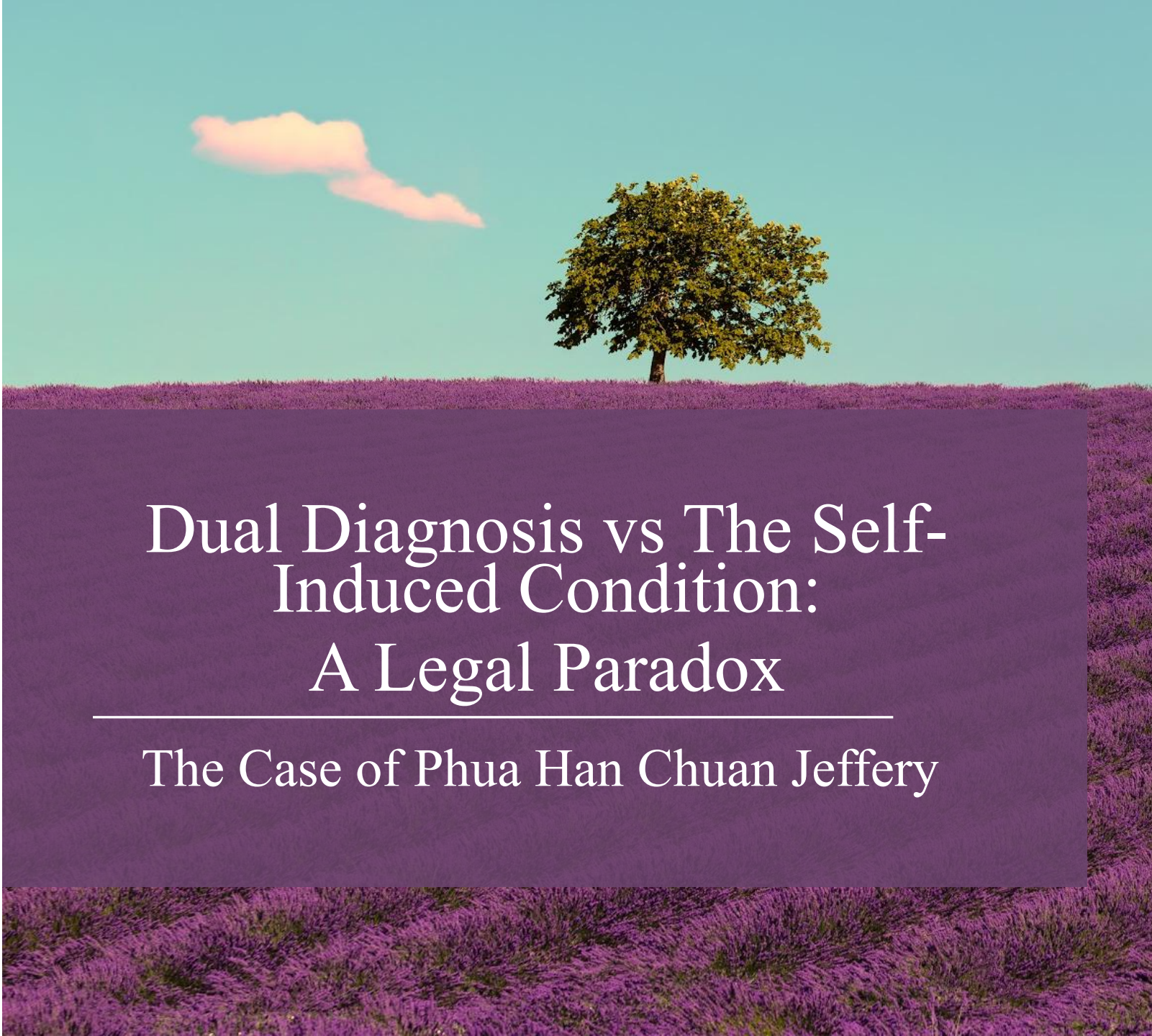




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Dual Diagnosis vs The Self-Induced Condition: A Legal Paradox

The Case of Phua Han Chuan Jeffery

- Relevant Law and Sentencing Guidelines in SG
- Public Prosecutor v Phua Han Chuan Jeffery [2011] SGHC 209
 - Facts of the Case
 - Judgment
- Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73
 - Facts of this appeal
 - Judgment
- Similar Case with a Different Outcome

