

**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2016] SGHC 267**

Criminal Case No 39 of 2016

Between

Public Prosecutor

*... Public Prosecutor*

And

Lee Sze Yong

*... Accused*

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**JUDGMENT**

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[Criminal Law] – [Offences] – [Kidnapping]

[Statutory Interpretation] – [Interpretation Act] – [Purposive approach]

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**Public Prosecutor**

**v**

**Lee Sze Yong**

**[2016] SGHC 267**

High Court — Criminal Case No 39 of 2016

Chan Seng Onn J

30, 31 August; 1 September 2016; 30 September 2016

1 December 2016

Judgment reserved.

**Chan Seng Onn J:**

**Introduction**

1 The accused stood trial before me for the offence of kidnapping for ransom. The victim is the elderly mother of a successful businessman who owns a well-known supermarket chain in Singapore. At trial, the accused conceded that he had lied to the elderly lady to induce her into entering his car, that he had subsequently issued a demand for ransom to her wealthy son, and that he had released her only after receiving a bag containing cash amounting to \$2 million. But the defence emphasised throughout the course of the trial that the accused had intended to release the victim at the end of the day, even if he had not received the ransom he sought.

2 The dispute essentially narrows into a question of law: whether the statutory provision that creates the offence of kidnapping for ransom requires that the abductor intend to hold his victim until and unless he receives the ransom. The defence argues, and the Prosecution contends otherwise, that this is the correct reading of the statutory provision. I will explain my decision on this question of law and my overall determination of whether the Prosecution has succeeded in proving beyond a reasonable doubt that the accused has committed the offence.

### **The charge**

3 The accused faces a single charge (“the Charge”) under s 3 of the Kidnapping Act (Cap 151, 1999 Rev Ed) (“the Kidnapping Act”). The Charge reads as follows:

That you, **LEE SZE YONG**,

on 8 January 2014, from the roadside along Hougang Avenue 2, Singapore, did abduct one Ng Lye Poh, female / then 79 years old, with intent to hold the said Ng Lye Poh for ransom, and you have thereby committed an offence punishable under section 3 of the Kidnapping Act, Chapter 151.

### **Facts**

#### ***The evidence of the parties***

4 I begin with a brief review of the evidence adduced at trial. Counsel for the accused did not challenge the admissibility or accuracy of any of the statements that the accused provided to the police. Upon the application of the Prosecution, I therefore admitted the following ten statements of the accused as evidence:

- (a) One contemporaneous statement recorded on 9 January 2014 at about 6.19 am;

- (b) One cautioned statement recorded on 9 January 2014 at about 5.15 pm; and
- (c) Eight other long statements, recorded between 11 January and 23 January 2014.

These statements are detailed and comprehensive. When aggregated with the undisputed evidence of the other witnesses, one can piece together a clear picture of the relevant events that transpired until the accused's arrest on 9 January 2014 at about 12.37 am.<sup>1</sup>

5 The Prosecution called a total of 29 witnesses. The accused was the only witness for the defence.

***The accused***

6 The accused is Mr Lee Sze Yong. At the material time in 2014, he was 41 years old. He works as a retail sales executive, drawing a monthly salary of about \$4,850. Since 2005, the accused has resided in a four-room Housing Development Board ("HDB") flat with Mr Heng Chen Boon ("Mr Heng") and the accused's mother.<sup>2</sup>

7 The accused and Mr Heng have been in a close relationship for many years. The flat in which they reside was originally purchased by Mr Heng, but the accused was subsequently added as a joint owner when Mr Heng faced difficulties in servicing the HDB loan. The accused has since taken on the

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<sup>1</sup> Conditioned statement of DSP Burhanudeen Bin Haji Hussainar at [5].

<sup>2</sup> Accused's statement recorded on 11 January 2014 at 2.37 pm at [3].

burden of servicing the monthly payments.<sup>3</sup> Mr Heng has part-time employment in machine testing and earns a monthly salary of about \$300.<sup>4</sup>

***Mr Lim Hock Chee and Mdm Ng Lye Poh***

8 Mr Lim Hock Chee (“Mr Lim”) is the owner of the Sheng Siong supermarket business in Singapore. The Sheng Siong supermarket chain has more than 33 outlets and employs more than 2,500 staff members. Mr Lim values the total assets of his business at about \$500 million.<sup>5</sup>

9 Mr Lim resides at 73 Jalan Arif with his mother Mdm Ng Lye Poh (“Mdm Ng”), his wife and his four children.<sup>6</sup> Mdm Ng suffers from diabetes and requires insulin injections every morning.<sup>7</sup> She was 79 years old at the material time.

***Events prior to 8 January 2014***

*Accused’s financial difficulties*

10 In 2011, the accused found himself in financial difficulties. Over the years, he had taken loans from various banks, friends and moneylenders both legal and illegal.<sup>8</sup> According to the accused, he borrowed money because of the need to enrol his since-deceased father into a private nursing home<sup>9</sup> and to

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<sup>3</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [5].

<sup>4</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [11].

<sup>5</sup> Lim Hock Chee’s conditioned statement at [3].

<sup>6</sup> Lim Hock Chee’s conditioned statement at [2].

<sup>7</sup> Ng Lye Poh’s conditioned statement at [8].

<sup>8</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [6] to [9].

<sup>9</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [6].

fund his purchase of a new car, a Volkswagen Scirocco bearing registration plate number SKE5292J (“the Volkswagen”).<sup>10</sup> The accused estimated the total amount of his debts to be about \$150,000 to \$200,000.<sup>11</sup>

11 According to the accused, he became “stressed”<sup>12</sup> and “desperate”<sup>13</sup> as a result of his financial woes. He considered various solutions such as selling the flat or moving his family to Malaysia, but eventually did not implement them either because he did not find them feasible or because he did not receive support from his mother and Mr Heng.<sup>14</sup>

*Accused’s plans to clear his debts*

12 Sometime in 2011,<sup>15</sup> the accused started thinking about ways of “getting fast money to clear [his] debts once and for all”.<sup>16</sup> The accused came across certain Forbes Lists of wealthiest people in the world and in Singapore. It struck him that “[he] could kidnap someone and demand for a ransom and [that] if [he was] successful, [he] could repay all [his] debts”.<sup>17</sup>

13 The first target considered by the accused was Mr Peter Lim, a Singaporean billionaire. The accused claimed that he read the papers daily and therefore knew “quite a bit about Peter Lim”. He considered targeting one of

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<sup>10</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [12]; Accused’s statement recorded on 13 January 2014 at 2.06 pm at [A8].

<sup>11</sup> Accused’s statement recorded on 13 January 2014 at 2.06 pm at [A3].

<sup>12</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [10].

<sup>13</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [13].

<sup>14</sup> Accused’s statement recorded on 13 January 2014 at 2.06 pm at [A2].

<sup>15</sup> Accused’s statement recorded on 14 January 2014 at 2.42 pm at [A4].

<sup>16</sup> Accused’s statement recorded on 13 January 2014 at 2.06 pm at [A11].

<sup>17</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [13].



Peter Lim's children and making a demand for ransom of \$50 million. In further pursuit of the idea, the accused conducted research on the Internet, seeking out details of Peter Lim's personal life, including his place of residence.<sup>18</sup> The accused also did similar research on other wealthy people. He utilised the government electronic platform [www.bizfile.gov.sg](http://www.bizfile.gov.sg) ("the Bizfile website") in order to gather information on persons and companies, using his SingPass details to access the Bizfile website. The accused even made payments on the Bizfile website in order to purchase information he needed.<sup>19</sup>

14 The accused kept an organiser in which he recorded information on potential targets and the means by which he could execute his plans.<sup>20</sup> The organiser was seized by the police from the Volkswagen, following the accused's arrest.<sup>21</sup> The organiser reveals the enormous effort that the accused expended in devising his plans. Its pages contain a vast welter of information on matters such as (i) the physical appearances, daily routines and personal information of potential targets and their family members; (ii) step-by-step plans on how to execute the abductions and demands for ransom in respect of his targets; (iii) reminders to himself on how to avoid detection while executing those plans; (iv) draft text messages to be sent as demands for ransom;<sup>22</sup> and (v) a list of items to be obtained for use or potential use when carrying out his plans.<sup>23</sup> Amongst the items in the list are chloroform, a taser gun, pepper spray, curry powder and a knife. The accused admits that:

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<sup>18</sup> Accused's statement recorded on 13 January 2014 at 2.06 pm at [A11].

