IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

District Arrest Case No 902587 of 2023

Public Prosecutor

Against

Yao Zhi Hai Edmond

ORAL JUDGEMENT

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Public Prosecutor
v
Yao Zhi Hai Edmond

District Arrest Case No 902587 of 2023
District Judge James Elisha Lee

13 March, 2 to 4 June, 3 to 6 November 2025, 26 January 2026

19 March 2026

District Judge James Elisha Lee

Introduction

1 This is my decision with reasons, which I will supplement in the event full grounds are issued or necessary.

2 The accused Yao Zhi Hai Edmond ("the Accused"), a 47-year-old Singapore citizen by birth, claimed trial to a charge under s 10 read with s 32(a) of the Enlistment Act (Chapter 93, Revised Edition 1995) ("EA") as follows:

> **DAC 902587-2023**
>
> You … are charged that you, being a person subject to the Enlistment Act (Chapter 93, 1995 Rev Ed) ("Enlistment Act"), had committed an offence of failing to report for enlistment into full-time National Service, under Sec 10 r/w Sec 32(a) of the Enlistment Act, on 24 January 1997 (which is the date you were required to report for enlistment as stated on

the Enlistment Notice delivered by the Enlistment Inspector on 23 January 1997).

3 The Accused faces another 14 charges under s 5A(1)(a) Immigration Act (Cap 133, 2008 Revised Edition) ("IA") which have been stood down.

Undisputed Facts

4 An agreed statement of facts ("ASOF") was tendered under s 267(1) of the Criminal Procedure Code 2010 ("CPC"). Based on the ASOF and the evidence adduced at trial, the following material facts are not in dispute.

5 The Accused was born on 31 October 1978 in Singapore and issued with a Birth Certificate bearing Birth Registration No. 78-30862A. His mother is DW2 Koh Sock Cheng ("DW2 Koh"), a Singapore citizen and his father is Jauw Tung Sin @ Jauw Thung Sin, an Indonesian. The Accused's registered birth name was "Jauw Ming Siang, Edmond" [1].

6 On 27 November 1978, the Accused's parents obtained a certificate of birth for him after lodging a declaration at the embassy of the Republic of Indonesia in Singapore. The name stated on the Indonesian Birth Certificate is "Edmond Jauw Ming Siang"[2]. The Accused's father obtained Indonesian citizenship for the Accused on 2 March 1979 by lodging a Declaration on Report of Citizenship for Citizen of Indonesia dated 2 March 1979[3].

[1] See exhibit P1.

[2] See exhibit P2.

[3] See exhibit P3.

7 The Accused was first issued with an Indonesia passport on 31 October 1983. The passport reflected his name as "Edmond Ming Siang Jauw" and indicated that the Accused's nationality as "Indonesia"[4]. The Accused has never held any passport from Singapore. Since being issued with the Indonesia passport, the Accused has used his Indonesia passport for travel between Singapore and Indonesia.

8 On 5 November 1983, the Accused's parents had brought the Accused's Indonesia passport to the Immigration and Checkpoints Authority ("ICA") and informed that the Accused is an Indonesian. ICA had acknowledged the visit by indicating (handwritten) "SCR/CS/809/83 dd 5/11/83" on the Accused's passport[5].

9 On 17 March 1986, the Accused's mother DW2 Koh made a deed poll stating that the Accused is a minor and a citizen of the Republic of Singapore, and to renounce and abandon the use of the name "Jauw Ming Siang Edmond" and assume the name "Yao Zhi Hai Edmond" from 17 March 1986 onwards[6].

10 Between 1984 and 1996, the Accused completed his education in Singapore as a Singapore citizen as follows:

a) 1984 to 1990: completed Primary School at Catholic High School.

b) 1991 to 1994: completed Secondary School at Raffles Institution.

c) 1995 to 1996: completed his tertiary education at Raffles Junior College.

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[4] See exhibit P4.

[5] See exhibit P5.

[6] See exhibit P6

11 The Accused was issued with a Singapore National Registration Identity Card ("NRIC") bearing the name "Yao Zhi Hai Edmond" on 7 May 1990. He was 12 years old at the time. He was re-issued with a Singapore NRIC bearing the same name on 30 April 1993[7].

12 On 26 January 1996, the Central Manpower Base ("CMPB") sent the Accused a registration notice pursuant to s 3 EA to register for National Service ("NS") by completing an attached registration form and mailing the completed registration form to the CMPB by 9 February 1996 ("Registration Notice"). The Registration Notice addressed the Accused as "Mr Yao Zhi Hai Edmond" and was sent via normal post to the Accused's local registered address at 39B Goodman Road, Singapore 439010 (the "Accused's registered address").

13 On 7 February 1996, CMPB received the completed NS registration form[8] signed by the Accused together with, *inter alia*, a letter from the Accused's mother DW2 Koh stating that the Accused is a citizen of Singapore by birth who concurrently holds Indonesia citizenship and that the Accused wished to renounce his Singapore citizenship in favour of his Indonesia citizenship. The letter also stated that the Accused wished to defer NS until he reached 21 years old, upon which he would be able to renounce his Singapore citizenship. The letter further indicated that the Accused was anxious to further his studies at a university in the United States without the disruption caused by NS, which contributed substantially to his decision to renounce his Singapore citizenship, and wished to apply for deferment from NS until he completed his university education[9].

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[7] See exhibits P7 and P8.

[8] See exhibit P11.

[9] See exhibit P12.

14 On 28 June 1996, a further reporting order was issued by CMPB to the Accused to report for documentation and fitness examination on 10 July 1996[10]. The Accused duly attended at CMPB and completed his full medical screening. He was medically graded as "PES A".

15 On 19 November 1996, CMPB sent via normal post to the Accused's registered address an Enlistment Notice pursuant to s 10 EA, addressed to "Mr Yao Zhi Hai Edmond", to report for enlistment for full-time NS on 23 January 1997 at 10.00 a.m. (the "1st Enlistment Notice")[11]. The Accused was aware of the 1st Enlistment Notice[12].

16 On 10 January 1997, the Accused's father sent a letter to CMPB in response to the 1st Enlistment Notice (the "10 January 1997 Letter") requesting for the Accused to be deferred from full-time NS until he turned 21 years old as the Accused had yet to decide on his national status and that the Accused would enlist should he choose to be a Singaporean. The Accused's father also stated that as an Indonesian the Accused was not allowed to serve in the armed forces of another county[13].

17 On the same day, CMPB replied to the 10 January 1997 Letter to state that as the Accused is a Singapore citizen by birth although he is also an Indonesian citizen, he was required to fulfil his NS liabilities and that only those who had not exercised the rights and privileges of Singapore citizenship can be deferred from NS until they reach 21 years pending the renunciation of their Singapore citizenship. As the Accused had exercised his rights and privileges

[10] See exhibit P13.

[11] See exhibit P14.

[12] NE Day 6, page 61 and Day 7, page 25 to 26.

[13] See exhibit P15.

as a Singapore citizen, namely, by being educated here and completed his education at Raffles Junior College, he is required to fulfil his NS obligations without exception. CMPB's letter also informed the Accused's parents to advise the Accused to report for enlistment on 23 January 1997 as required by the 1st Enlistment Notice sent to him on 19 November 1996[14].