Misuse of Drugs Act 1973 (Cap 185, 2008 Rev Ed)

Discretion of court not to impose sentence of death in certain circumstances

33B.—(1) Where a person commits or attempts to commit an offence under section 5(1) or 7, being an offence punishable with death under the sixth column of the Second Schedule, and the person is convicted thereof, the court —

(a) may, if the person satisfies the requirements of subsection (2), instead of imposing the death penalty, sentence the person to imprisonment for life and, if the person is sentenced to life imprisonment, the person shall also be sentenced to caning of not less than 15 strokes; or

(b) shall, if the person satisfies the requirements of subsection (3), instead of imposing the death penalty, sentence the person to imprisonment for life.

- (2) The requirements referred to in subsection (1)(a) are as follows:
- (a) the person convicted proves, on a balance of probabilities, that his or her involvement in the offence under section 5(1) or 7 was restricted —
 - (i) to transporting, sending or delivering a controlled drug;
 - (ii) to offering to transport, send or deliver a controlled drug;
 - (iii) to doing or offering to do any act preparatory to or for the purpose of his or her transporting, sending or delivering a controlled drug; or
 - (iv) to any combination of activities in sub-paragraphs (i), (ii) and (iii); and
 - (b) the Public Prosecutor certifies to any court that, in his or her determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

- (3) The requirements referred to in subsection (1)(b) are that the person convicted proves, on a balance of probabilities, that —
- (a) his or her involvement in the offence under section 5(1) or 7 was restricted —
 - (i) to transporting, sending or delivering a controlled drug;
 - (ii) to offering to transport, send or deliver a controlled drug;
 - (iii) to doing or offering to do any act preparatory to or for the purpose of his or her transporting, sending or delivering a controlled drug; or
 - (iv) to any combination of activities in sub-paragraphs (i), (ii) and (iii); and
 - (b) he or she was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his or her mental responsibility for his or her acts and omissions in relation to the offence under section 5(1) or 7.

(4) The determination of whether or not any person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities shall be at the sole discretion of the Public Prosecutor and no action or proceeding shall lie against the Public Prosecutor in relation to any such determination unless it is proved to the court that the determination was done in bad faith or with malice.

Public Prosecutor v Phua Han Chuan Jeffery [2011] SGHC 209

Pertinent Facts

- ❑ Jeffery was 23 yrs old at the time of the offence.
- ❑ He was driving a rented car back to Singapore from Malaysia when he was arrested on 20 January 2010.
- ❑ He was arrested at the Woodlands Immigration Checkpoint and found to be in possession of 104.21g of diamorphine (Heroin) in 3 separate bundles and zaleplon.

Public Prosecutor v Phua Han Chuan Jeffery [2011] SGHC 209

Pertinent Facts

- Jeffery informed the police that he was instructed transport the drugs by an acquaintance “Ah Da.”
- He shared that he was paid for this errand.
- He indicated that he presumed that he would be carrying Erimin-5 (benzodiazepine Nimetazepam) as he thought he recognized the drug when his acquaintance was packing the substances.

Public Prosecutor v Phua Han Chuan Jeffery [2011] SGHC 209

Pertinent Facts

- ❑ Jeffrey reported that his acquaintance affirmed that all the bundles contained Erimin-5.
- ❑ He indicated that when he asked “Ah Da” to open the bundles, he was denied and informed that the bundles were all the same.

Public Prosecutor v Phua Han Chuan Jeffery [2011] SGHC 209

Pertinent Facts

- ❑ He assisted in wrapping the bundles with black tape and his DNA was found on the tape.
- ❑ Jeffery reported being aware that the act of transporting Erimin-5 (presumably) into Singapore was illegal, and that he assumed he would either get a fine or a jail sentence for this if he were caught.

Public Prosecutor v Phua Han Chuan Jeffery [2011] SGHC 209

Defense and Judgment

- ❑ The Defence submitted that Jeffery had been tricked into carrying diamorphine into Singapore and that he had no reason to suspect that the bundles might contain diamorphine.
- ❑ The High Court Judge, Justice Choo Han Teck, considered the following:
 - ❑ Per the MDA, 18(2) “Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of the drug.”