<sup>19</sup> Accused's statement recorded on 13 January 2014 at 2.06 pm at [A11].

<sup>20</sup> Accused's statement recorded on 21 January 2014 at 3 pm at [A122].

<sup>21</sup> Accused's statement recorded on 21 January 2014 at 3 pm at [Q121] and [A121].

<sup>22</sup> AB395 to 396.

<sup>23</sup> AB404 to 405.

(a) He knew that chloroform could be used to “knock people out” and considered that he might need chloroform in his plans. He ordered one bottle of chloroform which was eventually seized by the police from the Volkswagen.<sup>24</sup>

(b) He thought that he might need a taser gun to “scare the victim”, and therefore purchased one in Bangkok. A taser gun was seized by the police following the arrest of the accused. The accused claimed that the taser gun was no longer working.<sup>25</sup>

(c) As he might require pepper spray “to temporarily blind a person”, he purchased a can of pepper spray in Kuala Lumpur. This was eventually also seized by the police.<sup>26</sup>

(d) He had read in the newspapers that chilli powder was used by robbers to blind their victims, and intended similarly to use chilli powder in the event that he needed to “temporarily blind [his] kidnap target”.<sup>27</sup> A container of chilli powder was seized from the accused following his arrest.<sup>28</sup>

15 The organiser also contains addresses, NRIC numbers, telephone numbers, website addresses, timings and car plate numbers. In order to gather the information, the accused would conduct surveillance outside the homes or

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<sup>24</sup> Accused’s statement recorded on 22 January 2014 at 11 am at [A185].

<sup>25</sup> Accused’s statement recorded on 22 January 2014 at 11 am at [A186].

<sup>26</sup> Accused’s statement recorded on 22 January 2014 at 11 am at [A192].

<sup>27</sup> Accused’s statement recorded on 14 January 2014 at 2.42 pm at [A65] and [A66].

<sup>28</sup> Conditioned statement of DSP Burhanudeen Bin Haji Hussainar at [134(59)] and [134(112)].

offices of his targets<sup>29</sup> and would even follow them or their family members as they went about their daily tasks.<sup>30</sup>

16 The accused also purchased a large number of items, apart from those described at [14] above, from various sources in preparation for the execution of his plans.<sup>31</sup> He had begun gathering these items since 2011.<sup>32</sup> They included a “skin-colour” face mask purchased from eBay, a Halloween face mask from a shop in Kuala Lumpur, cable-ties from a shop in Sim Lim Tower and two car registration number plates obtained from a car accessories shop in Johor Bahru that bore different registration numbers from that of his Volkswagen. The accused admits that he purchased the “skin-colour” face mask in order to avoid being identified as he had read on the Internet that such masks were effective for this purpose.<sup>33</sup> He had also intended to affix the number plates on the Volkswagen if he used the Volkswagen as part of his plans.<sup>34</sup>

17 The Prosecution tendered as part of its evidence certain Internet search records of the accused.<sup>35</sup> Amongst the searches conducted on search engines and websites such as Yahoo!, Ask.com, reference.com and YouTube were extensive inquiries on how a person might be rendered unconscious. For instance, the accused entered the following search terms: “how to make

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<sup>29</sup> Accused’s statement recorded on 13 January 2014 at 2.06 pm at [A16] and [A17]; Accused’s statement recorded on 21 January 2014 at 3 pm at [A127], [A131], [A133], [A142] and [A149].

<sup>30</sup> Accused’s statement recorded on 21 January 2014 at 3 pm at [A131] and [A143].

<sup>31</sup> Accused’s statement recorded on 14 January 2014 at 2.42 pm at [A43].

<sup>32</sup> Accused’s statement recorded on 14 January 2014 at 2.42 pm at [A42].

<sup>33</sup> Accused’s statement recorded on 14 January 2014 at 2.42 pm at [A53] and [A54].

<sup>34</sup> Accused’s statement recorded on 14 January 2014 at 2.42 pm at [A47] to [A49].

<sup>35</sup> P306(B, C, D, H).

someone unconscious”, “How to make unconscious using chloroform”, “What is the easiest way to make someone unconscious” and “how to hit someone unconscious”.

*Mdm Ng selected as the accused’s target*

18 Sometime in 2013, the accused carried out research on Mr Lim and observed that Mr Lim was worth more than \$500 million.<sup>36</sup> The accused visited the Bizfile website and purchased business information on the Sheng Siong supermarket chain. From this information, he learnt that Mr Lim resided at 73 Jalan Arif.<sup>37</sup>

19 Over the course of the next six months, the accused drove numerous times to 73 Jalan Arif to observe the house and its occupants from his car. During one of these visits, he noticed an elderly female Chinese emerging from the house at about “9 plus in the morning”. This was Mdm Ng. The accused sensed that Mdm Ng might be Mr Lim’s mother, aunt or grandmother. The accused visited 73 Jalan Arif at least another 6 to 7 times to study her movements.<sup>38</sup> Following his observations, he surmised that Mdm Ng would leave the house at around 9 am daily and return at about 12 noon.<sup>39</sup> He then decided to make her “[his] target to demand for a ransom”.<sup>40</sup>

20 Sometime in mid-December 2013, the accused felt compelled to clear certain debts that he owed<sup>41</sup> and accordingly made up his mind to execute his

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<sup>36</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [17].

<sup>37</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [18].

<sup>38</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [18] and [19].

<sup>39</sup> Accused’s statement recorded on 13 January 2014 at 2.06 pm at [A17].

<sup>40</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [18] and [19].

plan.<sup>42</sup> The accused submitted an application for three days' leave (*ie* from 7 to 9 January 2014) to his manager.

***Events on 8 January 2014***

***Accused's deception of Mdm Ng***

21 On 8 January 2014, sometime between 7.30 am to 8 am, the accused left his house and drove the Volkswagen to 73 Jalan Arif. He saw Mdm Ng emerging from the house at about 9.30 am. The accused then used his mobile phone to access the website [www.carclub.com.sg](http://www.carclub.com.sg), where he booked a Honda Civic, which bore the licence plate number SGU2254C ("the rental car"), for use from 9.30 am to 1.30 pm. The accused then proceeded to Blk 946A Hougang Street 91 where the rental car was located. He parked the Volkswagen, transferred some bags (containing certain items that he thought he might need to use in the execution of his plans)<sup>43</sup> from the Volkswagen to the rental car, and entered the rental car.<sup>44</sup> The accused did not want to use the Volkswagen as he was "afraid that [he] might get detected".<sup>45</sup>

22 The accused drove the rental car to a bus bay that was a short distance away from an overhead bridge near Blk 627 Hougang Avenue 2, where he waited.<sup>46</sup> At about 11.30 am, Mdm Ng came down the stairs of the overhead bridge. The accused exited the rental car and approached her at the foot of the

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<sup>41</sup> Accused's statement recorded on 13 January 2014 at 2.06 pm at [A20].

<sup>42</sup> Accused's statement recorded on 13 January 2014 at 2.06 pm at [A19].

<sup>43</sup> Accused's statement recorded on 15 January 2014 at 3.08 pm at [A93].

<sup>44</sup> Accused's statement recorded on 13 January 2014 at 2.06 pm at [A22].

<sup>45</sup> Accused's statement recorded on 13 January 2014 at 2.06 pm at [A23].

<sup>46</sup> Accused's statement recorded on 13 January 2014 at 2.06 pm at [A26]; Accused's statement recorded on 11 January 2014 at 2.37 pm at [21].

bridge.<sup>47</sup> He asked her if “Lim Hock Chee”, whom he described as the boss of Sheng Siong supermarket, was her son. Mdm Ng replied in the affirmative.<sup>48</sup>

23 The accused then lied to Mdm Ng that Mr Lim had had a fall in his office and that the accused had been tasked to drive Mdm Ng to see Mr Lim. Mdm Ng gave evidence that she immediately believed the accused since the accused knew Mr Lim’s name, and became worried for her son.<sup>49</sup> The accused told Mdm Ng to follow him to the rental car and to sit at the front passenger seat. Mdm Ng complied with his directions.