18 On 21 January 1997, lawyers acting for DW2 Koh wrote to CMPB to appeal on the Accused's behalf to be dispensed from enlisting into NS, and that the Accused's parents and the Accused were prepared for the Accused to renounce his Singapore citizenship and whatever rights and privileges that he has as a Singapore citizen immediately. The letter stated that the Accused's parents wanted him to retain his Indonesian citizenship as he intended to work in Indonesia and not in Singapore. The lawyers also highlighted that the Accused will no longer be entitled to keep his Indonesian citizenship once he has served national services with Singapore[15].

19 The Accused did not report to CMPB for enlistment on 23 January 1997 as directed.

20 A second enlistment notice dated 23 January 1997 ("2nd Enlistment Notice) directing the Accused to report for enlistment on 24 January 1997 was delivered by hand by PW2 Koh Gek Watt ("PW2 Koh"), who was employed as an NS default investigator at the time, at the Accused's registered address. A copy of the notice was left with the Accused's domestic helper Josie Marin ("Marin")[16].

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[14] See exhibit P17.

[15] See exhibit P18.

[16] NE Day 4, pages 40 to 46.

21 The Accused did not report to CMPB for enlistment on 24 January 1997 as directed.

22 On 28 January 1997, a Police Gazette was put up for the Accused's arrest in Singapore. The Accused's NRIC and name "Yao Zhi Hai Edmond" was reflected in the Police Gazette.

23 On 30 January 1997, the lawyers sent 2 more letters to CMPB reiterating the same request for the Accused's enlistment to be deferred and the reasons for seeking a deferment[17]. CMPB replied to the lawyers on 17 February 1997 that as the Accused had exercised the rights and privileges of being a Singapore citizen by receiving an education in Singapore, the Accused was required to serve full-time NS and CMPB would not be able to make an exception for him[18]. A further letter dated 10 March 1997 from the lawyers was received by CMPB informing that the Accused's parents' intention was for the Accused to be an Indonesian citizen and that they had been ignorant of the implications of putting him through the local schools in Singapore. The letter reiterated that the Accused would lose his Indonesian citizenship if he were to enlist[19]. CMPB replied on 17 March 1997 to reiterate that as the Accused is a Singapore citizen by birth, he was required to fulfil his NS liabilities[20].

24 The Accused completed his further education abroad between July 1997 and June 2001.

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[17] See exhibit P20.

[18] See exhibit P21.

[19] See exhibit P22.

[20] See exhibit P23.

25 On 30 October 2003, the Accused wrote to the Singapore Embassy in Indonesia to renounce his Singapore citizenship[21]. The Singapore Embassy in Indonesia then wrote to ICA to inform of the Accused's intended renunciation of his Singapore citizenship. ICA in turn wrote to CMPB to ask whether CMPB had any objections to the renunciation. CMPB then wrote to ICA to inform that CMPB did not support the Accused's renunciation.

26 On 4 December 2003, the Accused submitted a Statement from Indonesia stating that under Indonesia law, the Accused will lose his Indonesian citizenship if he undergoes military service in another country without the Indonesia Government's prior approval (the "4 December 2003 Letter") to the Singapore Embassy in Indonesia[22]. ICA subsequently replied to the 4 December 2003 letter informing that the Accused's renunciation application was being withheld under Article 128(2)(b) of the Constitution of the Republic of Singapore[23].

27 DW2 Koh subsequently made appeals to the Ministry of Home Affairs through a Member of Parliament. ICA responded to the appeals by reiterating that the Accused was required to fulfil his NS obligation[24].

28 Under Law No. 62 of 1958 Law on the Citizenship of the Republic of Indonesia ("Indonesian Citizenship Law"), citizenship of the Republic of Indonesia is lost because of:

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[21] See exhibit P24.

[22] See exhibit P25.

[23] See exhibit P26 and P27.

[24] See exhibits P28 to P30.

> (f) entering a foreign military service without prior permission from the Minister of Justice;
>
> (g) without prior permission form the Minister of Justice, entering a foreign state's service or the services of an organization of nations not entered by the Republic of Indonesia as member, if the position held in the state's service may, according to the regulations of the Republic of Indonesia, only be held by a citizen or the position in said nation organization service requires on oath or official promise;
>
> (h) taking the oath or making the promise of loyalty to a foreign country or a part thereof;
>
> ….

29 The Accused married a Singaporean on 3 January 2005 and had registered his marriage using his Indonesian passport[25]. He applied for permanent residence subsequently, but his application was rejected by ICA on the basis that the Accused is still a Singapore citizen[26].

30 The Accused travelled in and out of Singapore between 17 March 1997 and 1 September 2021. Between 31 December 2008 and 16 March 2020, the Accused used his Indonesian passport to enter Singapore on 13 occasions[27]. His application for a Short Term Visit Pass ("STVP") for the period 16 March 2020

[25] See exhibit P31.

[26] See exhibit P32 and 33.

[27] See exhibit P36.

to 8 July 2021 was approved by ICA. The STVP was extended to 6 September 2021[28].

31 The Accused was arrested on 1 September 2021 at the ICA Visitor Services Centre for failing to fulfil liability imposed on him pursuant to s 32B EA when he attempted to further extend his STVP[29]. He attended at CMPB and ICA subsequently for interviews with the respective investigation officers. He was formally charged in court on 23 February 2023.

Overview of The Parties' Cases

The Prosecution's Case

32 The Prosecution's case is that on the undisputed facts, the physical elements of the charge have been made out against the Accused.

33 Although s 10 EA is silent on the requirement of fault element, the Prosecution submits that following the approach by the three-judge court of the High Court in *Naresh Kumar s/o Nagesvaran v PP* [2025] SGHC 165 ("*Naresh Kumar*"), a purposive interpretation of s 10 and 32(a) EA leads to the conclusion that Parliament had intended the contravention of the provision to be an offence of strict liability. The plain wording of s 10 EA did not contain any requirement that a person required to report for enlistment for NS must know that he was legally bound to comply with the notice requiring him to report or that he had the intention to breach this obligation. Such a requirement would contravene the principle that ignorance of the law does not exonerate one from criminal liability. The interpretation of s 10 and 32(a) EA as a strict liability offence is

[28] See exhibit P37.

[29] See exhibit P38.

also fortified by the purpose the provisions serve in Singapore's NS scheme and in line with the fundamental principles of NS, defaulting on NS obligations must be deterred.

34 Although s 26H(4) of the Penal Code 1871 provides for a defence of reasonable care to strict liability offences, this provision is not applicable in this case as the High Court has held in *Naresh Kumar* that the defence was not intended to have retrospective application to offending conduct prior to 10 February 2020, the date the provision came into effect.

35 As for the common law defence of reasonable care, the Accused had not met the burden of proving that he exercised reasonable care to avoid not fulfilling his liability under the EA as:

(a) he had not taken any active steps to report for NS;

(b) he had not taken any active steps to ensure that he was exempted from his duty to serve NS both prior to and after his enlistment date;

(c) he cannot be said to have held an honest or reasonable belief at any juncture that there was no need for him to enlist for NS as CMPB had taken the consistent position that the Accused was liable to serve NS with no exception and there had been no unequivocal or unqualified representations made by CMPB, MINDEF or any other public authority that he no longer had to enlist.

The Defence's Case

36 The Defence's case is that the Accused is an Indonesian citizen, and this has led him to believe in good faith that he is bound by law to not enlist for NS in Singapore as Article 17 of the Indonesian Citizenship Law expressly forbids

an Indonesia citizen from entering a foreign military service and that serving NS in Singapore will result in the loss of his Indonesian citizenship.

