

# The State of Statements in Singapore's Legal System

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## I. Introduction

During the investigations of crimes, numerous statements are often recorded by the police. Different types of statements might also be taken at different times. Unfortunately, the process remains relatively unknown to the public and therefore may create an undue amount of uncertainty and unease for those undergoing the process. This is especially since statements are often taken without counsel present.<sup>1</sup>

Recent events have also demonstrated the potential implications of statements being made to police. For instance, people have lost their livelihood by being the subject of a police report.<sup>2</sup> Statements that are made to the police might result in protracted legal proceedings and other harsh social consequences. Most recently, certain false allegations of molest that were made against a local doctor resulted in investigations that caused him more than \$600,000 in legal fees over a period of 4 years.<sup>3</sup> As part of this, the public may wonder how courts might treat statements that are taken during investigations and wonder whether there are sufficient safeguards against unreliable statements.

This article aims to introduce the various types of statements that may be recorded by the police during their investigations. This will shed some light on the existing statutory requirements that must be met when statements are taken. The article will also briefly discuss how such statements may be used as part of evidence, which will help you understand when and how your statements can (or cannot) be used against you. In doing so, reference will be had to the Singapore's Criminal Procedure Code ("CPC")<sup>4</sup> and the relevant judgments, which govern how statements are recorded and used by our courts.

## II. Types of statements

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<sup>1</sup> The right to counsel under Article 9(3) of the Constitution only needs to be granted within a reasonable time after a person's arrest. This suggests that counsel might not be present when statements are taken. *Jasbir Singh v Public Prosecutor* [1994] 1 SLR(R) 782 at 798–800, [44]–[49]. The police might also restrict the accused's access to the counsel when interviews are being carried out. *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 (CA) ("*Kadar*"), at [57].

<sup>2</sup> Louisa Tang, "The Big Read: Accused persons get no sympathy but long proceedings are tough, more so on those not found guilty", CNA (19 April 2021) <<https://www.channelnewsasia.com/singapore/the-big-read-accused-persons-long-court-proceedings-224946>> (accessed 12 September 2021).

<sup>3</sup> Louisa Tang, "It was humiliating: Doctor acquitted of molestation charges tells of painful experience" TODAY online (22 August 2021) <<https://www.todayonline.com/singapore/doctor-acquitted-molestation-charges-tells-humiliating-painful-experience>> (accessed 11 September 2021).

<sup>4</sup> Criminal Procedure Code (Cap 68, Rev Ed 2012) ("CPC").

There are two types of statements that are taken during police investigations. These are provided for under section 22 and section 23 of the CPC.<sup>5</sup>

#### A. *Statements under Section 22 of the CPC*

The first type of statement that can be taken by law enforcement during investigations comes under section 22 of the CPC. Section 22(1) stipulates that investigation officers may interview and record the statement of any person who “appears to be acquainted with any facts and circumstances of the case”.<sup>6</sup> During such an interview, an individual must state what he/she understands to be the truth. Lying may amount to the giving or fabricating of false evidence, which is a crime.<sup>7</sup> However, an individual is not required to state information that might expose him to a criminal charge or sanction.<sup>8</sup> This partly reflects the privilege against self-incrimination.<sup>9</sup>

Unfortunately, section 22 statements suffer from certain terminology issues. Although they are often called “investigation statements”,<sup>10</sup> other types of statements (e.g. under section 23) are also taken during investigations.<sup>11</sup> While they might also be referred to as “long statements”,<sup>12</sup> there is no statutory indication in the CPC as to their length or duration. Even though they are also frequently called “witness statements”,<sup>13</sup> this is a misnomer, as it is not only witnesses that may be examined. Rather, as mentioned, any person who seems acquainted with the facts of the case may be examined.<sup>14</sup> It also does not matter whether anyone has been charged or not, or whether the person will even be called as a witness for that particular case.<sup>15</sup> As such, statements made under section 22 of the CPC will simply be called “**Section 22 statements**”.

