

## **Am I allowed to defend myself if I am molested?\***

### **I. Introduction**

- 1 Imagine falling asleep on the bus home and waking up to find the stranger sitting next to you touching you inappropriately. How would you react? Would you push him away or hit him in self-defence?
- 2 The number of molestation cases have recently been on the rise.<sup>1</sup> As such, many people are preparing to fight back against potential assaulters, some even going as far as taking self-defence classes.<sup>2</sup> The question that thus arises is whether, according to the law, people are allowed to defend themselves, and to what extent.
- 3 In Singapore, the law on self-defence is known as “private defence” (“**PD**”). This is a legal defence.<sup>3</sup> To illustrate: imagine if you were molested and punched your molester’s face in response, breaking his nose in the process. You must first be charged with causing hurt to the molester, before you can use PD (as a legal defence) to prove that you are innocent. PD is, however, relatively untested in the context of molestation.
- 4 As PD is a complex area of law, this article seeks to clear up common misconceptions on the application of PD and summarize the law in this area. The practical considerations of relying on PD will also be discussed.

### **II. Discussion**

#### **A. *When does PD apply?***

- 5 Many people seem to believe that they can just say that they were acting in self-defence and that would get them out of trouble. Unfortunately, the law requires more than that. All four of these following requirements must be met before you can argue that you were acting in self-defence:<sup>4</sup>

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<sup>1</sup> Singapore Police Force website <[https://www.police.gov.sg/news-and-publications/media-releases/20191013\\_ARREST\\_SEVEN\\_TO\\_BE\\_CHARGED\\_FOR\\_OUTRAGE\\_OF\\_MODESTY\\_CID](https://www.police.gov.sg/news-and-publications/media-releases/20191013_ARREST_SEVEN_TO_BE_CHARGED_FOR_OUTRAGE_OF_MODESTY_CID)> (accessed 19 October 2019).

<sup>2</sup> Mavis Wong, “Molest victims aren’t just speaking up, they are fighting back”, *The Straits Times* (3 December 2018) <<https://www.straitstimes.com/singapore/molest-victims-arent-just-speaking-up-they-are-fighting-back>> (accessed 19 October 2019).

<sup>3</sup> Penal Code (Cap 224, Rev Ed 2008) s 96.

<sup>4</sup> *Tan Chor Jin v Public Prosecutor* [2008] 4 SLR(R) 306 at [39] and [46]; summarized in *Low Song Chye v Public Prosecutor and another appeal* [2019] SGHC 140 at [48].

- (a) there must have been an offence committed against you;<sup>5</sup>
- (b) it was not reasonable for you to seek police protection;<sup>6</sup>
- (c) you reasonably perceived or felt threatened by the danger;<sup>7</sup> and
- (d) you did not use more force than necessary to stop the danger.<sup>8</sup>

(1) *An offence must be committed against you*

6 The first requirement is that an offence under the Penal Code must be committed against you.<sup>9</sup> The first requirement is usually easily fulfilled, as molestation cases are frequently considered as an “outrage of modesty”,<sup>10</sup> which is a Penal Code offence.<sup>11</sup>

7 The law acknowledges that people may harbour misconceptions, so it is sufficient for you to have *thought* that an offence was committed against you (even if no offence was actually committed).<sup>12</sup> However, your misconception has to be reasonable.<sup>13</sup> If X bumps into Y once on a crowded train and apologises, but Y punches X, it is unlikely that Y thought an offence was committed against her, as accidentally bumping into someone is clearly not an offence. The right to PD would not arise in this scenario, since Y’s misconception would not be considered reasonable.

(2) *You must have no reasonable recourse to the police*

8 The second requirement encourages people to seek the protection of police if it is reasonable to do so.<sup>14</sup> This implies that if you defended yourself when police protection was available, it is unlikely that this requirement will be fulfilled. Defending yourself should only be your preferred option if you have no practical means of involving the police. In a recent case, a man boarded a bus and stood near the victim, who was sitting

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<sup>5</sup> *Supra* n 3, at s 97.

<sup>6</sup> *Id.*, at s 99(3).

<sup>7</sup> *Id.*, at s 102.

<sup>8</sup> *Id.*, at s 99(4).

<sup>9</sup> *Id.*, at s 97.

<sup>10</sup> See, for example, the cases of *GCO v Public Prosecutor* [2019] 3 SLR 1402; *Public Prosecutor v Thaw Zin Oo* [2019] SGMC 47; *Public Prosecutor v Muhammad Fauzi bin Salleh* [2019] SGMC 33; and *Public Prosecutor v Manjit Singh s/o Kartar Singh* [2018] SGMC 83. In these cases, the accused persons were charged for “outrage of modesty”, under section 354 of the Penal Code, after molesting their victims.

<sup>11</sup> *Supra* n 3, at s 354.