37 The Defence adduced evidence from DW3 Hikmahanto Juwana ("DW3 Professor Juwana), a law professor from the University of Indonesia. In the report produced by DW3 Professor Juwana, it was stated (in summary) as follows[30]:

> (a) An Indonesian citizen who enters a foreign military service without prior permission from the Indonesian Ministry of Justice or takes the oath or makes the promise of loyalty to a foreign country or part thereof will lose his/her Indonesian citizenship.
>
> (b) The consequence for an Indonesian citizen, who is also a Singapore citizen, serving NS in Singapore without prior permission from the Ministry of Justice is the loss of his/her Indonesian citizenship.
>
> (c) Permission from the Minister of Justice could be obtained in 1997 by submitting a petition to the Indonesia Ministry of Justice. Permission is granted when a Ministerial Decree is issued by the Indonesia Ministry of Justice.
>
> (d) From the research that he had conducted, there has been no permission granted under Article 17(f) of the Indonesian Citizenship Law.
>
> (e) There has been no case of an Indonesian citizen who has been previously prevented from renouncing his other citizenship (e.g.,

[30] Exhibit D17 at section D, page 8.

Singapore citizenship) retaining his Indonesian citizenship after serving NS and renouncing his Singapore citizenship.

(f) Serving NS in Singapore and taking the oath of allegiance in Singapore are breaches of the Indonesian Citizenship Law.

(g) Preventing an individual from renouncing Singapore citizenship before serving NS is an infringement of the Universal Declaration of Human Rights ("UDHR") and/or ASEAN Human Rights Declaration ("AHRD").

38 As such the defences under s 76 and 79 of the Penal Code applies to the Accused as he had operated under a mistake which led him to believe in good faith that he was justified by Indonesian law in not reporting for enlistment for NS in Singapore.

39 The Defence further submitted that the State by issuing the Accused with a visit pass each time he entered Singapore with his Indonesian passport had expressly accepted that he is an Indonesian citizen. Both ICA and MINDEF knew that the Accused holds an Indonesian passport. Notwithstanding, the Accused was allowed to travel in and out of Singapore using his Indonesian passport between 17 March 1997 and 1 September 2021 without any enforcement action taken.

40 They aver that based on representations by ICA made in November 1983, the Accused had been under the honest belief that the Accused's Singapore citizenship would be cancelled upon him turning 22 years old. MINDEF is aware and does not dispute that the Accused holds Indonesian citizenship.

41 The Accused and DW2 Koh also testified that in February 1999, she had met with 2 CMPB officers to discuss issues concerning the Accused's brother's application for exit permit. DW2 Koh avers that the CMPB officers had initially informed her that they were required to put up 2 bonds, one each for the Accused and his brother due to the Accused's outstanding NS liability. The following day, they were informed, however, that the bonds were no longer necessary and that the issue concerning the application for exit permit for the Accused's brother was resolved. The Accused thus had the impression that he has no NS liabilities[31].

42 The Defence submits in the alternative that the State's said action created a substantive legitimate expectation ("SLE") which the Accused had relied on and therefore provides a legitimate basis to exonerate him. The Accused had been travelling in and out of Singapore using his Indonesian passport since 1987.

43 The Defence further claimed that sometime after 23 March 2004, DW2 Koh had met with one [redacted] (deceased) who was purportedly a [redacted] at [redacted] and [redacted] of [redacted] at the material time. DW2 Koh testified that she had met [redacted] after 23 March 2004 at [redacted] in Jakarta concerning the Accused's NS issue and [redacted] had allegedly represented to her the matter would be resolved. As no enforcement action was taken by MINDEF against the Accused subsequently until his arrest, the Accused had concluded that it was a conscious and deliberate decision on the part of MINDEF and that he no longer had any outstanding NS liability. The

[31] NE Day 6 page 25, Day 7 page 19, Day 8 pages 30 and 31.

Defence is relying on the representations allegedly made by [redacted] to seek relief under the doctrine of SLE.

The Prosecution's Response

44 In response to the Defence's claim that the State's action had created a SLE, the Prosecution submits that the doctrine of SLE has not been definitively accepted by the Court of Appeal ("CA") as forming part of Singapore law. The Prosecution referred to the case of *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 ("*SGB Starkstrom*") where the CA had canvassed the difficulties in accepting the doctrine as part of Singapore. Although the CA had given limited recognition of the doctrine in *Tan Seng Kee v Attorney-General and other appeals* [2022] 1 SLR 1347 ("*Tan Seng Kee*") in the specific context of general non-enforcement of s 377A, the CA had caveated that it was not importing the doctrine into Singapore law in any wider context. As such, the doctrine of SLE has no application in the present case.

45 Even if the assumption is made that the doctrine of SLE is applicable, it does not apply in the present case based on the requirements set out in the decisions where the court had analysed these requirements on the assumption that the doctrine applied without applying it.

46 With regards to DW3 Professor Juwana's evidence that Singapore has breached the UHDR and AHRD, the Prosecution submits that it is settled law that Singapore's international law obligations do not give rise to any individual rights and obligations in the domestic context unless and until they are transposed into domestic law by legislation. DW3 Professor Juwana has also conceded in his testimony that both the UDHR and AHRD are not capable of being breached in and of themselves. He has also acknowledged that he was not

in a position to comment about whether Singapore breached any international law obligations.

47 With regards to the Accused's claim that the defences under s76 and 79 Penal Code applies, the Prosecution submits that the Indonesian Citizenship Law relied upon by the Accused merely provides for the circumstances under which Indonesian citizenship may be lost and does not prescribe any offence or provide any ground for civil action. As such, the Accused cannot claim that he had in good faith believed himself bound or justified by law not to report for enlistment. The Accused had also not acted in good faith as he had failed to exercise any due care or attention in forming the belief that the Accused no longer had any NS liabilities.

Elements of the Charge

Section 10 and 32(a) EA

48 S 10 and 32(a) EA provides:

> **Duty to report for enlistment**
>
> 10.—(1) Subject to the provisions of this Act, the proper authority may by notice require a person subject to this Act not below the age of 18 years to report for enlistment for national service.
>
> (2) A person required to report for enlistment for national service shall report to the proper authority on such date and at such time and place as may be specified in the notice and shall attend from day to day until duly enlisted.
>
> (3) Enlistment for national service shall be in the manner approved by the proper authority.

> (4) No duty of any kind shall be imposed on a person required to report for enlistment or service unless he is found fit for service.
>
> **Offences**
>
> 32. Any person within or without Singapore who — (a) fails to comply with any order or notice issued under this Act;
>
> …
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 3 years or to both.

49 S 2 EA defines a "person subject to the EA" as a person who is a citizen of Singapore or a permanent resident thereof and who is not less than 16 years and 6 months of age and not more than 40 years of age.

50 Based on the undisputed facts and defence of the Accused, the issues to be determined in the present case are as follows:

> Issue 1 - Whether the physical elements of the offence under s 10 read with s 32(a) EA for failing to report for enlistment into full-time NS are made out?
>
> Issue 2 - Whether the offence of failing to report for enlistment into full-time NS is a strict liability offence?
>
> Issue 3 - Whether the Accused has satisfied the burden of proving that the common law defence of reasonable care is applicable to him?

Issue 4 - Whether the doctrine of SLE is applicable to the offence in issue and, if so, what are the requirements that have to be proved by the Accused for the SLE doctrine to apply?