Section 22(3) prescribes the procedural requirements for such statements. For example, Section 22 statements must be in writing or in the form of an audio-visual recording.<sup>16</sup> If the statement is recorded in writing, it must be read over to the person and signed by him/her. If the person does not understand English, it must be interpreted for him/her in a language that he/she understands.<sup>17</sup>

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<sup>5</sup> Although these statements might be referred to as “contemporaneous” or “non-contemporaneous” statements, these labels merely refer to the time when the statement was taken. There also does not appear to be a limit on the number of statements that can be recorded under either section. *PP v Mohamed Ansari bin Mohamed Abdul Aziz* [2019] SGHC 268 (“*Ansari*”) at [4]-[5].

<sup>6</sup> CPC, s 22(1).

<sup>7</sup> Penal Code (Cap 224, Rev Ed 2008), Chapter XI.

<sup>8</sup> CPC, s 22(2).

<sup>9</sup> Lionel Leo and Chen Siyuan, *Law of Evidence in Singapore* (Sweet & Maxwell, 2016) (“Leo and Chen”), at p 523.

<sup>10</sup> Leo and Chen, *id.*, at p 520; Law Society of Singapore, *Report of the Council of the Law Society on the Draft Criminal Procedure Code Bill 2009* (“*Report on Draft CPC Bill*”), at p 28.

<sup>11</sup> *PP v Omar bin Yacob Bamadhaj* [2021] SGHC 46 (“*Omar*”), at [8].

<sup>12</sup> *PP v Kannan s/o R Kumaran* [2021] SGHC 36 (“*Kannan*”) at [22]; *Muhammad bin Abdullah v PP* [2017] SGCA 04 (“*Abdullah*”) at [21]; *Mohamad Noor bin Abdullah* [2017] 3 SLR 478 (“*Noor*”) at [9(d)].

<sup>13</sup> Law Society of Singapore, *Report on Draft CPC Bill*, *supra* n 10, at p 28; suggested from CPC s 22.

<sup>14</sup> CPC, s 22(1).

<sup>15</sup> CPC, s 22(1).

<sup>16</sup> CPC, s 22(3).

<sup>17</sup> CPC, s 22(4).

### **B. Statements under Section 23 of the CPC**

The second type of statement that can be taken is the “**cautioned statement**” under section 23 of the CPC. Section 23 provides that investigation officers may record a statement from a person charged with an offence.<sup>18</sup> Cautioned statements might also be recorded when the person is informed by the investigating officer that he might be prosecuted for an offence.<sup>19</sup>

Such statements differ from Section 22 statements, in that a person being questioned under section 22 does not have to be charged or informed that he/she might be prosecuted (this is required when statements are taken under section 23).<sup>20</sup> The cautioned statement is therefore an important opportunity for an accused to state his case or defense.<sup>21</sup>

The procedural requirements for taking statements under section 23 are similar to those for section 22. For instance, the statement must be in writing or in the form of an audio-visual recording.<sup>22</sup> After a statement has been made by an accused under section 23, the statement must be read to and signed by him/her.<sup>23</sup> If the accused does not understand English, it must be interpreted for the accused in a language that he/she understands.<sup>24</sup>

However, there are a few additional requirements for statements recorded under section 23. The hallmark feature of a section 23 statement is that the following caution must be read to the accused:<sup>25</sup>

“You have been charged with (or informed that you may be prosecuted for) [Charge]. Do you want to say anything about the charge that was just read to you? If you keep quiet now about any fact or matter in your defence and you reveal this fact or matter in your defence only at your trial, the judge may be less likely to believe you. This may have a bad effect on your case in court. Therefore, it may be better for you to mention such fact or matter now. If you wish to do so, what you say will be written down, read back to you for any mistakes to be corrected and then signed by you.”

Thus, a statement under section 23 is also known as a “cautioned statement”.<sup>26</sup>

After the caution has been read, an accused can choose to remain silent. This reflects the accused’s right to silence and/or privilege against self-incrimination.<sup>27</sup> However, if the accused chooses to remain silent, or demonstrates refusal to provide a statement by his conduct, then

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<sup>18</sup> CPC, s 23(1).

