PC

14. The Respondent appreciates that S4 of OAPA is not derived from a PC provision, nor it is completely similar to S109 of the PC. Nevertheless, it is submitted that the approach to S4 sheds useful on S109 of the PC for the following reasons.

⁵ *Interpretation Act* (Cap 1, 1997 Rev Ed). *ACS Computer Pte Ltd v. Rubina* [1997] SGHC 129 at [19].

⁶ *Penal Code Prepared by the Indian Law Commissioners, and Published by Command of the Governor General of India in Council*, Note V at p 95.

15. Acts are said to be *in pari materia* if they deal with the same subject matter on the same lines.⁷ S4 of the OAPA and S109 of the PC overlap significantly on the notion of active encouragement of the offence, which the present case is concerned with. S4 of the OAPA is a useful guide to the interpretation of S109 of the PC insofar as this overlap is concerned.

16. Under S107(a) of the PC, abetting an act is defined as “instigating” a person to do that act. The term “instigating” is turn defined as active encouragement.⁸ Thus, S109 of the PC, when read with S107(a) and S300, refers specifically to the notion of actively encouraging the murder of the victim.

17. This is no different from S4 of the OAPA, under which one is prohibited from “encourag[ing].... any person... to murder any other person”. Therefore, these provisions are *in pari materia* because they deal with the same subject matter, in the same language.

ii. The OAPA has been interpreted to include solicitations of murder at a group of persons

18. The English cases addressing section 4 of the OAPA clearly accept that the instigation of a group of people, the identities of which is unknown to the instigator, falls within the ambit of the section. Thus, such cases would also fall under S109.

⁷ *Penn-Texas Corporation v Murat Anstalt and others* (No 2) [1964] 2 All ER 594, *R v Bouch* [1982] 3 All ER 918.

⁸ *Wang Sun Lin v PP* [2010] SGHC 53 at [31].

19. In *R v Most*,⁹ the accused had published and circulated an article in a newspaper extolling the murder of the Emperor of Russia, commending it as an example to revolutionists around the world. The jury was directed to consider whether this was an encouragement directed at revolutionists to kill the Queen of England. The Court of Criminal Appeal held that the publication of the article could amount to an encouragement to murder, even though it was not addressed to a specific person.

20. Thus, instigation directed at a group of people falls within the ambit of S4 of the OAPA. Since this is *in pari materia* with S109, read with S107 and S300 of the PC, instigation directed at a group of people also falls within S109.

IV. CONCLUSION

21. To conclude, the Appellant's instigation of her Instagram followers falls within S109 of the PC. This is so for three reasons. First, a literal reading of S109 militates in favour of a broad interpretation of the provision. Second, a purposive interpretation of the aforementioned provision points to the same conclusion. Third, the English cases interpreting S4 of the OAPA have accepted that the accused's instigation of the commission of an offence to a group of persons unknown to the accused falls within the ambit of section 4, and this logic applies to S109 of the PC as well.

22. In view of these submissions, the Respondent humbly urges the court to uphold Appellant's conviction.

⁹ *R v Most* (1881) 7 Q.B.D. 244 at 252. See also *R. v El-Faisal* [2004] EWCA Crim 456 at [13]-[17].

Cases Cited

PP v Eline Degren

Constitutional Reference No 1 of 1995 [1995] SGCT 1

ACS Computer Pte Ltd v. Rubina [1997] SGHC 129

Wang Sun Lin v PP [2010] SGHC 53

Public Prosecutor v Lim Tee Hian [1991] 2 SLR(R) 393

R v Most (1881) 7 Q.B.D. 244

R. v El-Faisal [2004] EWCA Crim 456

Penn-Texas Corporation v Murat Anstalt and others (No 2) [1964] 2 All ER 594

R v Bouch [1982] 3 All ER 918.

Commentaries Cited

Penal Code Prepared by the Indian Law Commissioners, and Published by Command

of the Governor General of India in Council

Halsburys Laws of England, Volume 96, paragraph 633

Legislation Cited

Penal Code (Cap 224, 2008 Rev Ed)

Interpretation Act (Cap 1, 1997 Rev Ed)

Offences Against the Person Act 1861 (c100)