Issue 5 - Whether the defences under s 76 and 79 Penal Code applies to the Accused?

51 I will deal with each issue in that order.

Analysis & Assessment

Issue 1 : Whether the physical elements of the offence under s 10 r/w s 32(a) EA for failing to report for enlistment into full-time NS are made out?

52 The Accused is a person subject to the EA pursuant to s 2 EA by virtue of the following undisputed facts:

(a) the Accused is a male Singapore citizen by birth by virtue of Article 121(1) of the Constitution of the Republic of Singapore ("the Constitution");

(b) he was not less than 16 years and 6 months and not more than 40 years of age at the material time;

(c) he has been certified as medically fit for NS having been medically graded as "PES A".

53 The Accused was not under the age of 18 years when the 1st and 2nd Enlistment Notices were issued and sent to him. He was required to report for enlistment for NS on 23 January 1997 under the 1st Enlistment Notice sent to him on 19 November 1996. The Accused was aware of the 1st Enlistment

Notice. He failed to report for enlistment as required. The 2nd Enlistment Notice which required him to report for enlistment on 24 January 1997 was hand delivered to his registered residence on 23 January 1997. The Accused again failed to report for enlistment as required.

54 The 2nd Enlistment Notice was handed over by PW2 Koh to Marin. It is not disputed that Marin was the Accused's family domestic helper at the time. It is also not disputed that the 2nd Enlistment Notice was served on the Accused's household at the time[32]. PW2 Koh testified that Marin had acknowledged receipt of the 2nd Enlistment Notice by signing on a copy of the notice and appending her name and relationship to the Accused[33]. After serving the 2nd Enlistment Notice, PW2 Koh had prepared a file note dated 24 January 1997 to his officer-in-charge stating that he had visited the residence at the Accused's registered address with one SGT Jimmy Lim on 23 January 1997 at about 5pm and found that the Accused and his parents were in Indonesia. The note also stated that the maid had informed that the Accused had the intention to go for overseas studies in the United States and that his parents would be returning to Singapore in about a week. The note further recorded that the 2nd Enlistment Notice was served to the maid and that PW2 Koh had also informed her to let the Accused know of the consequences of default[34].

55 Under s 29(2)(f) EA, it is provided that a notice issued under the EA may be served on any person by leaving it at the usual or last known place of residence of the person to be served with a member of his family or household who is apparently above the age of 16 years and apparently residing at that

[32] NE Day 9, page 32 line 25 to page 33 line 4.

[33] Exhibit P53.

[34] Exhibit P59.

place. S 29(3)(d) in turn provides that the notice shall be deemed to have been conveyed to the person to whom it applies at the time of delivery.

56 I am of the view that the 2nd Enlistment Notice has been properly served on the Accused pursuant to s 29(2)(f) and s 29(3)(d) EA. The physical elements of the offence under s 10 read with s 32(a) EA for failing to report for enlistment into full-time NS are therefore made out.

Issue 2 - Whether the offence of failing to report for enlistment into full-time NS is a strict liability offence?

57 In *Gammon (Hong Kong) Ltd v AG of Hong Kong* [1985] AC 1 ("*Gammon*"), the Privy Council had affirmed the following principles:

> … (1) there is a presumption of law that mens rea is required before a person can be held guilty of a criminal offence; (2) the presumption is particularly strong where the offence is 'truly criminal' in character; (3) the presumption applies to statutory offences, and can be displaced only if this is clearly or by necessary implication the effect of the statute; (4) the only situation in which the presumption can b displaced is where the statute is concerned with an issue of social concern, and public safety is such an issue; (5) even where a statute is concerned with such an issue, the presumption of mens rea stands unless it can also be shown that the creation of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act.

58 The CA had held in *PP v Bridges Christopher* [1997] 3 SLR(R) 467 ("*Bridges*") at [45] that "mens rea is presumed to be a necessary ingredient of an offence in the absence of clear words to the contrary".

59 In *Naresh Kumar*, the High Court held at [47] to [49] that while the decision in *Bridges* was binding, there was no contradiction between the presumption of mens rea in *Gammon* and the purposive approach to statutory interpretation using the three-step framework set out in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*"). The two approaches were complementary, with the *Gammon* approach assisting the court in cases of genuine ambiguity where the text, context and purpose of the provision (applying *Tan Cheng Bock* at [54]) provide no clear answer to the question whether mens rea has to be proved by the Prosecution.

60 The High Court in *Naresh Kumar* then held at [50] that the purposive interpretation of s 32(2) of the Enlistment Act (Cap 93, 2001 Revised Edition) led clearly to the conclusion that Parliament had intended for the offence of not returning to Singapore after the expiry of an exit permit to be an offence of strict liability. The High Court had noted at [51] that it is plain from the text of the provision that it contains no requirement that the person must know that he was not permitted to stay outside Singapore without a valid exit permit or that he must know that his exit permit has expired. The natural and ordinary meaning of the text and context of the provision is that the offence is complete once the person in question fails to return to Singapore before the expiry of the exit permit and thereby fails to fulfil any liability imposed.

61 The High Court further held at [53] that they are fortified in their view of the provision by the purpose it serves in Singapore's National Service scheme and referred to the Ministerial Statement on the Enlistment (Amendment) Act 2006 (Act 14 of 2006) whereby then Minister of Defence Mr Teo Chee Hean has stated[35]:

[35] See Singapore Parl Debates; Vol 80, Sitting No 15; Col 2004; [16 January 2006].

> National Service was introduced 38 years ago in 1967, soon after we became independent. National Service fulfilled a critical need – we had to defend ourselves. It was a matter of survival. As a small country with a small population, the only way we could build a force of sufficient size to defend ourselves was through conscription. It was a decision not taken lightly given the significant impact that conscription would have on every Singaporean. But there was no alternative.

62 The Minister had also explained that NS was underpinned by 3 fundamental principles:

> … The first is that National Service must be for meeting a critical national need – for it requires considerable cost both to the individual and to the nation. That critical need is national security and our survival. …
>
> The second fundamental principle of our National Service is universality. All young Singaporean males who are fit to serve are conscripted. If we have a system in which some are conscripted but others are not, there will be strong feelings of unfairness which will undermine the commitment of our NSmen.
>
> …
>
> The third fundamental principle of our National Service is equity. Everyone has to be treated in the same way, regardless of background or status. His deployment in NS is determined by where he is most needed to meet the needs of the national defence.

63 The High Court held at [55] and [56] that in line with these fundamental principles, in particular, the principle of universality, defaulting in NS obligations must be deterred and that given the vital importance of NS to Singapore's national security and survival, coupled with the role of the exit

permit regime, reading a mens rea requirement into the EA offence would undermine the deterrent effect of the provision. Therefore, the interpretation of the provision as a strict liability offence is the only permissible and proper reading under the *Tan Cheng Bock* framework.

64 In the present case, it is similarly plain from the text of s 10 and 32(a) EA that there is no requirement that an accused person must know that he is required pursuant to the enlistment notices duly served on him to report for enlistment for NS. The offence is completed when the accused fails to report for enlistment on the date, and time, he is required to do so pursuant to the enlistment notice. To require such knowledge would go against the principle that ignorance of the law does not excuse.

65 The purpose which the provisions in s 10 and 32(a) serve in Singapore's NS scheme is equally important as the provisions in issue in *Naresh Kumar's* case. The rationale that defaulting in NS obligations must be deterred apply with equal if not more compelling force in the context of s 10 and 32(a) EA in that a contravention of the provisions represent a direct repudiation of one's NS obligations. Applying the approach in *Naresh Kumar*, I am therefore of the view that the only permissible and proper reading of s 10 and s 32(a) EA is that it constitutes a strict liability offence.