<sup>19</sup> CPC, s 23(1).

<sup>20</sup> CPC s 22(1).

<sup>21</sup> Leo and Chen, *supra* n 9, at p 521.

<sup>22</sup> CPC s 23(3).

<sup>23</sup> CPC s 23(3A)(a) and (c).

<sup>24</sup> CPC s 23(3A)(b).

<sup>25</sup> CPC s 23(1).

<sup>26</sup> CPC s 23(1).

<sup>27</sup> Leo and Chen, *supra* n 9, at p 526. The privilege against self-incrimination allows a person not to say anything that might expose him to a “criminal charge, penalty or forfeiture”. *Law Society of Singapore v Shanmugan Manohar* [2021] SGHC 201 (“*Manohar*”), at [94].

this fact must be recorded.<sup>28</sup> This might allow the court to draw an adverse inference (see below).

### III. Usage as evidence

Statements that are recorded during investigations (whether under section 22 or 23) play an important role as evidence.<sup>29</sup> Generally, evidence is used to prove the existence (or absence) of relevant facts.<sup>30</sup> Therefore, statements can be used to prove (or disprove) the “elements” of a crime, and thereby support a conviction.

However, these statements also serve other purposes. For instance, the full and frank disclosure of the accused’s criminal activities through his/her statements might affect the nature and gravity of his/her sentence.<sup>31</sup> This is because providing truthful statements could indicate the accused’s genuine remorse in acknowledging the seriousness of the offence and its implications,<sup>32</sup> or show the accused’s cooperation with the police.<sup>33</sup>

For example, in *Public Prosecutor v Wong Jia Yi*, the accused had cooperated fully with the police during pre-sentence interviews, and even furnished information as to her drug sources.<sup>34</sup> This demonstrated genuine remorse, and the appeal for probation was therefore allowed.<sup>35</sup> In *A Karthik v Public Prosecutor*, the accused likewise decided to confess to all that he had done; this meant that rehabilitation became the dominant sentencing consideration, and probation was granted.<sup>36</sup>

In view of the multifaceted importance of statements as evidence, we now turn to examine the admissibility of the statements made during police investigations and consider the situations under which the weight accorded to them might be diminished. This would demystify how courts treat such statements and address the issue of whether there exist sufficient safeguards against unreliable statements that might be made during investigations.

#### A. Admissibility

The admissibility of statements in the criminal context is primarily governed by the CPC.<sup>37</sup> In this regard, statements (whether under sections 22 or 23) are generally treated alike. The main distinction for admissibility is whether the statement was made by the accused or a witness.

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<sup>28</sup> CPC s 23(2).

<sup>29</sup> Leo and Chen, *supra* n 9, at p 520, citing Chin Tet Yung, Criminal Procedure Code 2010: Confessions and Statements by Accused Persons Revisited (2012) 24(1) SALJ 60, at [60].

<sup>30</sup> Evidence Act (Cap 97, Rev Ed 1997), s 5.

<sup>31</sup> *PP v Siow Kai Yuan Terence* [2020] SGHC 82 (“*Terence Siow*”), at [56(a)(ii), (iii)].

<sup>32</sup> *Id*, at [56(a)]; *GCM v PP* [2021] SGHC 18 (“*GCM*”) at [33(a)].

<sup>33</sup> *Terence Siow, ibid*; *GCM, ibid*.

<sup>34</sup> *PP v Wong Jia Yi* [2003] SGDC (“*Wong*”), at [17] and [36], affirmed in *Praveen s/o Krishnan v PP* [2017] SGHC 324 (“*Praveen*”) at [41] and *Terence Siow, id*, at [56(a)(iii)(C)].

<sup>35</sup> *Wong, id*, at [39] and [40].

<sup>36</sup> *A Karthik v PP* [2018] SGHC 202 at [73]-[74].

<sup>37</sup> CPC, s 258-259.