*Accused’s telephone call and text message to Mr Lim*

24 The accused then drove Mdm Ng to Seletar Camp and stopped in the vicinity of a nearby childcare centre. He informed Mdm Ng that he needed to get something from the backseat of the rental car. The accused then took the opportunity to place a face mask and a blindfold on Mdm Ng.<sup>50</sup>

25 Following this, the accused used a mobile phone containing a Malaysian SIM card to call Mr Lim. He admits that the reason why he used the Malaysian line was to “avoid detection” because he “thought the police [would] not be able to track [him] if [he] use[d] a Malaysian SIM card to call and demand for ransom”. He had even used a fake name when he purchased the SIM card from Malaysia.<sup>51</sup>

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<sup>47</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [22].

<sup>48</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [23].

<sup>49</sup> Conditioned statement of Ng Lye Poh at [3].

<sup>50</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [24].

<sup>51</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [26].

26 When Mr Lim answered the call, the accused informed Mr Lim that Mr Lim's mother was with him. The accused told Mr Lim to prepare \$20 million in \$100 and \$1,000 bills, and that he would contact Mr Lim again that night. Mr Lim requested to speak to Mdm Ng. The accused held the mobile phone close to Mdm Ng's ear.<sup>52</sup> Mdm Ng uttered into the mobile phone in Hokkien, "Why did you catch me?" or "Why did you abduct me in a car?"<sup>53</sup> The accused did not make out what Mdm Ng had said. He then moved the mobile phone away from Mdm Ng and ended the call. According to Mr Lim, before the call ended, the accused warned him not to report the matter to the police or his mother's life would be in jeopardy.<sup>54</sup>

27 Mr Lim immediately called home and inquired about his mother's whereabouts. His domestic helper informed him that Mdm Ng was not at home. Mr Lim then tried to reach his mother on her mobile phone but it was switched off.<sup>55</sup> At about 12.55 pm, the accused sent Mr Lim a text message in Chinese. When translated into English, the message reads as follows:<sup>56</sup>

We demand 20 million (\$100 and \$1000 notes not in continuous serial number). One does not bring money along at birth and cannot carry it beyond death, problem that can be resolved with money is not a problem, you better spend money to resolve this matter. If (you) dare report to the police or if someone follows us, we would not want the money anymore, and you can forget about seeing your mother again too (perish together). We are ready for the worst, pay money and life will be saved (A big tree attracts a woodman's axe, it is better you raise the money yourself). Pay money tonight, will contact you again.

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<sup>52</sup> Accused's statement recorded on 11 January 2014 at 2.37 pm at [27].

<sup>53</sup> Conditioned statement of Lim Hock Chee at [5]; conditioned statement of Ng Lye Poh at [9].

<sup>54</sup> Conditioned statement of Lim Hock Chee at [6].

<sup>55</sup> Conditioned statement of Lim Hock Chee at [7].

<sup>56</sup> Conditioned statement of Lim Hock Chee at [8].

After sending the message to Mr Lim, the accused removed the battery and SIM card from the mobile phone.<sup>57</sup> The accused then drove the rental car, with Mdm Ng still in the front passenger seat, to an open-air car park at Punggol End where he waited.

28 Mr Lim forwarded the text message from the accused to his brothers, Lim Hock Eng and Lim Hock Leng. Mr Lim and his family members then gathered in his office to discuss their course of action. They decided to report the matter to the police. Sometime before 2 pm, they arrived at Woodlands Neighbourhood Police Centre. Mr Lim informed one of the officers about what had happened. He also contacted his bank and gave instructions to the bank officer for \$20 million to be prepared. The bank officer informed him that he could only prepare \$20 million by the next day, but that he could prepare a few million dollars in the meantime. Mr Lim directed his brothers to liaise with the bank officer on the collection of the cash.<sup>58</sup>

*Assistance of Mr Heng sought by the accused*

29 At about 2 pm, the accused realised that the rental period for the car had expired. He called the car rental company and successfully requested for an extension of the period of rental from 1.30 pm to 3.30 pm.<sup>59</sup> The accused then called Mr Heng on his mobile phone and requested Mr Heng to go back to their flat, retrieve a duplicate key for the Volkswagen, and head down to Blk 946A Hougang Street 91 where the accused had parked the Volkswagen that morning. Mr Heng was to drive the Volkswagen down to Punggol End to meet the accused.<sup>60</sup>

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<sup>57</sup> Accused's statement recorded on 11 January 2014 at 2.37 pm at [27].

<sup>58</sup> Conditioned statement of Lim Hock Chee at [12].

<sup>59</sup> Accused's statement recorded on 14 January 2014 at 2.42 pm at [A86].



30 Mr Heng arrived at Punggol End in the Volkswagen at about 2.30 pm.<sup>61</sup> Mr Heng parked the Volkswagen beside the rental car. The accused retrieved his bags from the rental car and placed them in the Volkswagen. Thereafter, the accused helped Mdm Ng, who was still blindfolded, out of the rental car and to the front passenger seat of the Volkswagen.<sup>62</sup> Mr Heng asked the accused why he had a blindfolded old woman with him. The accused told Mr Heng not to ask and mentioned that it was part of his private investigation work.<sup>63</sup>

31 The accused then requested Mr Heng to follow him in the rental car while the accused drove the Volkswagen to Kranji. The accused intended to check Mdm Ng into Kranji Resort. At about 3 pm, they arrived at Kranji Resort. The accused asked Mr Heng to stand outside the Volkswagen and help look after Mdm Ng while the accused entered the resort to check if a chalet was available. Upon enquiry with the receptionist, he was told that a chalet was indeed available but that he would have to produce his NRIC to the receptionist. The accused pretended that he had not brought his NRIC with him and left the resort. He returned to Mr Heng and told him to drive the rental car back to Blk 946A Hougang Street 91 and return it to the car rental company.<sup>64</sup>

32 After Mr Heng had driven off, the accused entered the Volkswagen and drove Mdm Ng aimlessly around Lim Chu Kang, Kranji and Jurong.<sup>65</sup>

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<sup>60</sup> Accused's statement recorded on 11 January 2014 at 2.37 pm at [28].

<sup>61</sup> Accused's statement recorded on 14 January 2014 at 2.42 pm at [A89].

<sup>62</sup> Conditioned statement of Heng Chen Boon at [13].

<sup>63</sup> Conditioned statement of Heng Chen Boon at [14].

<sup>64</sup> Accused's statement recorded on 14 January 2014 at 2.42 pm at [A90].

Sometime during the journey, he learnt from Mdm Ng that she required daily insulin injections for her diabetes (see [9] above).

*Accused's ransom arrangements with Mr Lim*

33 At about 7.35 pm, Mr Lim called the accused and informed the accused that he had only managed to obtain \$2 million. The accused replied that the amount was not sufficient to be shared and that Mdm Ng needed to have her insulin injection. The accused further indicated that he did not want to drag the matter further and agreed to accept the \$2 million.<sup>66</sup> The accused then told Mr Lim to proceed to Yishun Stadium at 8.30 pm with the money, and that Mr Lim should not bring anyone with him, including the police.<sup>67</sup> Before the accused ended the call, he told Mr Lim that he was going to play a game with him.<sup>68</sup>

34 Right after ending the call with Mr Lim, the accused called Mr Heng and asked him to take a taxi to Sembawang Park.<sup>69</sup> The accused proceeded to drive the Volkswagen to a car park at Sembawang Park. Mr Heng arrived there at about 8.15 pm,<sup>70</sup> and saw that Mdm Ng was still in the Volkswagen. Upon Mr Heng's queries, the accused told Mr Heng that he had "*Bang Jia*" the old lady, which Mr Heng understood to mean that the accused had "kidnapped the old lady".<sup>71</sup> The accused also informed Mr Heng that Mdm Ng

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<sup>65</sup> Accused's statement recorded on 14 January 2014 at 2.42 pm at [A90].

<sup>66</sup> Conditioned statement of Lim Hock Chee at [16].

<sup>67</sup> Accused's statement recorded on 11 January 2014 at 2.37 pm at [32].

<sup>68</sup> Conditioned statement of Lim Hock Chee at [16].

<sup>69</sup> Accused's statement recorded on 11 January 2014 at 2.37 pm at [32].

<sup>70</sup> Accused's statement recorded on 11 January 2014 at 2.37 pm at [33].