66 In the present case, as the Prosecution had established beyond reasonable doubt the physical elements, i.e. that the Accused is a person subject to the EA as defined under s 2 EA, and that he had been duly notified to report for enlistment for full-time NS on 24 January 1997 pursuant to the 2nd Enlistment Notice, I am of the view that the Prosecution has proven the charge against the Accused.

Issue 3 - Whether the Accused has satisfied the burden of proving that the common law defence of reasonable care is applicable to him?

67 In *Naresh Kumar*, the High Court held that the appellant was entitled to invoke the common law defence of reasonable care for strict liability offences. In order to do so, the accused must prove that he exercised reasonable care to avoid failing to return to Singapore before the expiry of the exit permit. On the evidence, the High Court found that there was nothing to support a possible defence of failing to return to Singapore before the expiry of the exit permit.

68 Following *Naresh Kumar*, I am of the view that in order for the Accused to successfully invoke the common law defence of reasonable care, he must prove on a balance of probabilities that he had exercised reasonable care to avoid failing to report for enlistment for NS on 24 January 1997.

69 In the present case, the Accused's parents had taken the following steps after the Accused had been notified of his NS obligations:

(a) after receiving the registration notice for NS on 26 January 1996, DW2 Koh had sent a letter to CMPB together with the completed NS registration form informing that the Accused holds concurrent Indonesian citizenship and wished to defer his NS until he reaches the age of 21 years whereupon he would be able to renounce his Singapore citizenship. The letter also stated that the Accused wished to apply for deferment from NS until he has completed his university education – see [12];

(b) after having received the 1st Enlistment Notice, the Accused's father had written to CMPB again requesting for deferment of NS until the Accused turned 21 years of age and informing that the Accused

would enlist should he decide to retain his Singapore citizenship. The letter also stated that as an Indonesian, the Accused was not allowed to serve in the armed forces of another country – see [15];

(c) DW2 Koh engaged lawyers to write to CMPB requesting for the Accused to be dispensed from his NS liabilities and informing that the Accused was prepared to renounce his Singapore citizenship. The letter also highlighted that the Accused will not be able to keep his Indonesian citizenship once he has served NS – see [17].

70 CMPB's position, as communicated in their respective replies has consistently been that the Accused was required to fulfil his NS liabilities as a Singapore citizen by birth even though he is also an Indonesian citizen. In the light of CMPB's unequivocal communication of its position at the time, it was not open, in my view, for the Accused to claim that he had honestly believed that he did not have to report for enlistment on account of his Indonesian citizenship and the impact serving NS in Singapore would have on it.

71 Despite CMPB's position having been clearly communicated to him, the Accused elected not to report for enlistment for NS, first on 23 January 1997 pursuant to the 1st Enlistment Notice and again on 24 January 1997 pursuant to the 2nd Enlistment Notice. He was aware of the 1st Enlistment Notice and therefore knew that he had to report for enlistment on 23 January 1997. He failed to do so. Instead, he left Singapore for Indonesia on 24 January 1997. There was nothing from the Defence which suggested that he had been overseas against his will. The Accused has not adduced any evidence, and it is also not his position, that he had been prevented from returning to Singapore to report for enlistment due to circumstances beyond his control. The conclusive inference

would be that the Accused had knowingly and intentionally failed to report for enlistment for NS.

72 There is, therefore, no issue on the facts of whether the Accused had acted with reasonable care to avoid failing to report for enlistment. I am of the view, as such, that the Accused has failed to prove on a balance of probabilities that the common law defence of reasonable care is applicable to him.

73 For completeness, the statutory defence of reasonable care under s 26H(4) Penal Code would not apply in light of the High Court's decision in *Naresh Kumar* at [63] to [66] that the defence has no retrospective application as the provision was a codification of the pre-existing common law position and was not intended to have any retroactive effect. The Accused had committed the offence in January 1997 which predates the coming into operation of s 26H(4).

Issue 4 - Whether the doctrine of SLE is applicable to the offence in issue and, if so, what are the requirements that have to be proved by the Accused for the SLE doctrine to apply?

74 The CA held in *Tan Seng Kee* at [123] that it "has yet to rule definitively that the doctrine of SLE is part of Singapore law." In *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2014] 1 SLR 1047 ("*Chiu Teng*") the High Court held that the doctrine applied in Singapore. In *SGB Starkstrom*, the CA clarified at [41] that they neither affirm nor overrule *Chiu Teng* and deferred resolution of the matter to a future occasion where it would be essential to do so as the CA had found that the doctrine was inapplicable on the facts of the case. The CA had opined at [59] that accepting the doctrine of SLE as part of our law would "represent a significant departure from our current understanding of the scope and limits of judicial review". This would "potentially change the

understanding of the court's role in undertaking judicial review of administrative or executive actions and could cause a redefinition of our approach to the doctrine of separation of powers and the relative roles of the judicial and executive branches of the Government".

75 The CA further observed at [60] that the "difficulties inherent in accepting the doctrine of SLE should not be underestimated" and noted that while some common law jurisdictions, including the UK and Hong Kong, have accepted the doctrine, others such as Australia and Canada have rejected it. The CA also opined that the applicability of the doctrine of SLE in Singapore will raise many nuanced questions which would have to be determined and pointed out at [62] that:

> …. the crux of the issue is not likely to be whether there are sound reasons for protecting legitimate expectations, but rather, *which body should decide* whether the particular expectation in question is to prevail over the countervailing interests that may be at stake; specifically, should that balancing exercise be a matter for the court or the Executive? This is likely to be one of the central issues that would have to be considered should the question of substantive legitimate expectations come before us again.

76 The CA then observed in *Tan Seng Kee* that in the years following *SGB Starkstrom*, the courts have continued to leave open the question whether the doctrine of SLE is or should be part of Singapore law.

77 The appeals in *Tan Seng Kee* concerned the constitutionality of s 377A Penal Code. The CA in that case had applied a limited recognition of the doctrine of SLE on the exceptional circumstances surrounding the general non-enforcement of s 377A. The CA had emphasised at [133] that the recognition of

the doctrine was "an extremely limited one" and is shaped by 2 fundamental considerations. The first was the need to give legal effect to the Attorney-General's representations concerning the prosecutorial policy in respect of offences under s 377A failing which some individuals may be exposed to the grave threat of prosecution. The second was by doing so, the court would be upholding the public interest in maintaining Parliament's decision to retain s 377A while not proactively enforcing it in order to strike a balance between upholding society's traditional heterosexual values while allowing space for homosexuals. The CA further held at [135] that recognising the SLE doctrine in these specific circumstances would neither offend the doctrine of separation of powers nor require the court to review the substantive merits of Parliament's decision. The court would on the contrary be giving effect to Parliament's decision on the issue. The court's holding would also neither constrain any future legislative or executive action regarding s 377A nor encroach on the Public Prosecutor's prosecutorial discretion. The CA held that drawing all these points together, recognising the doctrine of SLE on the specific context and facts of the case would not engage the "thorny issues" raised in *SGB Starkstrom*.