(1) *Statements made by the accused, whether under Section 22 or Section 23.*

The CPC provides that statements by the accused are typically admissible as evidence at his/her trial.<sup>38</sup> However, admissibility may be challenged on *substantive* or *procedural* grounds.<sup>39</sup>

For a challenge on substantive grounds, an accused can challenge the voluntariness of the statement<sup>40</sup> (also known as the “**voluntariness test**”).<sup>41</sup> This is to enhance the reliability of statements, by preventing false confessions. This also discourages misconduct or other improprieties by investigating officers, which would amount to abuse of power and undermine the rule of law and the integrity of the judicial process.<sup>42</sup>

To challenge the voluntariness of a statement, an accused must show an “*objective*” and a “*subjective*” element.<sup>43</sup> The *objective* element is satisfied if there was an inducement, threat, or promise from a person in authority with reference to the charge.<sup>44</sup> This entails considering what might be gained or lost as well as the degree of assurance.<sup>45</sup> Further, the objective element may also be satisfied where there is oppressive questioning by the authorities,<sup>46</sup> or if the accused was suffering from the severe effects of a medical or psychological condition at the time of his statement.<sup>47</sup>

The *subjective* aspect is satisfied if the inducement, threat, or promise operates on the mind of the accused through hope of escape or fear of punishment connected with the charge.<sup>48</sup> However, the accused must still have reasonable grounds to believe that, by making the statement, he would gain an advantage or avoid any evil of a temporal nature in reference to the proceedings against him.<sup>49</sup>

For instance, in *Cheng Heng Lee v Public Prosecutor*, the court commented that the accused’s statement would be inadmissible if the investigating officer had said to the accused, “You better cooperate with me and I will help you. If not, you will surely hang”.<sup>50</sup> In contrast, the police

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<sup>38</sup> CPC s 258(1); *Sulaiman bin Jumari v PP* [2020] SGCA 116 (“*Sulaiman*”), at [36]; Leo and Chen, *supra* n 9, at p 521.

<sup>39</sup> Leo and Chen, *id.*, at p 522-541.

<sup>40</sup> *PP v Muhammad Abdul Hadi bin Haron and another* [2020] 5 SLR 710 (“*Abdul Hadi*”), at [8].

<sup>41</sup> *Sulaiman*, *supra* n 38, at [39].

<sup>42</sup> *Id.*, at [37]-[38].

<sup>43</sup> *Chai Chien Wei Kelvin v PP* [1998] 3 SLR(R) 619 (“*Kelvin Chai*”) at [53].

<sup>44</sup> *Id.*, at [53].

<sup>45</sup> *Sulaiman*, *supra* n 38, at [39].

<sup>46</sup> *Tey Tsun Hang v PP* [2014] SGHC 39 (“*Tey*”), at [86]-[91]. Oppressive questioning exists when a person in authority acted in a manner such that his acts tend to sap and have in fact sapped the free will of the maker of the statement, and this may arise due to the nature, duration or other attendant circumstances of the questioning. CPC, s 258, Explanation 1; *Tey*, *supra* n 45, at [90]-[91].

<sup>47</sup> For statements to be involuntariness due to the effects of a medical or psychological condition, a high threshold must be met. *Tey*, at [92] and [121].

<sup>48</sup> *Kelvin Chai*, *supra* n 43, at [53].

<sup>49</sup> CPC s 258(3); *Ansari*, *supra* n 5, at [9].

<sup>50</sup> *Ansari*, *id.*, at [55].

telling an accused to cooperate, not lie or give “a hard time”, or that he would be facing the death penalty otherwise, would not ordinarily amount to an inducement, threat, or oppression.<sup>51</sup>

However, the circumstances where these elements (objective and subjective) are satisfied are not always clear cut. In *Public Prosecutor v Mohamed Ansari bin Mohamed Abdul Aziz*, the accused had pleaded with the police to let his girlfriend go as she was not involved in the drugs, and the sergeant had apparently said “it depends on what you say”.<sup>52</sup> The court concluded that this ambiguous remark had cast a reasonable doubt on voluntariness of the accused’s statement:<sup>53</sup> his remark could constitute an inducement for the accused to give a positive statement admitting full responsibility for the drugs, in exchange for the police acceding to his plea and releasing his girlfriend.<sup>54</sup> Therefore, the statement was ruled as inadmissible.<sup>55</sup>