<sup>71</sup> Conditioned statement of Heng Chen Boon at [19].

was the mother of the boss of the Sheng Siong supermarket chain.<sup>72</sup> Mr Heng asked the accused why he would do something like that, which was a serious offence in Singapore. He pleaded with the accused to release Mdm Ng and suggested that they could leave her at the nearby bus stop or a taxi stand and ask her son to fetch her. The accused replied that he “could not turn back”.<sup>73</sup> Mr Heng cried and further pleaded with the accused, telling him that even if he owed a lot of money, they could sell their flat and the accused could use the proceeds. The accused insisted, however, that there was no turning back for him.<sup>74</sup>

35 The accused asked Mr Heng to help him and after some initial resistance, Mr Heng obliged. Mr Heng sat in the driver’s seat of the Volkswagen while the accused sat on the rear passenger seat. The accused then directed Mr Heng, using hand signals, to drive.<sup>75</sup> When they arrived at Gibraltar Crescent, the accused told Mr Heng to stop the car. The accused exited and called Mr Lim. This was at about 8.45 pm. The accused asked Mr Lim if he had arrived at Yishun Stadium, and Mr Lim replied that his brother was on the way back with the money and that Mr Lim had not reached Yishun Stadium. Mr Lim requested to meet at 10 pm. The accused responded that Mr Lim’s mother needed her injection and told him to meet at 9.30 pm. The accused then ended the call.<sup>76</sup>

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<sup>72</sup> Conditioned statement of Heng Chen Boon at [20].

<sup>73</sup> Conditioned statement of Heng Chen Boon at [21]; Accused’s statement recorded on 11 January 2014 at 2.37 pm at [35].

<sup>74</sup> Conditioned statement of Heng Chen Boon at [22].

<sup>75</sup> Conditioned statement of Heng Chen Boon at [23].

<sup>76</sup> Accused’s statement recorded on 15 January 2014 at 3.08 pm at [A102].

*Ransom deposited by Mr Lim*

36 At about 9.20 pm, Mr Lim left home with the ransom of \$2 million in his car. At about 9.33 pm, while Mr Lim was driving, he received another call from the accused, asking for Mr Lim's whereabouts. Mr Lim replied that he would arrive at Yishun Stadium in about 10 minutes and the accused then ended the call.<sup>77</sup>

37 Mr Lim arrived at Yishun Stadium at about 9.45 pm. At about 9.55 pm, the accused called him again to inquire about the description of Mr Lim's car. Mr Lim replied that it was a silver Lexus L600 bearing registration plate number SKH600X. The accused then instructed him to proceed to Andrews Avenue immediately.<sup>78</sup>

38 The accused then drove Mdm Ng to a car park at Tuah Road. He told Mr Heng to drive the Volkswagen back to Gibraltar Crescent and wait for his call. The accused informed Mr Heng that he was going to collect the money.<sup>79</sup> It appears that Mr Heng initially refused to comply with the accused's directions. The accused warned Mr Heng that if he did not comply, the accused would tell Mr Heng's family members about their sexual acts in the past. Mr Heng became very frightened. The accused passed him the car keys to the Volkswagen and walked off, leaving Mr Heng with Mdm Ng.<sup>80</sup>

39 At about 10.25 pm, Mr Lim arrived at Andrews Avenue. Thereafter, the accused made two calls to Mr Lim to determine where Mr Lim was. The

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<sup>77</sup> Conditioned statement of Lim Hock Chee at [18].

<sup>78</sup> Conditioned statement of Lim Hock Chee at [19].

<sup>79</sup> Accused's statement recorded on 15 January 2014 at 3.08 pm at [A103].

<sup>80</sup> Conditioned statement of Heng Chen Boon at [27] to [29].

accused eventually instructed Mr Lim to proceed to Car Park 2 at Sembawang Park.<sup>81</sup> The accused waited near Malta Crescent.<sup>82</sup> At about 11.10 pm, the accused called Mr Lim and instructed him to proceed by foot to a pavilion in Sembawang Park. He told Mr Lim to leave the bag containing the money under a tree beside the pavilion. The accused then ended the call.<sup>83</sup>

40 Mr Lim placed the bag under the tree as instructed. He then walked out of Sembawang Park and returned to his car.

*Collection of the ransom*

41 The accused waited for about 15 minutes after Mr Lim had deposited the bag before he went to the tree to retrieve the bag. He unzipped it slightly and noticed that it contained stacks of money. Holding the bag in his right hand, the accused ran toward Malta Crescent and Gibraltar Crescent before eventually turning into Cyprus Road, where he saw thick vegetation. The accused entered the vegetation and deposited the bag there.<sup>84</sup>

42 Thereafter, the accused returned to the Volkswagen. He directed Mr Heng to drive to a HDB estate near Sembawang Road. The accused then told Mr Heng to alight and take a taxi home. Mr Heng did so.

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<sup>81</sup> Conditioned statement of Lim Hock Chee at [20] to [21]; Accused's statement recorded on 15 January 2014 at 3.08 pm at [A103].

<sup>82</sup> Accused's statement recorded on 15 January 2014 at 3.08 pm at [A103].

<sup>83</sup> Conditioned statement of Lim Hock Chee at [22].

<sup>84</sup> Accused's statement recorded on 15 January 2014 at 3.08 pm at [A103].

*Release of Mdm Ng*

43 Following Mr Heng's departure, the accused drove to Seletar Camp and parked the Volkswagen near a bus stop. He removed Mdm Ng's blindfold and used a wet tissue to clean her face, hands and arms. He then helped Mdm Ng out of the Volkswagen and pointed her to a bus stop in front of her, telling her to wait for her son at the bus stop.<sup>85</sup>

44 On 9 January 2014, at about 12.05 pm, the accused called Mr Lim and informed him that he had released Mdm Ng at a bus stop along Jalan Kayu, near Seletar Camp. The accused told Mr Lim to make his way there to look for her.<sup>86</sup>

*Arrest of the accused*

45 After the call, the accused noticed that his clothes were muddy and decided to go to the house of Marcus Loh, a friend of his, in order to clean up. The accused drove to a car park at Ang Mo Kio Avenue 10 and exited the car. As the accused was cleaning his hand with wet wipes, he was arrested by police officers.<sup>87</sup>

**The parties' submissions**

46 It suffices for me at this juncture to summarise the cases of the Prosecution and the defence. I will describe the parties' submissions in greater detail during my analysis of the key issues to be determined.

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<sup>85</sup> Accused's statement recorded on 15 January 2014 at 3.08 pm at [A106].

<sup>86</sup> Conditioned statement of Lim Hock Chee at [24].

<sup>87</sup> Accused's statement recorded on 15 January 2014 at 3.08 pm at [A106] and [A107].

47 The Prosecution submits that the contents of the accused’s uncontested statements alone are sufficient to prove the Charge against the accused beyond reasonable doubt.<sup>88</sup> The admissions made by the accused in his statements are entirely consistent with the testimonies of Mdm Ng, Mr Lim, Mr Heng and the contemporaneous video recordings taken by the camera in the Volkswagen.<sup>89</sup>

48 The defence does not dispute that the accused committed the *actus reus* of the offence under s 3 of the Kidnapping Act. The defence argues, however, that the *mens rea* for the offence is not satisfied. The accused intended to release Mdm Ng that same day (*ie* 8 January 2014), regardless of whether the accused received the ransom.<sup>90</sup> It submits, in essence, that the *mens rea* to be established for an offence under s 3 is the intention to hold the victim *until and unless the ransom is paid*. In other words, it is a “condition precedent” to the release of the victim that the ransom is paid.<sup>91</sup> Thus the scope of the offence does not include an abductor whose intention is to release his hostage whether or not ransom is received. Accordingly, the accused, whose intention was to release Mdm Ng regardless of whether he received the ransom he demanded, is not guilty of the offence under s 3 of the Kidnapping Act.<sup>92</sup>

49 The Prosecution responds that the defence’s submissions are incorrect both as a matter of law and fact. It argues that there is no evidence which supports the accused’s claim that he intended to release Mdm Ng on the night

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<sup>88</sup> Prosecution’s closing submissions at [5].

<sup>89</sup> Prosecution’s closing submissions at [4].

<sup>90</sup> Defence’s closing submissions at [3].

<sup>91</sup> Defence’s closing submissions at [17].

