

Oral answer by Law Minister K Shanmugam to Parliamentary Question on acquittal & presumption of innocence

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Question for Oral Answer

Mr Alvin Yeo, MP: To ask the Minister for Law in view of the public comment that has generated, if he will make clear the Government's position on the letter written by the Attorney-General's Chambers to The Straits Times on 14 May 2008 that people acquitted of crimes may not necessarily be factually innocent.

Mr Christopher de Souza, MP: To ask the Minister for Law whether the Government supports the presumption of innocence and if yes, whether he will clarify the comments in the letter by the Attorney-General's Chambers to The Straits Times Forum Page on 14 May 2008.

Minister for Law, Mr K Shanmugam:

1. Members have asked about the Government's position on a letter written by the Attorney-General's Chambers to the Straits Times Forum page on 14 May 2008. It is first necessary to note the context in which the letter was written.

- I. The context in which the AG had made his statements

2. AGC made two statements on 8 and 14 May 2008, to the effect that "an acquittal does not mean that an accused is innocent" and that an acquitted person could be "guilty in fact". These statements were made in response to a journalist's question. The question posed was whether compensation ought to be awarded where there has been an acquittal. The AG's statements must therefore be understood in the context that the AG was dealing **only with the issue of compensation**. He was explaining why compensation could not be paid to everyone who gets acquitted, by pointing out that not everyone who gets acquitted is necessarily innocent.
3. Having set out the context in which the statements had been made, let me now deal with the specific issues on the presumption of innocence that have been raised by the two Honourable Members.

- II. Guilt and Innocence: the position in law and in fact

4. In our Criminal Justice System:-

1. When a Court finds an accused guilty of an offence with which he has been charged, it means that the judge is satisfied beyond reasonable doubt, that the accused has committed the offence charged. In other words, the judge is convinced that the accused is guilty.

2. On the other hand, when the Court acquits an accused, it simply means that the Court is not convinced that he is guilty. This is because the Court does not have to go into the question of whether the accused is in fact innocent. An acquittal (often) simply means that the prosecution has failed to prove the case beyond reasonable doubt. In such a situation (when there is any reasonable doubt), the Court has a duty to acquit the accused, regardless of whether the Court thinks the accused may have in fact committed the offence. It is therefore possible for a person who has committed the offence to walk away free. We accept that as an unavoidable consequence of our trial system, as procedural justice is important.
5. This position has been stated by DPM Professor S Jayakumar in Parliament, in 1994 and 1996 and again by SMS Associate Professor Ho Peng Kee in 2004 and 2006. These statements were made by the Government after obtaining the advice of the then AG, Chan Sek Keong, now CJ. The AG, in May 2008, was thus restating a similar position when he made his statements.
6. The position that has been stated is:-
 1. logical;
 2. is supported by jurisprudence from respectable common law jurisdictions; and
 3. is the position publicly taken by the then AG Mr Chan Sek Keong in 1996.
7. Let me elaborate.

1. The position is logical

8. As stated earlier, it is entirely possible for a person to have committed acts which amount to a crime and yet, there may be no conviction. I emphasize, no serious lawyer will question this possibility. There are many reasons why there might be an acquittal. Witnesses may not be found at trial. Or they may change their evidence, either because they genuinely fail to recall essential facts, or for other reasons. Or there might be an acquittal on a technicality.
9. The Government's position is therefore simply a statement of logical and undeniable fact: a person may have committed a crime and yet get an acquittal in Court.