If the admissibility of a statement is challenged on substantive grounds, the prosecution would then have to prove that the statement was in fact voluntarily made by the accused, by removing any reasonable doubt as to the existence of any threat, inducement or promise.<sup>56</sup> In *Public Prosecutor v Omar bin Yacob Bamadhaj*, the Prosecution was able to remove such doubt by proving that the sergeant who recorded the accused’s statement had confirmed that the accused was fine and also comfortable to give his statement in English.<sup>57</sup> The sergeant’s testimony was also corroborated by the testimonies of two other sergeants, who were present at the time (and also made similar entries in their station diaries).<sup>58</sup>

Regarding challenges on procedural grounds: even though it is not stated in the CPC that a court may exclude voluntary statements on procedural grounds, this is possible because the court retains a general common law discretion to exclude voluntary statements if it deems that the prejudicial effect of such statements exceeds its probative value.<sup>59</sup> For a successful challenge on procedural grounds, the accused must show that there are serious concerns with the reliability of the statement, as well as prove that the prejudice that might be caused by admitting the statement significantly outweighs the probative value of such statement.<sup>60</sup>

One example where the court has excluded a statement on procedural grounds would be in *Muhammad bin Kadar v PP* (“Kadar”). In *Kadar*, it was clear that the accused, who was undergoing a police interrogation, had an addiction and was suffering from drug withdrawal

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<sup>51</sup> *Abdul Hadi*, *supra* n 40, at [19].

<sup>52</sup> *Ansari*, *supra* n 5, at [37]-[39].

<sup>53</sup> *Ibid.*

<sup>54</sup> *Id.*, at [33]-[34].

<sup>55</sup> *Id.*, at [39].

<sup>56</sup> *Id.*, at [9].

<sup>57</sup> *Omar*, *supra* n 11, at [32].

<sup>58</sup> *Id.*, at [33]-[34] and [39].

<sup>59</sup> Leo and Chen, *supra* n 9, at p 529, citing *Kadar* at [55].

<sup>60</sup> *Sulaiman*, *supra* n 38, at [44] et seq. This implies that procedural non-compliance does not typically, by itself, render a statement inadmissible. On a related note, the Court of Appeal has stated that it is not prudent or possible to set down a definitive set of principles for how courts should exercise its discretion since the scenarios are innumerable. *Sulaiman*, *supra* n 38, at [48].

symptoms at the time.<sup>61</sup> This caused him to be in a state of confusion and become unable to cope with the stress of the interrogation.<sup>62</sup> This was further supported by independent evidence of his tired appearance and slurred conduct.<sup>63</sup> The court thus held that his statements were inadmissible since the procedural defects caused the statements' prejudicial effect to exceed their probative value.<sup>64</sup>

If the accused wishes to challenge the admissibility of any statement (under sections 22 or 23),<sup>65</sup> courts must conduct an ancillary hearing<sup>66</sup> to determine its admissibility.<sup>67</sup> This allows an accused to step into the witness box and give evidence under oath to contest the admissibility of statements that he alleges to be involuntary.<sup>68</sup> The outcome of a successful challenge would be the exclusion of the statement as evidence.<sup>69</sup>

(2) *Statements made by witnesses under Section 22.*

As you might have noticed, most statements that are made by the accused are admissible under the existing legal regime. In contrast, witness statements are generally inadmissible.<sup>70</sup> There are two reasons: *first*, to protect accused persons from the risk of untruthful witnesses, and *second*, to ensure only reliable evidence is admitted by regulating the use of witness statements.<sup>71</sup> To use a witness statement, the Prosecution would thus have to show that the statement is admissible under an exception.<sup>72</sup>

A possible reason for this distinction is that statements by witnesses might not be relevant or reliable.<sup>73</sup> Additionally, although the voluntariness test does not appear to apply for witness statements,<sup>74</sup> case law does support the existence of judicial discretion to exclude involuntary witness statements.<sup>75</sup> Therefore, statements of key witnesses should also be taken carefully so as to ensure their admissibility.