<sup>92</sup> Defence’s closing submissions at [5].

of 8 January 2014 regardless of whether ransom was paid. To the contrary, the weight of the evidence shows that the accused was serious about collecting the ransom, and would have continued to hold Mdm Ng if Mr Lim had not made the payment.<sup>93</sup> The Prosecution questions also the defence's characterisation of the *mens rea* of the offence as a matter of law. It argues that there is no ambiguity in the language of s 3 of the Kidnapping Act, and that the defence's interpretation of s 3 is both strained and artificial.<sup>94</sup> The *mens rea* requirement under s 3, according to the Prosecution, is its literal meaning – *ie*, the intent to hold the victim for the purpose of ransom.<sup>95</sup> An accused will have the necessary mental element for the offence once he abducts the hostage with *the intention to make a demand for ransom*.<sup>96</sup>

### Issues for determination

50 Section 3 of the Kidnapping Act reads as follows:

**Abduction, wrongful restraint or wrongful confinement for ransom**

**3.** Whoever, with intent to hold any person for ransom, abducts or wrongfully restrains or wrongfully confines that person shall be guilty of an offence and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, also be liable to caning.

51 It is apparent from the language of the statute that the *actus reus* of the s 3 offence consists of the abduction, wrongful restraint or wrongful confinement of the person who is held for ransom. For ease of reference, I will

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<sup>93</sup> Prosecution's closing submissions at [8].

<sup>94</sup> Prosecution's reply submissions at [3].

<sup>95</sup> Prosecution's reply submissions at [7].

<sup>96</sup> Prosecution's reply submissions at [14].



refer to the person who is held for ransom as “the victim”. The *mens rea* requirement under s 3 is accordingly the intent to hold the victim for ransom.

52 As I have mentioned (at [48] above), the defence does not contest the satisfaction of the *actus reus* requirement in this case. My analysis will therefore centre on the crux of the defence, *ie* whether the accused possessed the necessary *mens rea*.

53 For completeness, however, I consider that the *actus reus* would have been satisfied even if the defence had not conceded the point. Section 2 of the Kidnapping Act indicates that the terms “abduction”, “wrongful restraint” and “wrongful confinement” have the meanings assigned to them in the relevant sections of the Penal Code (Cap 224, 2008 Rev Ed) (“the Penal Code”). Abduction is defined at s 362 of the Penal Code, which states, “Whoever by force compels, or by any deceitful means induces any person to go from any place, is said to abduct that person.” It is evident from the undisputed facts that the accused lied to Mdm Ng when he first approached her at about 11.30 am on 8 January 2014, telling her that Mr Lim had suffered a fall and had sent the accused to bring Mdm Ng to see Mr Lim at his office, in a bid to induce Mdm Ng to get into the rental car with him and leave the area (see [22] to [23] above). This strategy was undeniably successful. Thus, if the matter had been contested, I would have had no hesitation in finding that the *actus reus* requirement of the s 3 offence was satisfied.

54 Given the manner in which the accused has chosen to mount his defence, the dispute has narrowed into the following two key issues for my determination:

- (a) The nature of the *mens rea* requirement for the offence under s 3 of the Kidnapping Act; and
- (b) Whether the accused possessed the aforementioned *mens rea*.

I will take each of these two issues in turn.

### **The *mens rea* for the offence under s 3 of the Kidnapping Act**

#### ***The proper approach to statutory interpretation***

55 Given the dispute on the proper interpretation of s 3 of the Kidnapping Act, I begin by identifying certain well-established principles on statutory interpretation that will inform my approach to the issues. It is appropriate to begin with s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) (“the Interpretation Act”), which enshrines the principle of purposive interpretation:

#### **Purposive interpretation of written law and use of extrinsic materials**

**9A.**—(1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

56 In *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 (“*Low Kok Heng*”), which was cited with approval by the Court of Appeal in its recent decision in *Nam Hong Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd* [2016] 4 SLR 604 at [28], V K Rajah JA explained (at [41]) that any common law principle of interpretation, such as the plain meaning rule and the strict construction rule, must yield to the purposive interpretation approach under s 9A(1) of the Interpretation Act. All written law, penal or otherwise, must be interpreted purposively. Other common law

principles come into play only when (i) their application coincides with the purpose underlying the written law in question; or (ii) ambiguity in that written law persists even after an attempt at purposive interpretation.

57 In *Forward Food Management Pte Ltd and another v Public Prosecutor* [2002] 1 SLR(R) 443 (“*Forward Food Management*”), Yong Pung How CJ held (at [26]) that the strict construction rule is only applied to ambiguous statutory provisions as a tool of last resort. It is only after the literal and purposive interpretations of the provision as methods of ascertaining Parliament’s intent have been exhausted that the strict construction rule kicks in in the accused’s favour. In *Low Kok Heng*, Rajah JA expressed the view (at [38]) that the position taken in *Forward Food Management* is “decidedly the most appropriate approach to adopt [in relation to the strict construction rule], particularly in the light of the principle of statutory construction of statutes endorsed by Parliament in the Interpretation Act”.

58 The defence has begun its analysis by applying a “literal interpretation” to the language of s 3.<sup>97</sup> It reaches the conclusion that “the language of s 3 alone is inconclusive” and thus “it will be necessary to ‘look beyond the four corners of the statute’ and purposively interpret s 3”.<sup>98</sup> It then embarks on a purposive interpretation of the statutory provision and concludes that Parliament “could not have intended” that s 3 would apply in a case where the abductor intended to release his victim even if he did not receive the ransom demanded.<sup>99</sup>

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<sup>97</sup> Defence’s closing submissions at [9] to [19].

<sup>98</sup> Defence’s closing submissions at [18].

<sup>99</sup> Defence’s closing submissions at [38].

59 I do not consider that the defence conducted its analysis according to the proper approach to statutory interpretation that I have described in the preceding paragraphs. As emphasised by Rajah JA in *Low Kok Heng* (at [57]), s 9A(1) of the Interpretation Act mandates that a purposive approach be adopted in the construction of all statutory provisions, and allows extrinsic material to be referred to even where, on a plain reading, the words of a statute are clear and unambiguous. Purposive interpretation is the “paramount principle of interpretation”. Accordingly, I will begin my analysis with a purposive interpretation of s 3 of the Kidnapping Act, in order to ascertain the *mens rea* requirement stated therein.

### ***Purposive interpretation***

#### *Legislative history*

60 The Penal Code (Amendment) Bill was laid before Parliament on 23 April 1958 by the Chief Secretary, Mr E. B. David (“Mr David”). One of the aims of the Bill was to increase the sentences for the crime of kidnapping, in light of several instances of kidnapping and attempted kidnapping over the past years. According to Mr David, “the essence of every kidnapping case is to put the victim and his relatives in fear of physical violence”: *Singapore Parliamentary Debates*, Official Report (23 April 1958) vol 6 at col 135. Mr David explained that “for the better protection of the public, it [was] considered advisable to arm the Courts with this additional power to be used at discretion”.

61 In the same debate, Member of Parliament Mr Lee Choon Eng expressed the view that “[k]idnapping and gangsterism are very, very serious offences because they cause fear and alarm not only to the rich and poor but also to every individual citizen in this country. ... We must also consider the

condition of the family of that victim. When a victim is kidnapped and confined illegally or wrongfully, the family is put under mental torture and suffers more if that victim is the sole bread-winner of the family.”: *Singapore Parliamentary Debates*, Official Report (23 April 1958) vol 6 at col 136.

62 An even more resolute stance was expressed by the then-Minister for Home Affairs, Mr Ong Pang Boon (“Mr Ong”), in moving the Punishment of Kidnapping Bill on 24 May 1961. Mr Ong described the Bill as “the strongest manifestation yet of the Government’s determination to wipe out evil perpetrators of the offence of kidnapping for ransom”: *Singapore Parliamentary Debates*, Official Report (24 May 1961) vol 14 at col 1504. One of the aims he described was to “deter potential kidnappers from risking their necks without the certainty of gain”. He emphasised the need to combat the kidnapping menace which, at the time the Bill was introduced, had “reared its ugly and evil head...and caused alarm and nervousness especially among the wealthy merchants and businessmen”.

