

IN THE COURT OF APPEAL, MALAYSIA

(APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. W-05-406-09/2023 & W-05-407-09/2023

BETWEEN

PUBLIC PROSECUTOR

APPELLANT

AND

1. MOKTAR BIN RADIN

2. ZIZIE IZETTE BINTI A. SAMAD

RESPONDENTS

[In the matter of the High Court of Malaya at Kuala Lumpur

Criminal Application No. WA-44-150-09/2022
& WA-44-151-09/2022

Between

1. Moktar Bin Radin

2. Zizie Izzette Binti A. Samad

Applicants

And

Public Prosecutor

Respondent]

CORAM

1. AHMAD ZAIDI BIN IBRAHIM, JCA
2. MOHAMED ZAINI BIN MAZLAN, JCA
3. NOORIN BINTI BADARUDDIN, HCJ

BROAD GROUNDS

Note

These broad grounds provide a summary of the court's judgment. They do not include the detailed reasons for the court's decision, which will be present in the written judgment to be released soon.

- [1]** This appeal arises from the High Court's decision to discharge and acquit the respondents pursuant to an application for a revision of the Sessions Court's ruling at the end of the prosecution's case. The Sessions Court ruled that the prosecution had made out a prima facie case against the respondents. In their application, the respondents contended that the learned Sessions Court Judge's ruling was erroneous and sought to overturn her ruling. The critical issue in this appeal is whether the High Court has a right to subject the findings of a prima facie case to revision.
- [2]** A criminal trial will typically commence with an accused facing a charge. The prosecution will then commence its case against the accused by calling witnesses and tendering evidence to support its case against the accused. At the end of the prosecution's case, the trial court will need to analyse the testimonies of the witnesses and evidence produced on a maximum evaluation basis and decide whether the prosecution has made out a prima facie case against the accused. A prima facie case is established against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence, which would warrant a conviction if unrebutted or unexplained. There are only two possibilities. If the court finds that the prosecution has not established a prima facie

case against the accused, the court shall acquit the accused. If the court finds that the prosecution has established a prima facie case against the accused on the offence charged, the court shall call upon the accused to enter his defence. The decision to acquit or to call for defence would have been arrived at after a maximum evaluation exercise by the trial judge.

- [3] These procedures and criteria are set out under section 173 Criminal Procedure Code ('CPC'). The provisions under section 173 CPC are mandatory. Once the court finds that the prosecution has made out a prima facie case against the accused, it "*shall call upon the accused to enter his defence*". Because of the word "*shall*" the court has no other option. Can this decision then be subjected to a revision?
- [4] It is established law that an accused cannot appeal a decision to call for a defense. The court's findings at this stage are not subject to appeal, as they do not constitute a final resolution of the accused's rights. Requesting a revision of these findings is essentially the same as filing an appeal against them.
- [5] The due process of the trial must continue, allowing the respondents to present their defense. The respondents' application is, in fact, an interlocutory appeal masquerading as a revision application. The court's determination of a prima facie case against the respondents here can only be challenged in an appeal after the trial, specifically at the conclusion of the defense's case.

- [6] We would further add that the High Court findings on the learned Sessions Court Judge's ('SCJ') decision to call for defence was premature. The learned SCJ's oral ruling was brief and does not contain comprehensive reasonings for her decision. The oral ruling was not a judgment that contains the grounds for her decision. The learned SCJ in fact has no obligation to give any reasons at this stage in calling for defence. That obligation only arises at the end of the trial, whether she chose to acquit or convict the respondents. There are insufficient materials in her brief oral ruling for the learned High Court Judge to revise, assuming that his lordship has the powers to do so.
- [7] The right to a fair trial applies equally to the prosecution. Allowing an application for revision of a prima facie ruling disrupts a trial, creating an insufferable situation in which the trial court must accede to numerous requests for postponements to enable each party to seek for a revision of the order made during the trial. This will frustrate the progress of trials, wasting precious judicial time and public expense, and must be stopped.
- [8] Based on the aforesaid, we allow the appeal by the appellant. The High Court's ruling is therefore set aside. The Session's Court ruling is restored. We order this case to be remitted back to the Sessions Court for the trial to continue without further delay.

Date: 18 November 2024