2. Jurisprudence from England and Scotland

10. The propositions which have been stated are consistent with jurisprudence from other countries
11. In the English House of Lords, in *Director of Public Prosecutions v Shannon* [1975] AC 717, the effect of an acquittal was considered by Lord Salmon in the following terms:-

"Interesting questions have been debated before your Lordships as to the true effect of an acquittal. An accused is entitled to be acquitted unless the evidence satisfies the jury beyond reasonable doubt that he is guilty. A verdict of not guilty may mean that the jury is certain that the accused is innocent, or it may mean that, although the evidence arouses considerable suspicion, it is insufficient to convince the jury of the accused's guilt beyond reasonable doubt. The verdict of not guilty is consistent with the jury having taken either view. The only effect of an acquittal, in law,

is that the accused can never again be brought before a criminal court and tried for the same offence. So far as the Crown is concerned, the accused is deemed, in law, to be innocent ¹.
(emphasis added)

12. The House of Lords could not have been clearer on the meaning of a “not guilty” verdict.
13. In Scotland - a well-worn system tested over the course of 250 years - the jury in criminal trials has the choice of three verdicts: “guilty”, “not guilty” and “not proven”. The verdict of “not proven” has the effect, just as a not guilty verdict, of an acquittal. However, the verdict of “not guilty” suggests that the accused definitely did not commit the crime which is a positive declaration of innocence, whereas the verdict of “not proven” implies only that the accused’s guilt has not been conclusively demonstrated. The latter verdict may often leave the public with the perception that the accused was guilty but this guilt could not be proved because of some inadequacy in the evidence.

3. The then Attorney-General Chan's public lecture in 1996

14. Thirdly, in a major public lecture on Criminal Law, in 1996, the then AG Chan Sek Keong pointed out that the trial process is designed to prove guilt. It is not designed to prove innocence. ²
15. AG Chan’s lecture is very instructive and a tour de force, carefully analysing (inter alia) the concepts of legal and factual innocence and the presumption of innocence. He pointed out that a person acquitted of a charge is legally innocent but may not be factually innocent. He explained that the presumption of innocence is a presumption that

an accused is legally innocent. It is simply an expression, that in a criminal trial, the prosecution is obliged to prove its case beyond reasonable doubt.

III. Presumption of Innocence

16. Mr de Souza has asked if the Government supports the “presumption of innocence”. Sir, let there not be any doubt on this point: **the presumption of innocence is an important and fundamental principle, and is one of the foundations of our Criminal Justice System. The Government is absolutely committed to upholding the presumption of innocence, as a core principle in our commitment to the Rule of Law. There is no intention to question or qualify that principle in any way.** I am surprised that any doubt at all should have arisen about this and I thank Mr de Souza and Mr Yeo for raising this issue and allowing me to clarify the position.
17. I would add that the AG’s statements made in May 2008 do not in any way seek to encroach on the function of the Courts. **It is for the Courts, and the Courts alone, to exercise judicial power and decide the question of guilt, in a trial. That is a fundamental principle of our Constitution.** The AG did not question that principle. He was simply pointing out the reality of the trial system: that a person may have committed a crime but nevertheless, the Prosecution may not succeed in Court, because of a gap between the commission of a crime and the prosecution’s ability to prove it in Court. The presumption of innocence does not preclude us from acknowledging that possibility. As I stated earlier, the Court can only look at the evidence in Court and must acquit the accused (if there is any reasonable doubt), even if the Court thinks that he probably committed the

crime - because such a probability is not enough for conviction under our law.

18. It is possible that some confusion had arisen because this is a technical area and there is tendency in common parlance to equate a finding of “not guilty” in court with actual innocence. A recent article by the Massachusetts Bar Association points out this common mistake and calls for more precise terminology. A finding of a “not guilty” is not to be equated with actual innocence.
19. However, as we acknowledge the realities of the trial system, **it is also important to stress that just as a person acquitted may not necessarily be innocent, he may well also in fact be innocent. We should not assume guilt by reason of a person being charged** because our legal system, like many others, and for various sensible reasons, does not go on to establish the factual innocence of an accused.
20. I trust that I have made the Government’s position clear. I wish to again thank both Mr Alvin Yeo and Mr de Souza for having raised these important questions.

Footnotes

[¹]At p. 772.