63 The Bill introduced the offence of kidnapping for ransom as an aggravated form of ordinary kidnapping or abduction. Mr Ong explained that cl 3 of the Bill, which is the precursor of s 3 of the Kidnapping Act, made it an offence for a person to abduct, wrongfully restrain or wrongfully confine any other person with intent to hold such person for ransom, and that on conviction the offender would be punished with death or imprisonment for life (whereupon he would also be liable to caning). He also observed the need to encourage victims and their families and agents to be more resolute in their cooperation with the police, because “[n]othing makes the kidnapper feel more secure and become bolder than the knowledge that most victims and their relatives are tongue-tied during negotiations whilst the victim is in captivity and even after payment of ransom through fear of possible reprisals instilled

into them by these kidnappers, who cleverly use this psychological weapon to good advantage”. This formed the rationale for the further creation of an offence for a person who knowingly negotiates to pay or to pays any ransom to procure the release of a victim (now under s 5(2) of the Kidnapping Act). As Mr Ong described, the purpose of the Bill was to “deter criminally-minded kidnappers from kidnapping persons for ransom” and to provide “a stern warning that kidnapping does not pay. Should there be any future kidnapping case, it could become an appointment with death or an invitation to life incarceration for the kidnapper.”: *Singapore Parliamentary Debates*, Official Report (24 May 1961) vol 14 at col 1507.

64 The Kidnapping Act (Cap 101, 1970 Rev Ed) came into operation on 15 April 1971. A query by Member of Parliament Mr Leong Horn Kee was posed to the then-Minister for Home Affairs and Second Minister for Law Professor S. Jayakumar during the parliamentary session on 23 March 1985, regarding the incidence of kidnap for ransom cases in Singapore over the past few years. Professor Jayakumar responded that all 34 cases reported to the police since 1959 had been solved. The punishments provided by the Kidnapping Act and the success of the police in dealing with such cases had the desired deterrent effect: *Singapore Parliamentary Debates*, Official Report (23 March 1985) vol 45 at col 1260. On 23 May 1994, the then-Minister for Home Affairs Mr Wong Kan Seng reported that the introduction of the death penalty for kidnapping in 1961 had resulted in a “dramatic drop in such cases” – there were only 6 cases of kidnapping reported in the last ten years (*ie* between 1984 and 1994), compared with a peak of 38 cases in 1959 alone: *Singapore Parliamentary Debates*, Official Report (23 May 1994) vol 63 at col 61.

*My findings*

65 In my view, there is nothing within the relevant parliamentary speeches discussed above that warrants a restrictive approach towards the *mens rea* requirement for the s 3 offence. Rather, it appears that the legislative intent is to cast a wide net to penalise the actions of abductors who place their victims and the relatives of their victims in fear that physical violence may be caused to the victims. As observed by Mr David as far back as 1958, the “essence” of kidnapping is the generation of such fear for victims and their relatives. In that debate, Mr Lee Choon Eng expressed similar sentiments, emphasising that kidnapping is a serious offence “because [it] cause[s] fear and alarm” to citizens. He further noted that the families of the victims are “put under mental torture”. Mr Ong similarly observed that kidnapping had “caused alarm and nervousness” amongst the citizenry.

66 From a reading of the parliamentary speeches, one can immediately discern the real concern that kidnapping for ransom causes considerable fear and apprehension to both victims and their families. No distinction is drawn between cases in which abductors intend to release their victims only if ransom is received, and those where abductors intend to effect such release after a certain period even if they did not obtain their desired payoff. Nor would one have expected Parliament to draw such a distinction, in light of the sentiments expressed by the Ministers and Members of Parliament, because in both types of cases the victims and their families will undoubtedly experience fear and apprehension. Accordingly, there was no need for Parliament to draw such a distinction, nor is there any basis for the defence to divine such a theoretical divide from the parliamentary speeches.

67 Following from its discussion of the harm to society posed by kidnapping, Parliament adopted an unambiguous and unwavering position that such acts had to be deterred – in the words of Mr Ong, there was a need to “deter potential kidnappers from risking their necks without the certainty of gain”. Parliament’s palpable intent was to establish a strong disincentive for abductors to embark on such a risky venture, gambling against the investigative abilities of law enforcement in the hope that they might derive some ill-gotten gains. Yet this is precisely what a person who abducts his victim and seeks ransom for the victim’s release is doing, regardless of whether he intends to release his victim after a period of time despite not receiving the ransom. Such a person has already cast his lot by embarking on a criminal endeavour in the hope of monetary return. Nothing in the parliamentary debates suggests that Parliament intended to allow those people who deliberately choose to abduct innocent victims and essentially gamble on whether they receive the ransom demanded, within a self-selected window of time, to escape criminal responsibility under the s 3 offence.

68 The defence points out that the offence of kidnapping or abducting in order to murder under s 364 of the Penal Code carries also a punishment of death or imprisonment for life, and argues that since an abductor with intent to release his victim regardless of whether he obtains ransom does not possess the same moral blameworthiness as an abductor who intends to murder his victim, the former cannot fall within the scope of the s 3 offence, which carries a similar sentence of death or life imprisonment.<sup>100</sup>

69 I do not think there is merit in this argument. This is for two reasons which the Prosecution has brought to my attention. First, the approach adopted

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<sup>100</sup> Defence’s closing submissions at [24].



by the defence essentially seeks to determine the scope of a penal provision by reference to the severity of the punishment provided for. The Prosecution submits, and I agree, that it would be an usurpation of the legislative function for a court to deliberately narrow the scope of a provision simply because it feels that the punishment which Parliament has prescribed for a certain offence is too severe.<sup>101</sup> I note further that a similar warning was sounded by Rajah JA in *Low Kok Heng* in his discussion of the limits of purposive interpretation (at [52]):

... Courts must be cautious to observe the limitations on their power and to confine themselves to administering the law. “Purposive construction often requires a sophisticated analysis to determine the legislative purpose and a discriminating judgment as to where the boundary of construction ends and legislation begins” (*per* McHugh JA in *Kingston v Keprose Pty Ltd* (1987) 11 NSWLR 404 at 423). *Section 9A of the Interpretation Act should not be viewed as a means or licence by which judges adopt new roles as legislators*; the separation of powers between the judicial branch and the legislative branch of government must be respected and preserved. [emphasis added]

70 Rajah JA strikes an appropriate note of caution that I bear well in mind in determining the scope of a statutory provision by way of purposive interpretation. In my view, Parliament has explained its view of the essence and the true harm of kidnapping to society (described at [60] to [64] above). Having set out the breadth of the offence in s 3 of the Kidnapping Act, Parliament has accordingly made a considered decision to prescribe the punishment it did in s 3 of the Kidnapping Act in order to stamp out such evil, and it has since then noted on more than one occasion the deterrent effect produced by such punishment (see [64] above). The Prosecution also correctly notes that when Parliament determines the appropriate sentence for offences, it

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<sup>101</sup> Prosecution’s reply submissions at [23].

considers a range of factors apart from the moral heinousness of the offences.<sup>102</sup> It takes into account other factors such as the prevalence of the offence, whether the offence is committed for profit, and whether the offence is difficult to detect or prevent. I find that the relevant parliamentary speeches reflect Parliament's consideration of these factors, in particular the prevalence of the offence as well as its difficulty of detection, due to the reluctance of victims' families to provide assistance to the police for fear of reprisals to the victims (see [63] above). Upon a holistic consideration of these factors, Parliament deemed it appropriate for the punishment for kidnapping for ransom to be set at the level laid down in s 3 of the Kidnapping Act.

71 The Prosecution also submits that the sentencing options that are open to the court for an offence under s 3 allow the court to take into account the relative culpability of the offender. For instance, the greater the level of harm inflicted on the victim, the more likely that a harsher sentence will be imposed on the offender. I agree with the Prosecution that s 3 of the Kidnapping Act provides for a "properly calibrated system of punishments that takes into account the level of harm inflicted on the hostage".<sup>103</sup> Given the sentencing options available, the court can take into account factors such as the intention of the abductor to release his victim even if he does not receive the ransom demanded within the specified period when determining the appropriate sentence to be imposed.

72 In the circumstances, I reject the defence's unduly restrictive interpretation of the *mens rea* requirement for the offence under s 3 of the Kidnapping Act. I accept the broader formulation proposed by the

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<sup>102</sup> Prosecution's reply submissions at [25].

<sup>103</sup> Prosecution's reply submissions at [19(b)].

Prosecution, which appears to me to be far more consistent with parliamentary intent. The mental element will be satisfied when the accused intends to hold the victim for the purpose of obtaining ransom. It is not part of the *mens rea* that the accused must further intend to hold the victim until and unless the ransom is obtained.