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<sup>61</sup> *Kadar, supra* n 1, at [160]-[163].

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Id.*, at [185].

<sup>65</sup> *Abdul Hadi, supra* n 40, at [8].

<sup>66</sup> This is also known as “*voir dire*”, “trial within a trial”, or “ancillary proceedings”. *Kadar, supra* n 1, at [57].

<sup>67</sup> CPC s 279; *Teo Yeow Chuah v PP* [2004] SGCA 17, at [18]-[20]; *Sagar s/o Suppiah Retnam v PP* [1995] 1 SLR(R) 147 (CA), at [34]-[40].

<sup>68</sup> *Ansari, supra* n 4, at [18]. Since this process is insulated from the main trial, it affords the accused better protection from self-incrimination by allowing him to remain silent during the main trial. *Ansari, supra* n 4, at [18].

<sup>69</sup> *Sulaiman, supra* n 38, at [51]; CPC s 258(3).

<sup>70</sup> CPC, s 259. This restriction has been interpreted to extend to civil proceedings. *Manohar, supra* n 27, at [111].

<sup>71</sup> *Manohar, id.*, at [79].

<sup>72</sup> CPC, s 259.

<sup>73</sup> The lack of relevance could be suggested by CPC s 259(1)(c), while the lack of reliability could be suggested by CPC, s 147.

<sup>74</sup> Law Society of Singapore, *Report on Draft CPC Bill, supra* n 10, p 34, at [3.30].

<sup>75</sup> *Id.*, at [3.31]-[3.32].

On this note, the accused may also wish to admit witness statements that are exculpatory into evidence.<sup>76</sup> Clearly, this would require the accused to have access to the statements. Therefore, to avoid substantial prejudice to the accused and to allow him to make an informed choice for how he conducts his defense, the prosecution is obliged to disclose all material witness statements before his trial begins.<sup>77</sup> The consequence of non-disclosure could include a retrial or even an acquittal.<sup>78</sup>

## **B. Weight**

Generally, written statements taken by the police are accorded substantial weight, especially compared to other forms of evidence.<sup>79</sup> This is because of the “aura of reliability” that comes from them being taken under stringent procedural requirements, by trustworthy officers experienced in investigative techniques, who would usually discharge their obligations conscientiously and with integrity.<sup>80</sup>

However, it is possible for statements taken by the police to be admissible and yet not be accorded their full weight. This is because the circumstances under which the statements were taken may reveal a lower level of reliability.<sup>81</sup> Thus, in *Kadar*, where the accused’s statement was recorded when he was in a state of confusion due to drug withdrawal symptoms and the stress from the interrogation,<sup>82</sup> the court held that even if his statements were admissible, doubt as to their reliability meant that they should be accorded little or even no weight.<sup>83</sup>

The contents of a statement can also affect its reliability. For example, the presence of inconsistencies might render statements unreliable and lower their weight during trial.<sup>84</sup> There are two factors affecting the weight to be accorded to inconsistent statements. The first is the *intentionality* of the inconsistency. If the inconsistency is a genuine mistake, its weight will likely not be lowered.<sup>85</sup> In contrast, deliberate lies in a statement can show that the person giving the statement is not credible. His/her statements might then be treated with caution or disbelieved, and other evidence might be preferred over his/her statements.<sup>86</sup>

The second factor is the *materiality* of the inconsistency. If the core or crux of the statement are not affected by these inconsistencies, full weight might still be given to the statement.<sup>87</sup>

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<sup>76</sup> *PP v Wee Teong Boo* [2020] SGCA 56, at [127].

<sup>77</sup> This is known as the “additional disclosure obligations”, which is/are above and beyond the *Kadar* obligations, and the obligation only ends when proceedings against the accused person have been completely disposed of. *Muhammad Nabill bin Mohd Fuad v PP* [2020] SGCA 25 at [39], [44], [45], and [50].