[²]Tenth Singapore Law Review Lecture, The criminal process? The Singapore model (1996) SLR 433 [pdf, 487kb]

SUPPLEMENTARY QUESTIONS AND ANSWERS:

Mr Alvin Yeo: I thank the Minister for his clear answer and am heartened by the affirmation of the Government’s stand

of presumption of innocence. Could I ask whether the Minister is prepared to consider a system of compensation for defendants who are in fact acquitted and whom they consider factually innocent?

Mr Shanmugam: That is the question that the Attorney-General was dealing with, and it raises a number of serious issues, including whether we want to fundamentally change our system to one where we require the accused to go further and prove their innocence. In the jurisdictions where compensation has been considered, by and large, they have been required not just to prove that they have been acquitted but to go further and say, "I am actually innocent". That means the burden of proof passes on. That raises a variety of policy issues and I have to say that it is not something that we are considering at this point in time.

Mr Christopher de Souza: Thank you, Minister, for your response. I am afraid I do not agree that the issue of cost creates opportunity for parties to second guess judicial pronouncements. So, I do have three questions arising out of this.

First, if we take the argument on the issue of cost to its logical conclusion, would the Minister then think it is acceptable for a defence counsel, whose client has been found guilty by the Court, or final appeal, to say publicly that his client could be factually innocent and, therefore, need not have to pay cost. This is possibly a real issue because under section 401 of the CPC, prosecution can request cost.

Secondly, does the Minister agree that the principle and unique role accorded to our Courts in criminal cases is to

vindicate or to convict? If so, what right do parties have to second guess such vindication?

Thirdly, does the Minister agree that where a man has been acquitted by the Court of Final Appeal, it must be unjust for parties to the proceedings to cast dispersions on his guilt that will hang over him all his life? More so, if the Court has pronounced a “not guilty” verdict.

Mr Shanmugam: Sir, as to the issue of cost, the way to resolve itself is as follows: at the end of the day, when there is a verdict by the Court, the Criminal Procedure Code has provisions for the prosecution to ask for costs in certain types of cases. Whatever the parties may think, it is for the Court to decide, upon an application by the prosecution, to decide whether it is an appropriate case for costs and, if so, whether the defence in that case should pay it. If the defence takes a view that costs should not be paid, it will not be the first time parties before a Court disagree with the verdict but nevertheless have to comply with it. There is really no public policy issue involved in that.

Secondly, Mr de Souza also asked: is it appropriate for parties to second guess what happens in a Court, ie, there is a verdict, what if the person is acquitted, should parties cast aspersions? While he said there is a third question, I think the third question is really a reformulation of the second question, so I will take them together. That is what my answer has been about. Take it as matter of logic. Do we accept that when the accused get charged and there is a trial and gets acquitted, there can at least be two categories: some who are really innocent; and some who get acquitted despite the fact that they actually committed the offence but the prosecution is unable to prove it. As a

matter of logic, no one will question that, and that is why I went through the jurisdictions in England and Scotland, where they actually have a “not proven” verdict as well, and the fact that our own Attorney-General has expressed those views. I will give you one obvious example of that: Most of the Members here will recall the O J Simpson case. He was acquitted in a criminal trial but that did not prevent his next-of-kin from suing in a civil case and getting damages because the standards of proof were different. So, the only recourse that a person who gets acquitted in Court of a criminal trial has, if someone outside says he in fact committed the offence, is to sue in defamation, in libel. But as a matter of logic, as a matter of factual proposition, as a matter of legal proposition, it will be absurd to suggest that simply because you get acquitted in a criminal trial, no one can say that you actually did it.

Mr Sin Boon Ann: Sir, while I can accept the differentiation between innocent in law and innocent in fact, and the fact that compensation in the acquittal situation is a matter of policy, there could be instances where prosecution decides to proceed with the matter on the basis of sloppy investigation and in the process of which drag the innocent party through a lengthy trial process at a great cost because he has to spend a great amount of money to defend his good name. In such a situation, would it be fair to say, therefore, that the onus is on the Government to then compensate in a situation such as this?