78 In *Han Hui Hui and others v Attorney-General* [2022] 5 SLR 1023 ("*Han Hui Hui*"), the High Court had also observed at [29] that the courts have generally been reluctant to accept the doctrine of SLE and that the CA's recognition of the limited application of the doctrine was under "exceptionally narrow circumstances".

79 The broad representations which the Defence has relied on to support the application of the doctrine of SLE are as follows:

(a) that CMPB knew and does not dispute that the Accused is an Indonesian citizen and that he will lose his Indonesian citizenship if he serves NS in Singapore;

(b) the Accused was allowed by ICA to travel in and out of Singapore using his Indonesian passport between 17 March 1997 and 1 September 2021 without any enforcement action taken;

(c) Representations allegedly made sometime after 23 March 2004 by [redacted] at the material time, to DW2 Koh that the issue concerning the Accused's NS liabilities will be resolved;

CMPB's awareness of the Accused's Indonesian citizenship

80 It is not in dispute that CMPB is aware of the Accused's Indonesian citizenship. CMPB also does not dispute that under the Indonesian Citizenship Law, the Accused may lose his Indonesian citizenship if he were to serve NS in Singapore. CMPB's position as communicated to the Accused and his parents has, however, been consistently that notwithstanding his Indonesian citizenship, the Accused is still liable to serve NS as he is also a Singapore citizen. As such, I do not see how the fact that CMPB has not disputed the Accused's Indonesian citizenship and the impact serving NS has on it amounts to any representation by CMPB which could support any legitimate expectation that the Accused is absolved of his NS obligations.

81 The Accused and his parents' view that the Accused's NS obligation may be deferred until he reached the age of 21 years whereupon he could then

serve NS if he elects not to renounce his Singapore citizenship (see [15] and [16]) was also misconceived.

82 DW2 Koh testified that on 5 November 1983, she had visited ICA to obtain a student pass for the Accused and was informed by the ICA officer that as she is a Singaporean, the Accused would be considered a "minor citizen" and would not require a student pass. The officer had also allegedly informed her that the Accused could retain his Indonesian citizenship until he reaches 21 years of age whereupon his Singapore citizenship would be cancelled if he did not swear allegiance to Singapore by the time he was 22 years old[36].

83 There is no supporting evidence adduced by the Defence with regards to what the said ICA officer had allegedly represented to DW2 Koh. Her testimony is therefore an assertion on her part based on memories of an event which had taken place more than 40 years ago.

84 Under Article 128(1) of the Constitution provides that:

> Any citizen of Singapore of or over the age of 21 years and of sound mind who is also or is about to become a citizen of another country may renounce his citizenship of Singapore by declaration registered by the Government, and shall upon such registration cease to be a citizen of Singapore.

85 This means that the Accused would have been able to renounce his Singapore citizenship by declaration when he reached the age of 21 years. And he would have ceased to be a Singapore citizen upon the declaration being registered by the Government of Singapore.

[36] NE Day 7 page 44, lines 15 to 22 and NE Day 6 page 9 lines 7 to 26.

86 Article 128(2) provides however that:

> The Government may withhold the registration of a declaration under this Article —
>
> …
>
> (b) if the declaration is made by a person subject to the Enlistment Act 1970 unless he has —
>
> (i) discharged his liability for full-time service under section 12 of that Act;
>
> (ii) rendered at least 3 years of operationally ready national service under section 13 of that Act in lieu of such full-time service; or
>
> (iii) complied with such conditions as may be determined by the Government.

87 The position is therefore clear. The Government may withhold the registration of a declaration of renunciation of Singapore citizenship by a person subject to the EA if the person has not discharged his NS liabilities.

88 DW2 Koh's assertion that she had been informed by the ICA officer that the Accused's Singapore citizenship would be cancelled if he did not swear allegiance to Singapore by the time he was 22 years old is therefore inconsistent with Article 128 of the Constitution. In the absence of any evidence supporting her assertion, which was based on her recollection of an event which had transpired 42 years ago, and given that she is an interested witness, I am unable to accept her evidence that that was in fact what the ICA officer had told her.

89 In any case, when the Accused's parents wrote to CMPB requesting for deferment of the Accused's NS until he turned 21 years of age, CMPB had replied in no uncertain terms that the Accused who is also a Singapore citizen was required to fulfil his NS obligations and that no deferment would be granted to him. As such, it would not be open to the Accused to rely on the alleged representations by the ICA officer in 1983 to support any legitimate expectation that he was not required to serve NS.

The Accused was allowed to travel in and out of Singapore using his Indonesian Passport

90 It is not in dispute that the Accused had travelled in and out of Singapore using his Indonesian passport between 17 March 1997 and 1 September 2021 (the Accused was arrested on 1 September 2021). On each occasion, he was issued with a visitor pass.

91 The Accused holds an Indonesian passport bearing the name "Edmond Ming Siang Jauw". The passport contains the Accused Singapore NRIC number which had been handwritten by an ICA officer on 3 October 1993[37]. The Defence's contention is that ICA knew the Accused goes by both the names "Edmond Ming Siang Jauw" and "Yao Zhi Hai Edmond". Although the Police Gazette issued on 28 January 1997 for the Accused's arrest was in the name "Yao Zhi Hai Edmond" and bore the Accused's NRIC number, the Accused was able to enter Singapore without being detained by ICA. He was also not prevented from leaving Singapore subsequently and this had continued until the day of the Accused's arrest at ICA.

[37] See exhibit P9.

92 It is not disputed that on 30 October 2003, the Accused had submitted a Declaration of Renunciation of Singapore Citizenship to the Singapore Embassy in Indonesia[38] but the application was not supported by CMPB – see [23]. On 4 December 2003, the Accused submitted a statement to ICA that he would lose his Indonesian citizenship if he were to undergo military service in another country[39]. On 18 December 2003, ICA replied that the Accused's application for renunciation was being withheld under Article 128(2)(b) of the Constitution[40] - see [24].

93 It is also not disputed that sometime between 18 December 2003 and 20 January 2004, DW2 Koh had appealed to the Member of Parliament for Marine Parade GRC for an early reply to the Accused's application for renunciation of his Singapore citizenship. ICA replied on 20 January 2004 to reiterate that the Accused's renunciation application was being withheld under Article 128(2)(b) of the Constitution and that DW2 Koh was advised to liaise directly with CMPB[41]. DW2 Koh subsequently appealed again through the said Member of Parliament to the Ministry of Home Affairs and ICA replied informing that the Accused was required to fulfil his NS obligations[42].

94 The Accused married a Singaporean in January 2005. In February 2005, he had applied for permanent residence under the name "Edmond Jauw Ming Siang" on the basis that he is the husband of a Singaporean. ICA replied that

[38] See exhibit P24.

[39] See exhibit P25.

[40] See exhibit P27.

[41] See exhibit P28.

[42] See exhibit P30.

they were unable to proceed with the application as the Accused is still a Singapore citizen[43].

95 The Defence submits that notwithstanding these developments, the Accused was allowed to travel in and out of Singapore without any enforcement action taken against the Accused or any steps taken to address the Accused's outstanding NS liabilities. Between 31 December 2008 and 16 March 2020, he had used his Indonesian passport to enter Singapore on a total of 13 occasions. ICA had also approved his application for a STVP for the period 16 March 2020 to 8 July 2021, which was subsequently extended to 6 September 2021. The Defence submits that the only cogent explanation for ICA and MINDEF's action, or non-action, is that MINDEF had made a conscious and deliberate decision not to take enforcement action against the Accused. This had therefore given the Accused a substantive legitimate expectation that Singapore regards the Accused as an Indonesian foreigner who was not subject to NS obligations.