<sup>78</sup> *Lim Hong Liang v PP* [2021] SGHC 106, at [21]-[22].

<sup>79</sup> *Kadar*, *supra* n 1, at [58].

<sup>80</sup> *Ibid.*

<sup>81</sup> *Id.*, at [59].

<sup>82</sup> *Id.*, at [160]-[163].

<sup>83</sup> *Id.*, at [149] and [185].

<sup>84</sup> *Kannan*, *supra* n 12, at [60].

<sup>85</sup> *Ibid.*

<sup>86</sup> *PP v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 (Conviction) (“*Chukwudi*”), at [60].

<sup>87</sup> *Kannan*, *supra* n 12, at [60], [63], and [65].



Courts are entitled to accept one part of the statement and reject another part of it.<sup>88</sup> These factors show that the general veracity (and hence, weight) of the statements will ultimately have to be assessed in their entirety.<sup>89</sup>

On a related note: the contents of a statements can also support a conviction while not strictly increasing its weight as evidence. For example, lying in a statement can invite adverse inferences and thereby corroborate guilt.<sup>90</sup> This will be the case if a statement was deliberately made, relates to a material issue, is clearly shown to be false by independent evidence, and the motive for the statement/lie was the realisation of guilt and fear of the truth.<sup>91</sup> In *Public Prosecutor v Iechukwu Uchechukwu Chukwudi*, the accused had deliberately lied to distance himself from drugs in his possession that he knew about. The court found his excuses were “wholly unsatisfactory and unbelievable”, with no acceptable explanation for the lies except for him realising his guilt. Therefore, the court found that an adverse inference could be drawn against him.<sup>92</sup>

Finally, what is *absent* in a statement also matters. The CPC allows a court to draw adverse inferences if the accused fails to mention any fact or circumstance in his/her cautioned statement that he subsequently relies on.<sup>93</sup> Drawing such inferences from omissions are appropriate if, e.g. the fact or circumstance that was withheld would exculpate the accused, unless there are good reasons for the omission.<sup>94</sup> This essentially means that the silence of an accused could be used against him if he failed to mention what he was reasonably expected to mention (i.e. exculpatory evidence) when questioned.<sup>95</sup> This is to prevent the accused from using defences that are merely afterthoughts.<sup>96</sup>

These principles apply for statements made under both sections 22 and 23.<sup>97</sup> Therefore, bearing in mind all the above possible repercussions, statements should be made carefully.

#### **IV. Conclusion**

As discussed, there are various types of statements that may be taken during investigations, each with their own terms, requirements, and purposes. Although this regime does encapsulate a fair amount of complexity, by ensuring that perpetrators are duly punished while innocent parties making mistakes in their speech are not definitively condemned, it simultaneously allows for fairness and balance in our criminal justice system.

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<sup>88</sup> *Ng Kwee Leong v PP* [1998] 3 SLR(R) 281 (“*Ng Kwee Leong*”) at [15]; *Kannan, id.*, at [79].

<sup>89</sup> *Ng Kwee Leong, ibid.*, albeit dealing with witness testimony generally rather than witness statements.

<sup>90</sup> *Chukwudi, supra* n 86 at [52].

<sup>91</sup> *Id.*, at [60].

<sup>92</sup> *Id.*, at [60]-[65].

<sup>93</sup> CPC, s 261.

<sup>94</sup> *Chukwudi, supra* n 86, at [57].

<sup>95</sup> CPC, s 261.

<sup>96</sup> Leo and Chen, *supra* n 9, at p 544, citing *Goh Choon Meng v PP* [1999] SGCA 46 at [26].

<sup>97</sup> *Ibid.*, citing *Kwek Seow Hock v PP* [2011] 3 SLR 157 (CA) at [18]-[19].

In this regard, law enforcement officers and the judiciary have an important role to play in ensuring that the law is obeyed when statements are taken, and that only factually accurate statements are admitted and accorded their due weight. All have a part to play for a safe and stable society and for the rule of law.