Mr Shanmugam: Sir, the question I have been answering so far had to deal with the issues of innocent in law and innocent in fact. That is the question that I am answering and making clear absolutely the Government's

commitment to the presumption of innocence and at the same time explaining why the Attorney-General said what he said and why that is consistent with the Government's position. When we deal with the issue of compensation and whether the accused who gets acquitted should be compensated, we deal with entirely separate issues which is really not the subject of my question. But as I answered earlier, it raises a number of difficult, complex, public policy issues because each time you talk about compensation, it is really the State, the Public Prosecutor, making careful decisions whether to proceed with a case or not to charge someone in Court. And he does it on behalf of all us as a State against an individual after what we believe are thorough and careful investigations, both on the part of the Police and then with the second layer, on the part of the Attorney-General's Chambers, and it has to be proven in Court. Do we want to add a further layer of checks on his decision-making by imposing on the Public Prosecutor the possibility that if the case does not succeed, which is taken not on behalf of himself as in a civil case, but on behalf of the entire public, as it were, in the protection of public interests? Do we want to impose a further layer of caution by telling him that if he gets his decision wrong, he has got to pay costs? Until now, and the answers have been given in this House, the public policy perspective has been not to impose that burden on the Attorney-General. It will be too high a burden. That is the view that has been taken.

Mr Speaker: Mr Sin, last question from you.

Mr Sin Boon Ann: Sir, a clarification. My position is not one to switch to liability. My position is essentially one of assurance to the public that if a decision is taken to prosecute, the parties have looked at it with duty of care and the duty has been discharged, and that this is not a

decision taken lightly. What the parties certainly do not want is a flippant prosecution which will result in great cost to the defendant to have to defend his good name.

Mr Shanmugam: I think whatever our prosecution in Singapore is accused of, it is usually not accused of flippant prosecution. The Member probably knows that there is already a provision in our law which provides for compensation should there be malicious prosecution. One has got to be very careful about frivolous, vexatious and malicious prosecutions, and that certainly is not the approach the prosecution takes.

Mr Speaker: Last question, Mr de Souza.

Mr Christopher de Souza: On the issue of costs and on the arguments on costs, should not the real question be whether the prosecution should have been commenced in the first place and not whether a man who has been acquitted is actually guilty? I think there is a distinction in that and I would like the Minister's response. Should not the question be at the costs hearing, whether the prosecution should have been commenced in the first place, ie, it was not frivolous, and not whether a man who has been acquitted is actually guilty?

Mr Shanmugam: I am not sure I understand the precise nature of the question, but let me try and understand and answer it to the best of my ability. I think there are two separate questions, which is something that I have been saying as well. In the context of the hon. Member's and Mr Yeo's questions, the issue is what are the legal consequences and what is the precise nature of an acquittal. That is a philosophical issue, as it were, that we have been debating and dealing with. It is an entirely

separate question as to whether either costs or compensation ought to be paid upon an acquittal and a couple of Members asked that question. I have tried to deal with it as best as I can, and I will repeat that answer, which is that when you get acquitted, there can be a number of policy perspectives. One, anyone who gets acquitted should get compensation. I do not think the public in Singapore would support that for the reason that there are many who may in fact have gotten away on a technicality. And if you tell the man in the street that all of them are going to get paid, I think people would not support it. I do not see Members in this House supporting it. I do not see the public supporting it. And I know of no jurisdiction where that is enforced as a matter of principle.

A second possibility could be compensation or some kind of costs are paid upon the accused not only proving that he got acquitted but going further to prove his innocence. There are jurisdictions where that is allowed. What we provide for is, if you can show that the prosecution was malicious and in some ways, what Mr de Souza said, that the prosecution should never have been started in the first place, then there are possibilities, if you can show that it was malicious or vexatious, for you to get some compensation. That is where we have set the bar, and we are not looking at changing that.

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