



Singapore
Institute of Legal Education

Private Client Practice Criminal Litigation Practice

The Trial

Ong Luan Tze
Deputy Chief Knowledge Management Officer
JUDICIARY, SUPREME COURT

II. TRIAL – CASE FOR THE PROSECUTION

Case for the Prosecution

- Procedure at trial (S.230(1) CPC).
- Proceeded charge/s will first be read to the accused for his plea to be taken.
- Opening statement, if any, will be read.

Case for the Prosecution

- Prosecution calls its witnesses
- Examination-in-chief of the Prosecution's witness by the prosecutor
 - Exhibits should be admitted through the appropriate witness
 - Report by a qualified person (e.g. HSA report) may be used as evidence at trial without calling the qualified person (S.263 CPC)

Case for the Prosecution

- Cross examination of the Prosecution's witness by the Defence
- Re-examination of the Prosecution's witness by the prosecutor
 - Questions to be asked only to clarify the areas covered in cross examination. (S.140(3) Evidence Act)

Case for the Prosecution

- S.136 Evidence Act – No particular number of witnesses shall be required for the proof of any fact.
- After proving its case, the Prosecution can offer its remaining witnesses to the Defence.

When should an adverse inference be drawn?

- S.116, illustration (g) Evidence Act – The court may presume that evidence which could be and is not produced would, if produced be unfavourable to the person who withholds it.

When should an adverse inference be drawn?

- Not every failure to offer or call a witness will be a basis for invoking S.116(g) EA.
- The materiality of the witness has to be considered.
- An adverse inference will not be made where the witnesses were not material or indispensable to the case, and where the case had been sufficiently proved by other independent evidence.
 - *Satli bin Masot v PP [1999] SGCA 22*

When should an adverse inference be drawn?

- On the other hand, if a witness was readily available to testify and a central figure in a party's case theory, then it would be incumbent on the said party to call him.
 - *Beh Chew Boo v PP [2020] 2 SLR 1375*

III. TEST AT THE CLOSE OF THE PROSECUTION'S CASE

Close of Prosecution's Case

“At the end of the Prosecution’s case, what had to be decided was a question of law only. As decider of law, the judge had to consider whether there was some evidence (not inherently incredible) which if he were to accept as accurate, would establish each essential element in the illegal offence.”

Haw Tua Taw v PP [1981-1982] SLR(R) 133 at [17]

Close of Prosecution's Case

- At the close of the Prosecution's case, the Defence may invite the Court to dismiss the case on the ground that there is no case to answer (S.230(f) CPC)
- Bear in mind that the threshold is a very low one at this stage (i.e. a *prima facie* case)
- Submission of no case should not be made just for the sake of it (*Ong Lee Koon v PP* [1995] 1 SLR(R) 682 at [19])

Close of Prosecution's Case

- The guiding propositions at the close of the Prosecution's case (*PP v Wong Wee Keong* [2016] 3 SLR 965 at [33]):
 - a) All evidence of primary fact should be accepted as being true, unless it is so inherently incredible that no reasonable person would be able to accept it as being true or if it has been discredited or shown to be wholly unreliable.
 - b) Inferences may be drawn, but only if they are reasonable.
 - c) The totality of evidence has to be considered

Close of Prosecution's Case

- If the court finds that there is no prima facie case against the accused, the court must order a discharge amounting to an acquittal (S.230(1)(k) CPC)
- If the court finds that there is a prima facie case against the accused, the court must call on the accused to give his defence. (S.230(1)(j) CPC)

Standard allocution under S.230(1)(m) CPC

“I find that the prosecution had made out a case against you on the charge(s) on which you are being tried. There is some evidence, not inherently incredible, that satisfies each and every element of the charge(s). Accordingly, I call upon you to give evidence in your own defence...”

Amendment of charge

- The court may alter the charge or frame a new charge before calling on the accused to give his defence (S.230(1)(g) CPC)
- Procedure in S.128 – S.131 CPC to be followed

Amendment of charge

- The trial court is not obliged to “*search the law for offences which an accused person may have committed*”.
- However, the trial court can, and ought to exercise its discretion to amend the charge if the evidence points obviously to another offence.
 - *PP v Tan Khee Wan Iris* [1994] 3 SLR(R) 168 at [7] – [10]

IV. CASE FOR THE DEFENCE

Case for the Defence

- If the accused is giving evidence in his own defence, he must give it on oath or affirmation, and be liable to cross examination. (S.291(1) CPC)
- The accused's evidence will be heard first before the other Defence witnesses, if any, are called.

V. RECALLING WITNESSES

Recalling witnesses

- At the end of the trial, the Court retains a discretion to call for, or to allow a person to be summoned / recalled as a witness (S.283(1) CPC)
 - This discretion should be exercised sparingly and judiciously to the just decision of the case (*Sim Cheng Hui v PP* [1998] 1 SLR(R) 670 at [30]

Recalling witnesses

- If the Court thinks that the person's evidence is essential to making a just decision in the case, the Court must re-call or summon the witness (S.283(2) CPC).
- If the charge is altered or a new charge framed by the court, parties must be allowed to re-call any witness with reference to the amended charge, unless the Court thinks the application is frivolous or vexatious. (S.131 CPC)

VI. REBUTTAL WITNESSES

Rebuttal witnesses

- At the close of the Defence's case, the Prosecution has the right to call or re-call any person for the purpose of rebuttal. Any such witness shall be liable to be cross-examined by the Defence. (S.230(1)(t) CPC)