96 I am unable to accept the Defence's submission that the fact that no enforcement action was taken against the Accused during the period between his non-reporting for enlistment and eventual arrest constitute basis for the Accused to believe that his NS liabilities had been absolved.

97 In *Chiu Teng*, the High Court had held at [119] that the recognition of the doctrine of SLE should be subject to the following safeguards:

> (a) The applicant must prove that the statement or representation made by the public authority was unequivocal and unqualified[:]

[43] See exhibits P32 and P33.

(i) if the statement or representation is open to more than one natural interpretation, the interpretation applied by the public authority will be adopted; and

(ii) the presence of a disclaimer or non-reliance clause would cause the statement or representation to be qualified.

(b) The applicant must prove [that] the statement or representation was made by someone with actual or ostensible authority to do so on behalf of the public authority.

(c) The applicant must prove that the statement or representation was made to him or to a class of persons to which he clearly belongs.

(d) The applicant must prove that it was reasonable for him to rely on the statement or representation in the circumstances of his case:

(i) if the applicant knew that the statement or representation was made in error and chose to capitalise on the error, he will not be titled to any relief;

(ii) similarly, if he suspected that the statement or representation was made in error and chose not to seek clarification when he could have done so, he will not be entitled to any relief;

(iii) if there is reason and opportunity to make enquiries and the applicant did not, he will not be entitled to any relief.

(e) The applicant must prove that he did rely on the statement or representation and that he suffered a detriment as a result.

(f) Even if all the above requirements are met, the court should nevertheless not grant relief if:

(i) giving effect to the statement or representation will result in a breach of the law or the State's international obligations;

(ii) giving effect to the statement or representation will infringe the accrued rights of some member of the public;

(iii) the public authority can show an overriding national or public interest which justifies the frustration of the applicant's expectation.

98 I am unable to accept the Defence's argument that by not taking any enforcement action against the Accused during the relevant period and allowing him to travel freely in and out of Singapore using his Indonesian passport, an unequivocal and unqualified representation had been made by ICA and MINDEF that the Accused was no longer required to serve NS. To the contrary, the unequivocal and unqualified representation from CMPB had consistently been that notwithstanding his Indonesian citizenship, the Accused was liable for NS as he is a Singapore citizen as well. In the circumstances, the conclusion that the Accused had drawn that he was therefore no longer required to serve NS is, in my view, based on nothing more than wishful thinking.

99 Based on the evidence, I am of the view that the Accused being allowed to travel freely in and out of Singapore using his Indonesian passport without any enforcement action taken had in part been contributed by the Accused's action. PW4 Zarina Beevi Binte Md Salim ("PW4 Zarina") testified that the Accused had been allowed to enter Singapore using his Indonesian passport as he had declared himself to be a foreigner. PW4 Zarina further testified that after the Accused turned 21, he ought to have declared that he was a Singapore citizen

and would be required to have a Singapore passport or Singapore travel document pursuant to s 5A IA[44]. This aspect of her evidence has not been challenged. Under s 5A(1)(a) IA, a Singapore citizen (whether or not the person is also the national of a country other than Singapore) who is arriving in Singapore is required to present his Singapore passport or any other prescribed evidence of his identity and Singapore citizenship. By entering Singapore using his Indonesian passport after he has turned 21 years of age, the Accused would appear to have contravened s 5A(1)(a) IA. He in fact faces 14 charges under s 5A(1)(a) IA which have been stood down. In doing so, the Accused would also appear to have evaded detection by the immigration officers that he is a Singapore citizen. Although his NRIC number is reflected in his Indonesian passport, it would have been entirely plausible for the immigration officers not to have noticed it. It would be a distortion of logic for the Accused to claim now that by not taking enforcement action against him, the ICA and MINDEF had thereby represented that the Accused is no longer liable to serve NS.

100 I am therefore of the view that the Accused cannot rely on the fact that he had been allowed to travel freely in and out of Singapore during the relevant period to support any legitimate expectation that he is no longer required to serve NS.

Representations allegedly made by [redacted]

101 DW2 Koh testified that sometime after 23 March 2004, she had met with [redacted] (deceased) at [redacted] to "settle [the Accused's] NS issues". According to DW2 Koh, [redacted] had told her that the Accused is "*an Indonesian citizen and that he cannot breach the Indonesian laws, he cannot be*

[44] NE Day 5 pages 30 to 35.

serving NS in other foreign countries" and that "*the matter in Singapore would be settled*"[45].

102 The Defence has similarly not adduced any evidence to support DW2 Koh's assertion save for a name card bearing [redacted] name, title and contact details[46]. The Prosecution has confirmed, however, that there is record that [redacted] was a [redacted] employed in [redacted] and was posted to [redacted] from [redacted][47]. Notwithstanding, the evidence concerning what was represented by [redacted] more than 20 years ago to DW2 Koh remain an assertion based on distant memories.

103 More importantly, even if this court were to accept this aspect of DW2 Koh's evidence, it remains unclear whether [redacted] in fact had the authority to make any representation with regards to the Accused's NS liabilities or even exactly what had been represented to her. There was no evidence adduced of any follow up contact from [redacted]. There was also no subsequent contact from the Singapore authorities on the matter. In fact, ICA had specifically informed the Accused that he is still a Singapore citizen in response to the Accused's subsequent attempt at applying for permanent residence – see [92].

104 Based on [92] and [93] above, it is clear that when DW2 Koh met with [redacted] after 23 March 2004 to discuss the Accused's NS liabilities she and the Accused were fully aware that the issue concerning the Accused's NS liabilities was still outstanding at the time. They would also have been fully aware that CMPB's position, which had been made clear to them in 1997, is that

[45] NE Day 8, pages 35 to 36.

[46] See exhibit D1.

[47] NE Day 3, page 46, lines 2 to 6.

notwithstanding the Accused's Indonesian citizenship, he still had to serve NS on account that he is a Singapore citizen. Against that backdrop, it would not be reasonable for the Accused to rely on [redacted] vague intimation that the issue will be resolved to form any legitimate expectation that he was no longer required to serve NS.

Applicability of the doctrine of SLE

105 In the light of the above, I am of the view that the doctrine of SLE is not applicable on the facts of the present case.

106 Applying the doctrine in the present case would also, in my view, present the very difficulties inherent in accepting the doctrine highlighted by the CA in *SGB Starkstrom*. The central issue in the present case concerns the NS obligations of a person who holds both Indonesian and Singapore citizenship, and specifically, whether such a person may be exempted from NS on account of the impact on his Indonesian citizenship serving NS would have. In my view, this is an issue which concerns policy rather than law. As the CA has pointed out in *SGB Starkstrom* at [62], the "crux of the issue is…which body *should decide* whether the particular expectation in question is to prevail over the countervailing interests that may be at stake; specifically, should that balancing exercise be a matter for the court or the Executive", or even Parliament in the present case.

107 In my view, recognising the doctrine in the present case would present the real risk of offending the doctrine of separation of powers. It would require the court to review the substantive merits of CMPB's decision that notwithstanding the Accused's Indonesian citizenship and the fact that the Accused may lose his Indonesian citizenship if he were to serve NS, the

Accused was nevertheless required to fulfil his NS obligations as a Singapore citizen. This would, in my view, be a departure from the current scope and limits of judicial review. It would require the court to effectively consider what inroads may be made into the institution of NS and the fundamental principles underpinning it – see [61] and [62]. Such a consideration would more appropriately be undertaken by the Executive and/or Parliament rather than a court.