<sup>12</sup> *Id.*, at s 98.

<sup>13</sup> *Id.*, at s 98, Illustration (b), states the concept of having made the misconception in “good faith”.

<sup>14</sup> *Id.*, at s 99(3).

down.<sup>15</sup> When the bus jerked, he accidentally rubbed against the victim's thigh. Feeling aroused, he moved closer and intentionally rubbed his groin against the victim's thigh. He continued to do so for four minutes until he alighted. In this case, the victim did not react as she was shocked and confused. However, it would have been reasonable for her to react in PD (for example, pushing him away), since she was on a bus without reasonable recourse to police protection in that moment.

(3) *You must have reasonably apprehended the danger*

9 The third requirement is for you to show that you reasonably perceived danger from the molester's actions when you acted in self-defence.<sup>16</sup> For example, X touches Y's thighs. Y would feel threatened, and it would be reasonable for her to perceive danger (to her modesty). This is reasonable apprehension because there is no other explanation as to why X would touch Y's thighs intentionally and without her consent, except to outrage her modesty.

10 This requirement also means that the right to PD only exists when there is danger or a threat.<sup>17</sup> Once the danger ceases, anything you do is not considered to be done in PD. In another recent case, a man touched a woman's thighs on the train.<sup>18</sup> She responded by moving to another seat. If she had gone back and punched the molester, she could not be said to be acting in PD, because the danger ceased when she moved away. After the woman alighted the train, the man followed her and touched her buttocks while they were on an escalator.<sup>19</sup> Here, the victim's right to PD would resume, because the threat was present again. It would thus be reasonable for her to react in PD.

(4) *You should only use necessary force*

11 The last requirement is that any harm you inflict must be only that necessary to defend yourself. What is considered "necessary" depends on different factors, including the

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<sup>15</sup> David Sun, "Ex-NUS lecturer jailed 14 weeks for rubbing against undergrad", The New Paper (18 October 2019) <<https://www.tnp.sg/news/singapore/ex-nus-lecturer-jailed-14-weeks-rubbing-against-undergrad-bus>> (accessed 11 November 2019)

<sup>16</sup> *Supra* n 3, at s 102.

<sup>17</sup> *Id.*, at s 102.

<sup>18</sup> Cheow Sue-Ann, "Victim of 'minor intrusion' molestation case disappointed at court's decision", *The Straits Times* (27 September 2019) <<https://www.straitstimes.com/singapore/victim-of-minor-intrusion-molestation-case-disappointed-at-courts-decision>> (accessed 11 November 2019)

<sup>19</sup> *Ibid.*

molester's physique.<sup>20</sup> For example, if X (molester) was of a small physique, less force would be necessary for Y to defend herself.

- 12 If you kill your molester, it is unlikely that you can rely on PD, unless his actions made you think that you would be killed, raped, or seriously hurt.<sup>21</sup> The force involved in killing is probably unnecessary to defend yourself, since violence by the molester is unlikely to be present in outrage of modesty cases.

**B. Practical considerations**

- 13 While the topic of self-defence has frequently been brought up in light of molestation cases, it is unlikely that you will ever have to rely on PD, as that would require you to first be arrested and charged. In molestation cases, the victim is unlikely to be charged, so even if physical force is used against the molester, there would be no need to bring up PD as a legal defence.
- 14 PD only becomes relevant if you are charged for an offence. However, before you rely on PD as your legal defence, it is important to note that the four requirements seem to be difficult to fulfil to the court's satisfaction. This is probably because successfully arguing PD will result in you being found "not guilty", so there is a need to set a higher threshold to ensure that only those who were truly acting in PD are granted this defence.
- 15 Ultimately, whether these four requirements are satisfied is for the court to decide. For example, even if you think that you have no time to call the police for help, the court may decide otherwise. Thus, the first course of action you should take if you are in such a situation is to call for the protection of the police, failing which, you can defend yourself with the force necessary to ward off your molester. In either case, you should make a police report.

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<sup>20</sup> *Roshdi v Private Prosecutor* [1994] 3 SLR(R) 1 at [41]; *Public Prosecutor v Lee Twe Jeat* [1994] 3 SLR 219 at [11].

<sup>21</sup> *Supra* n 3, at s 100.

### **III. Conclusion**

- 16 Although the law on PD is deceptively simple, in practice the court will consider many factors before granting you the right to PD (as alluded to in this article). As such, relying on this defence in court may not result in success (where success means a “not guilty” verdict). However, since it is unlikely for you to be charged with, for example, just pushing your molester away, PD is most likely not going to be relevant to you. If you are ever molested, the rule of thumb, to avoid legal repercussions, would be to defend yourself (in the absence of police intervention), but ensure that any hurt caused to the molester is not over the top. It seems as though those skills learnt by taking self-defence classes might come in handy after all.

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