VII. CLOSING SUBMISSION & JUDGMENT

Closing Submission & Judgment

- Closing submissions will first be made by the Defence (S.230(1)(u) CPC)
- Final right of reply lies with the Prosecution (S.230(1)(v) CPC)

Closing Submission & Judgment

- The case against the accused must be proven beyond a reasonable doubt.
- This does not mean that the Prosecution has to dispel *all* conceivable doubts. Doubts which are “merely fanciful” will not be sufficient to raise a reasonable doubt in the Prosecution’s case.
 - See *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR(R) 45 at [61]

Closing Submission & Judgment

- A doubt is not reasonable if it is not reasoned, in the sense of being supported by reasons that are logically connected to the evidence.
- A reasonable doubt can arise from “within the case mounted by the Prosecution”, or “on the totality of the evidence” which will include the Defence’s case and any weaknesses therein
 - See PP v GCK & Anor [2020] 1 SLR 486 at [131, 134 and 135

Closing Submission & Judgment

- The burden of proof always lies with the Prosecution.
- A tenuous and inadequate defence does not discharge the Prosecution's burden
 - See *Tan Edmund v PP* [1995] 1 SLR(R) 618 at [15]

Closing Submission & Judgment

- If the Court finds the accused not guilty, it must order a discharge amounting to an acquittal (S.230(1)(w) CPC)
- If the Court finds the accused guilty, it must record a conviction and comply with the procedure under S.228 CPC to deal with the issue of sentence. (S.230(1)(x) CPC)

Impeachment in general (2)

S 157 of Evidence Act (Cap 97) (“EA”)

The credit of a witness may be impeached in the following ways by the adverse party or, with the consent of the court, by the party who calls the witness:

- (a) *By evidence of people who testify that the witness is unworthy of credit;*
- (b) *By proof of bribery/corruption of the witness;*
- (c) *By proof of inconsistent statements made by the witness;*
- (d) *If a person is prosecuted for rape, it may be shown the prosecutrix was generally of an immoral character*

Prior inconsistent statement(1)

Public Prosecutor v Heah Lian Kin [2002] 2 SLR(R) 745

- A prior inconsistent statement is not confined to situations where the witness gives “two affirmative versions of the facts” [at [44]]
- If a witness claims that he cannot remember the events stated in his statement even after the statement was shown to him to refresh his memory, he contradicts the essence of his earlier statement which contains a detailed account of the facts (at [51])

Prior inconsistent statement(2)

Kwang Boon Keong Peter v Public Prosecutor [1998] 2 SLR(R) 211 at [21]

- Four classes of discrepancies:
 - Minor
 - Apparent
 - Serious
 - Material
- it is only the last two classes of differences which are sufficient to invoke the operation of s 147

Impeachment Procedure (1)

- Procedure derived from statute, case law and practice (see ss 147, 156 and 157 of EA and *Muthusamy v Public Prosecutor* [1948] MLJ 57)

Impeachment Procedure (2)

1. Establish material parts of the witness's evidence that are inconsistent with his/her previous statements
2. Highlight the material discrepancies in the statements (usually underlined in red), and cover up the prejudicial portions
3. Apply under s 157(c) of EA to cross examine witness on the statement and tender copy of statement to court for court to determine whether material discrepancies exist

Impeachment Procedure (3)

4. Court determines if there are serious/material discrepancies. If there are no irreconcilable conflicts, impeachment process will not be allowed to proceed.
5. If court determines that there are serious/material discrepancies, impeachment process continues.
6. Witness is asked whether he made the statement voluntarily. If witness denies making the statement, the statement must be proved by calling the maker of the statement

Impeachment Procedure (4)

7. After statement is admitted, the discrepancies are pointed out to the witness, and he is given a chance to explain
8. If the witness's explanation is satisfactory, his credit is saved

Impeachment Procedure (5)

“forgetful” witness

- Where witness claims that he does not remember what happened, it may be preferable to refresh his memory under s 161 of the EA.
- Rationale: witness may have genuinely forgotten, and is not deliberately trying to be hostile
- If refreshing memory fails, proceed to impeach

Effect of successful impeachment (1)

- The court does not need to rule on whether the witness's credit is impeached: see *Loganatha Venkatesan v Public Prosecutor* at [56]
- Witness's credit is adversely affected
- Evidence of the witness must now be carefully scrutinised

Effect of successful impeachment (2)

Loganatha Venkatesan v Public Prosecutor [2000] 2 SLR(R) 904 at [56]

[I]mpeachment of the witness's credit does not automatically lead to a total rejection of his evidence. The court must carefully scrutinise the whole of the evidence to determine which aspect might be true and which aspect should be disregarded...Thus, regardless of whether his credit is impeached, the duty of the court remains, that is, to evaluate the evidence in its entirety to determine which aspect to believe.

Effect of successful impeachment (3)

- s 147 (3) EA allows the witness's prior inconsistent statement to be admitted as “*evidence of any fact stated therein*”
- *Weight given to the statement depends on “all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts.”* (see s 147(6) EA)

Effect of successful impeachment (4)

Weight given to prior statement

- little weight is given to statements that were not made contemporaneously with the occurrence or existence of the facts stated: see *Lee Yuen Hong v Public Prosecutor* [2000] 1 SLR(R) 604 at [54]-[55]

Effect of successful impeachment (5)

Other factors affecting the weight of an admitted statement

Chai Chien Wei Kelvin v Public Prosecutor at [71] :

- The possibility of misrepresentation by the maker
- Explanation of the inconsistency
- Context of the whole statement
- The cogency and coherence of the facts to be relied on

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