108 Applying the doctrine would also have the potential of constraining future legislative or executive action on the upholding of NS liabilities under the EA and encroach on the Public Prosecutor's prosecutorial discretion in respect of offences under the EA.

109 Given the magnitude and importance of the role of NS to Singapore's national security and survival, I am of the view that this would not be a case appropriate for the doctrine of SLE to be applied.

Issue 5 - Whether the defences under s 76 and 79 Penal Code applies to the Accused?

110 The defences under s 76 and 79 of the Penal Code at the time of the offence states:

> 76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.
>
> …

> 79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it.

111 The Defence's argument is that the Accused was under the honest but mistaken factual belief that Singapore had regarded him as an Indonesian foreigner in Singapore. As an Indonesian citizen, the Accused was bound by the Indonesian Citizenship Law which states that he would lose his Indonesian citizenship if he served in a foreign military service. He believed as such that he had to comply with the Indonesian Citizenship Law under which he had an obligation not to serve in a foreign military. The Accused and his family had also acted with due care and attention in ensuring that the Singapore authorities were made aware of his status as an Indonesian citizen.

112 I do not accept the submission that the Accused was labouring under a mistake of fact that he had been regarded as an Indonesian foreigner by Singapore. The Accused knew that although he holds Indonesian citizenship, he is also a Singapore citizen. CMPB had also made it manifestly clear to him that he is liable for NS as such.

113 To the extent that the Accused believed that he was bound or justified by the Indonesian Citizenship Law in not reporting for enlistment, that would be a mistake of law, and not of fact, which offers no defence.

114 While it is not in dispute that under the Indonesian Citizenship Law, the Accused would lose his Indonesian citizenship if he were to serve NS, it would be a stretch to conclude that the Accused is therefore bound or justified by the Indonesian Citizenship Law not to report for enlistment when required to do so under the EA. It is clear from the illustrations to s 76 and 79 that the provisions

pertain to acts which are done in conformity with the commands of the law or in exercise of the power conferred by the law:

Illustrations (s76)

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a court of justice, being ordered by that court to arrest Y, and, after due enquiry, believing Z to be Y, arrest Z. A has committed no offence.

Illustrations (s79)

(a) A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

115 The Indonesian Citizenship Law merely prescribes that a person will lose his Indonesian citizenship if he serves in the military of another country. It neither commands nor empowers anyone to act in any manner. The Accused in electing not to report for enlistment had merely sought to avoid the consequences under the Indonesian Citizenship Law. That is not the same as being under the command or empowerment of the law to act in the way the Accused did.

116 A person must also have believed in good faith that he or she was bound or justified by law in committing the act before he or she can raise the defences under s76 and s79. "Good faith" is defined under s 52 as follows:

> Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

117 The burden falls on the Accused to establish on a balance of probabilities that s76 and s 79 applies to him pursuant to s 107 of the Evidence Act – *PP v Teo Eng Chan* [1987] SLR(R) 567 at [25] and [26] and *Tan Khee Wan Iris v PP* [1995] SGHC 94 at [17].

118 In *Tan Khee Wan Iris*, the High Court held at [19] that it is not sufficient for an accused person to show that he or she was mistaken:

> "However, it is not enough for the appellant to show that she was mistaken. She must also show that she believed in good faith that she had a valid licence for the relevant period. The test of whether a mistake was made in good faith is not whether the mistake was an easy one to make nor whether a reasonable person could make the mistake. The test is that laid down in s 52 of the Penal Code. The test is whether there was due care and attention. The mistake may be a natural one to make and it may be one which reasonable persons often make. Nevertheless, the defence is not made out unless it is shown on a balance of probabilities that the appellant exercised due care and attention. Thus, it is not enough to show that the licensing officer or even the Prosecution made the same mistake. All that shows is that it was a reasonable mistake to make. In order to succeed, the appellant must still show that she exercised due care and attention. No doubt in many cases the fact that a reasonable person made the same mistake will go some way towards discharging the burden of showing due care and attention, but that is not the same thing."

119 In that case, the High Court held that as the mistake on the face of the licence in issue was an obvious one and that if the appellant had read the whole of the licence and had given any thought at all to the matter, she would have discovered that there was something wrong with the licence. The mistake was therefore not one that can be made with due care and attention and that there was a duty on her part to ask the licensing officer. The High Court held that the

appellant had not discharged her burden to prove that she had exercised due care and attention.

120 In the present case, the Accused cannot by any stretch be considered to have acted in good faith. He had been informed from the outset by CMPB of his NS liabilities by virtue of his status as a Singapore citizen notwithstanding his Indonesian citizenship. He cannot therefore claim that he was labouring under any mistake of fact that he did not have to report for enlistment.

121 The defences under s 76 and 79 Penal Code is therefore not applicable to the Accused.

DW3 Professor Juwana's evidence

122 DW3 Professor Juwana had stated in his report that preventing an individual from renouncing Singapore citizenship before serving NS is an infringement of the UDHR and/or AHRD. Although the UDHR and AHRD do not have the same legal effect as treaties and agreements, the substance of the 2 declarations has developed into a source of customary law. The report also opined that "if an individual intends to renounce Singapore citizenship, either by their parents or themselves, due to holding Indonesian citizenship, then, according to international law, such a renunciation should be permitted under UDHR and/or AHRD and that under the UDHR and/or AHRD, or any other international laws, member states must respect the choice of nationality of any person[48].

[48] See exhibit D17 at section D, pages 8 and 24.

123 In *Yong Vui Kong v PP* [2010] 3 SLR 489, the CA had held at [59] that there are inherent limits on the extent to which our courts may refer to international human rights norms in the interpretation of domestic law, including the Singapore Constitution. Where the express wording is not amenable to the incorporation of the international norms in question, or where Singapore's constitutional history is such as to militate against the incorporation of those international norms, in order for our courts to give full effect to international human rights norms, it would be necessary for Parliament to first enact new laws or even amend the Singapore Constitution to expressly provide for rights which have not already been incorporated therein.

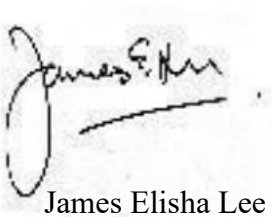
124 Article 128(2)(b) of the Constitution specifically provides that the Government may withhold the registration of a declaration of renunciation of Singapore citizenship made by a person subject to the Enlistment Act 1970 unless he has discharged his NS liability under the EA. To the extent that Article 128(2)(b) is incompatible with the UDHR and AHRD, the Singapore Constitution must prevail.

125 In any case, DW3 Professor Juwana has agreed that the Singapore courts adopt a dualist approach towards international law obligations, which means that such obligations do not automatically become part of domestic law. He has conceded that both the UDHR and AHRD are not capable of being breached in and of themselves. He has also acknowledged that he is not in a position to comment about whether Singapore has breached any international law obligations[49].

[49] NE Day 8, pages 15 to 17.

Verdict

126 For the reasons set out above, I find the Accused guilty of the charge and convict him accordingly.



James Elisha Lee
District Judge

Deputy Public Prosecutors Tay Jia En and Clara Low (Attorney-General's Chambers) for the Public Prosecutor;
Mr Sunil Sudheesan and Ms Joyce Khoo (Quahe Woo & Palmer LLC) for the Accused.