***Literal interpretation***

73 Given the finding that I have reached following a purposive interpretation of s 3, there is strictly speaking no need for me to have regard to other interpretive techniques, such as the plain meaning rule. But for completeness, I will explain my view on what a literal interpretation of s 3 demands.

***The parties' submissions***

74 The defence submits that the meaning of the phrase “hold for ransom” within s 3 turns on the meaning of the word “for”. It suggests that “for” has two possible meanings. It could mean “for the purpose of”, in which case the *mens rea* would be the intention to hold any person for the purpose of demanding or obtaining ransom.<sup>104</sup> Significantly, the defence concedes that if this is the *mens rea* of the s 3 offence, then the accused would have the necessary *mens rea* since the elements of the offence will be satisfied even if the accused intended to release Mdm Ng without receiving the ransom.<sup>105</sup>

75 But the defence argues that there is a second possible meaning of “for”. When “for” is used in the context of a transaction, it may create a

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<sup>104</sup> Defence’s closing submissions at [11].

<sup>105</sup> Defence’s closing submissions at [12].

condition precedent.<sup>106</sup> According to the defence, a kidnapping where ransom is demanded is ultimately a transaction. The victim's family pays the abductor ransom, and in exchange the abductor releases the victim. If so, the *mens rea* required under s 3 would be the intention to hold any person *until and unless the ransom is paid*. In other words, it is a "condition precedent" to the release of the person that the ransom is paid.<sup>107</sup> Thus in a case where the abductor intends to release the victim regardless of whether ransom is paid, he does not possess the requisite *mens rea*.

76 The Prosecution criticises the defence's approach on the basis that there is nothing in the parliamentary debates that suggests that Parliament treated kidnapping as a commercial transaction proposed by the abductor to the victim's family. The defence's attempt to transplant a meaning of the word "for" that is used in commercial transactions into s 3 of the Kidnapping Act is entirely artificial.<sup>108</sup> The Prosecution submits that the phrase "for ransom" within s 3 admits of only one meaning.<sup>109</sup> The High Court decision in *Public Prosecutor v Tan Ping Koon and another* [2004] SGHC 205 ("*Tan Ping Koon*") makes it clear that the *mens rea* of the s 3 offence is satisfied once the abductor abducts the victim with *the intention to make a demand for ransom*.<sup>110</sup>

### *My findings*

77 In my view, the defence's interpretation of the phrase "intent to hold any person for ransom" as "intent to hold any person until and unless ransom

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<sup>106</sup> Defence's closing submissions at [13].

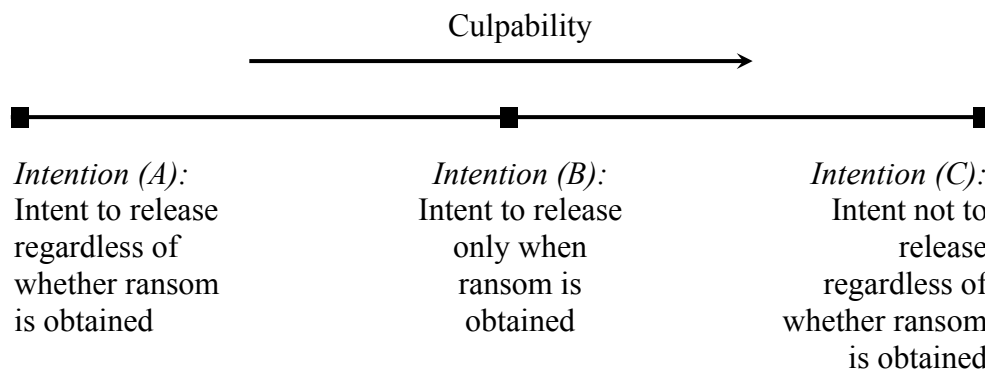
<sup>107</sup> Defence's closing submissions at [17].

<sup>108</sup> Prosecution's reply submissions at [9].

<sup>109</sup> Prosecution's reply submissions at [13].

<sup>110</sup> Prosecution's reply submissions at [14].

is paid” is untenable. The intention to require the payment of ransom as a “condition precedent” for release ultimately entails implausible consequences. In the interest of clarity, I will employ the use of the diagram below (*ie* Figure 1) to aid my explanation.



*Figure 1*

78 Figure 1 depicts the possible intentions of an abductor regarding the victim’s release, situated along a scale of relative culpability. On the lower end of the scale is the intention to release the victim regardless of whether ransom is obtained, which I have termed “Intention (A)” for ease of reference. The defence argues that Intention (A) is less morally blameworthy than Intention (B), which is the intention to release the victim only when ransom is obtained –in other words (and in the words of the defence), the intention to hold the victim until and unless the ransom is paid. The antithesis of Intention (A) is Intention (C), which refers to an abductor’s intent not to release the victim regardless of whether ransom is obtained. Such an abductor never intends to let his or her victim go, even if the victim’s family pays the ransom in full. An abductor who possesses Intention (C) is seated ignominiously at the highest end of the culpability spectrum.

79 The defence’s interpretation of the *mens rea* requirement as the “intent to hold any person until and unless ransom is paid” (see [75] above) is essentially a reference to Intention (B). Such an abductor, according to the defence, possesses sufficient moral culpability to be penalised under s 3 of the Kidnapping Act. The defence is at pains to emphasise that a person with Intention (A) would not possess the necessary *mens rea*. His intention does not contain the requisite “condition precedent”, because he intends to release the victim even if he does not obtain the ransom from the victim’s family. In other words, the existence of the “condition precedent” is an essential and indispensable element of the *mens rea* for the offence under s 3. The defence suggests that an abductor with Intention (B) does not have sufficient moral culpability for criminal liability under s 3. This accordingly forms the basis for the defence’s submission that the accused, as an abductor who intended to release Mdm Ng eventually regardless of whether he obtained the ransom, does not have the requisite *mens rea*.

80 The difficulty with the defence’s proposed *mens rea*, however, is that it is ultimately unable to account for Intention (C), *ie* an intention not to release regardless of whether ransom is obtained. Intention (C), similar to Intention (A), does not contain a condition precedent. In this sense, Intention (C) possesses a marked dialectical similarity to Intention (A). Significantly, however, Intention (C) stands at the very opposite end of the culpability spectrum from Intention (A). An abductor with such intention is the *most* morally blameworthy. Given his degree of moral blameworthiness, how could it possibly be the case that an abductor with Intention (C) manages to elude criminal liability under s 3 simply because the requisite “condition precedent” is similarly absent in Intention (C)? His state of mind represents the scourge of kidnapping at its most evil. Even after he receives the ransom (and also if he

does not), he intends for his victim to remain languishing in an unnameable dungeon, possibly never to be found. But the logically unavoidable consequence of the requirement (as proposed by the defence) that the abductor must intend to hold *until and unless* he obtains the ransom is that Intention (C) will be excluded from the scope of s 3. Just as Intention (A) is excluded from the scope of s 3 (as the defence recommends), so must Intention (C), if the defence's analysis is pursued to its logical end. I reject such an analysis. In my view, an acceptance of the defence's characterisation of the *mens rea* requirement will lead to the unacceptable corollary that greater evil will go unpunished. This is unsound as a matter of logic and policy and cannot conceivably represent Parliament's intention.

81 The Prosecution has referred me to *Tan Ping Koon*, a decision of Tay Yong Kwang J (as he then was) in the High Court. The facts of this case are not akin to those of the present case so I shall state them briefly. The two accused persons in that case each faced a charge of kidnapping with common intention. The victim was a young girl of less than 10 years at the time of the offences. The second accused had entered the victim's house, carried the victim out of the house and brought her into his car, which was driven by the first accused. They then left the scene, but soon noticed that they were followed by another vehicle. They decided to abandon the victim by asking her to alight at the side of the road. Although the two accused persons subsequently pleaded guilty before Tay J, Tay J nevertheless explained his views (at [54] and [55] of his judgment) on whether the elements of the offence were satisfied for each accused person. Tay J found that the act of abduction was complete when the second accused carried the victim out of the compound of the house onto the road. In relation to the existence of *mens rea*, Tay J held as follows:

55 However, in order to sustain a conviction under s 3 of the Kidnapping Act, the Prosecution must prove that the abduction was with the intention of holding that person for ransom. ... *A demand for ransom made after abduction would offer the best proof of the purpose of the abduction but no demand made does not mean no intention to make a demand. What has to be proved is the intent, not the demand nor the payment of ransom.* In the present case, the voluntary statements of both accused persons put the matter beyond any dispute. The only purpose of abducting [the victim] was to force her father to pay their price of her release. The offence is complete even if the perpetrators did not succeed in their purpose. [emphasis added]

82 In his analysis of whether the *mens rea* requirement for the s 3 offence was satisfied, Tay J focused on “the purpose of the abduction”, and reasoned that a demand for ransom made after abduction would offer the “best proof” of what this purpose was. He further reasoned that the fact that no demand was actually made on the facts of the case (given that the accused persons decided to release the victim for fear that they were being followed) did not mean that there was no intention to make a demand for ransom. I find that Tay J’s analysis coheres with my finding that the *mens rea* requirement for the offence under s 3 is the intention to hold the victim *for the purpose of obtaining ransom*. One clear means by which an abductor would evince such an intention would be by making a demand for ransom, backed by the leverage of the victim’s captivity and well-being.

### ***The strict construction rule***

83 I have explained at [57] above that the strict construction rule is only applied as a “tool of last resort”, when both the purposive and literal interpretations of the statutory provision have been attempted and the meaning of the provision remains in ambiguity. It is a “*qualified and non-absolute* principle of interpretation that applies *only* where ambiguity persists after a purposive interpretation approach pursuant to s 9(A)(1) of the Interpretation



Act is adopted” (emphasis in the original): *Low Kok Heng* at [85]. Having applied both purposive and literal interpretive techniques to s 3, and having found no such ambiguity in reaching my conclusions thereon, it would be inappropriate for me to apply the strict construction rule. I therefore reject the defence’s invitation for me to do so.<sup>111</sup>

**Whether the accused possessed the requisite *mens rea***

84 The defence concedes that if the *mens rea* for the offence under s 3 is the intention to hold the victim for the purpose of obtaining ransom (as I have found), then the accused will have the necessary *mens rea* (see [74] above). Indeed, the accused agreed during cross-examination that he abducted Mdm Ng not for any other purpose than his desire to demand a ransom from Mr Lim.<sup>112</sup> Since the sole defence of the accused is premised on his legal argument (which I have rejected) on the scope of the *mens rea* requirement under s 3, his defence falls away. I add for completeness that even if the accused had not conceded that he had the necessary *mens rea*, I would have rejected this contention. In my view, the overwhelming weight of the evidence demonstrates that the accused conceived and executed his plans to abduct Mdm Ng for the sole purpose of demanding ransom of \$20 million from Mr Lim. These plans were indeed carried out with some success – he managed to extract a sum of \$2 million from Mr Lim for his efforts.

85 Even if I were to accept the defence’s proposed formulation of the *mens rea*, I would have had serious doubts that the accused intended to release Mdm Ng regardless of whether he obtained the ransom. On the contrary, I

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<sup>111</sup> Defence’s closing submissions at [44].

<sup>112</sup> NE 1 September 2016 p15 lines 6 to 9.

would have been prepared to find that the evidence before me demonstrated beyond a reasonable doubt that the accused had intended to hold Mdm Ng until and unless Mr Lim made some payment for her release. I have set out the contents of the text message sent by the accused to Mr Lim at [27] above. The language is highly threatening and the expressed intention is clear: “pay money and life will be saved”. This was a “problem that [could] be resolved with money [and was therefore] not a problem”. The indisputable meaning of the message was that unless Mr Lim paid the money (and thereby resolved the “problem”), his mother’s life and liberty would be forfeited. During cross-examination, Mr Lim disagreed with counsel for the defence’s suggestion that the accused had intended to release Mdm Ng regardless of whether Mr Lim paid the ransom to the accused.<sup>113</sup> Mr Lim explained that during the telephone conversations with the accused and his text messages to Mr Lim, the accused “was angry and agitated”, causing Mr Lim to “worr[y] for the safety of [his] mother”.<sup>114</sup> Thereafter, following Mr Lim’s indication that he had only managed to raise \$2 million in the evening of 8 January 2014, the accused agreed to accept this sum. There is nothing to indicate that the accused’s decision to accept \$2 million (which is obviously still a substantial sum) as ransom was anything other than a considered choice on his part. In the totality of the circumstances, I do not consider that the evidence supports the defence’s assertion that the accused intended to release Mdm Ng regardless of whether he obtained the money or not.

86 I also emphasise the tremendous amount of preparatory work undertaken by the accused before 8 January 2014. His planning was assiduous and meticulous, as is evident from the documentary evidence (including the

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<sup>113</sup> NE 30 August 2016 p47 lines 24 to 30.

<sup>114</sup> NE 30 August 2016 p48 lines 1 to 3.

accused's organiser) seized by the police. He carried out surveillance at 73 Jalan Arif numerous times over the course of six months in order to observe Mdm Ng's daily routine, before he actually set the wheels of his plan in motion. Several years before that, he had already begun purchasing items that he might need to use in aid of his nefarious schemes. He sourced these items not merely locally, but also from Bangkok, Kuala Lumpur, Johor Bahru and online from eBay. These items were obtained for various purposes – to subdue the victim, to conceal the accused's appearance from the victim, and to aid him in eluding police detection. The defence's attempt to characterise the accused as “an amateur wannabe” and “the most woeful kidnapper in Singapore history” is therefore wholly without basis.<sup>115</sup> Indeed, he met with considerably more success in his endeavour than did the two accused persons in *Tan Ping Koon*, who abandoned their plan even before they made a demand for ransom. Given the vast efforts invested by the accused into the planning and preparation of his scheme, I consider it highly implausible that he would simply have given up when the clock struck twelve, and released Mdm Ng with his pockets empty.

87 Furthermore, when Mr Heng pleaded insistently that the accused should release Mdm Ng at a nearby bus stop or taxi stand, and that there were other solutions available to his financial woes, the accused's response was simply that he “could not turn back” (see [34] above). Following Mr Heng's refusal to cooperate, the accused even threatened that he would reveal their sexual history to Mr Heng's family members if Mr Heng did not comply (see [38] above). These are not the words of a sympathetic, half-hearted, would-be offender willing to release his hard-won financial leverage even if he did not receive a return. It is the language of a man who perceived that he had no

<sup>115</sup> Defence's closing submissions at [4].

recourse but to embark upon a criminal enterprise and who was determined to see his plans through, even if this entailed issuing threats to Mr Lim on the well-being of his elderly mother, or even to Mr Heng, a friend of 20 years to whom the accused is so close that he is “like...family”.<sup>116</sup>

88 The defence relies on the accused’s statements, where the accused indicates that he had repeatedly told Mdm Ng that he would release her by the night of 8 January 2014.<sup>117</sup> I am hesitant to place any weight on what the accused said to Mdm Ng under the circumstances because these utterances to Mdm Ng could simply be explained as assurances given for the purpose of placating Mdm Ng and preventing her from forming any intention to resist the accused. The defence asserts that the accused’s intention to release Mdm Ng that night was “further reinforced when he discovered that Mdm Ng needed insulin injections every night”.<sup>118</sup> But this rings hollow in light of the utter disregard that the accused displayed for Mdm Ng’s well-being when he decided to abduct her (a 79-year-old lady), blindfold her throughout the course of the day, drive her to various remote parts of Singapore and finally leave her alone in an unfamiliar area close to midnight, which might be well past the time for her regular insulin injections.

89 Accordingly, even assuming that the s 3 offence requires an intention to hold the victim until and unless ransom is obtained (which is not the legal conclusion that I have reached), I am satisfied beyond a reasonable doubt that the accused did hold such an intention.

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<sup>116</sup> Accused’s statement recorded on 11 January 2014 at 2.37 pm at [2].

<sup>117</sup> Defence’s closing submissions at [49].

<sup>118</sup> Defence’s closing submissions at [49].

**Conclusion**

90 For the above reasons, I find that the elements of the offence under s 3 of the Kidnapping Act, for which the accused has been charged, have been proved beyond a reasonable doubt. I therefore find the accused guilty of the Charge and convict him accordingly.

Chan Seng Onn  
Judge

David Khoo and Zhuo Wenzhao (Attorney-General's Chambers) for  
the Prosecution;  
Selva Kumara Naidu and Tham Lijing (Liberty Law Practice LLP,  
Ascendant Legal LLC) for the accused.

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