Public Prosecutor v Phua Han Chuan Jeffery [2011] SGHC 209

Defense and Judgment

- ❑ Jeffery's background as a "drug abuser" meant that it was unlikely he was a gullible party when it came to interacting with drugs and drug dealers.
- ❑ By Jeffery's admission, "Ah Da" was not a person he knew well enough to trust implicitly.

Public Prosecutor v Phua Han Chuan Jeffery [2011] SGHC 209

Defense and Judgment

- ❑ Any reasonable person in his position would have made sure to confirm that he was only carrying Erimin-5.
- ❑ Justice Choo found Jeffery guilty as charged and sentenced him to death.

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Pertinent Facts

- ❑ This was Jeffery's 4th application for an appeal against his sentence of death.
- ❑ Prosecution did not dispute that Jeffery's involvement had been that of a drug courier [Section 33B(3)(a) of the MDA].
- ❑ Jeffery was specifically appealing to be spared the death penalty on the account of an abnormality of mind.

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Pertinent Facts

- ❑ Specifically, section 33B(3) of the MDA: *(b) he or she was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his or her mental responsibility for his or her acts and omissions in relation to the offence under section 5(1) or 7.*

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Pertinent Facts

- ❑ Jeffery was evaluated by 2 different parties:
 - ❑ Dr Kenneth G W W Koh (Institute of Mental Health; for the prosecution)
 - ❑ Dr Munidasa Winslow and Dr Julia Lam (Promises Healthcare; for Jeffery)
- ❑ Both parties agreed that Jeffery was suffering from Persistent Depressive Disorder (PDD) and Substance Use Disorder-Ketamine Dependence

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Pertinent Facts

- ❑ Jeffery had reported taking 1-2g of ketamine daily from June/July 2009 up to the time of his arrest in January 2010.
- ❑ Both psychiatrists agreed that this was a moderately-high dose of ketamine and that Jeffery was a chronic abuser.
- ❑ Jeffery shared that he had done so to self-medicate his chronic low mood and tried to overdose on ketamine on several occasions after finding life meaningless.

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Dr Winslow and Dr Lam's Opinion

- Jeffery's diagnoses of Persistent Depressive Disorder and Ketamine Dependence at and around the time of the offence, would have "substantially impaired his judgment, impulse control, and decision-making in agreeing to be a courier without seriously thinking through the possible consequences of his actions."

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Dr Winslow and Dr Lam's opinion

- Dr Winslow testified that the abnormality of the mind was “induced by injury” from the Ketamine Dependence.
- He also testified that a chronic user of Ketamine would be more greatly affected.

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Dr Koh's Opinion and the Prosecution's Argument

- ❑ Jeffery's mental health conditions at the time of the offence did not significantly impair his reasoning or compromise his responsibility for his actions.
- ❑ Dr Koh noted that Jeffery's actions demonstrated the ability to plan and were not impulsive.

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Dr Koh's Opinion and the Prosecution's Argument

- ❑ The DPP further argued that there was no evidence of brain injury to prove that Jeffery's Ketamine Dependence caused an abnormality of mind "induced by injury."

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Judge's Considerations

- ❑ Justice Choo accepted the diagnoses of Persistent Depressive Disorder and Ketamine Dependence as genuine.
- ❑ He agreed that based on these conditions, Jeffery was “suffering from an abnormality of mind whether arising from an inherent cause or induced by disease or injury.”

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Judge's Considerations

- ❑ He noted that the critical question to address was whether the abnormality of mind “substantially impaired his mental responsibility for his acts and omissions in relation to the offence” as it would directly inform the mandatory sentence of death in Jeffery’s case.

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Consideration of Dr Koh's Opinions

- Jeffery's sister did not report any abnormal behavior around the time of the offence*
- Jeffery demonstrated that he could plan and perform complex and organized actions (i.e., driving a car from Singapore to Malaysia and back), and that this was inconsistent with a claim of severe cognitive impairments.

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Consideration of Dr Koh's Opinions

- Jeffery had at least two weeks prior to the commission of the offence to evaluate the consequences of completing the job, and thus, this did not lend itself to being an impulsive action.
- Jeffery was paid for this job and expressed awareness of the legal consequences of getting caught for transporting Erimin-5.

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Consideration of Dr Winslow's Opinions

- ❑ Persons who are suffering from PDD and Ketamine Dependence may be mentally impaired in many ways but appear normal in outward appearance.
- ❑ The key mental impairment for Jeffery was his ability to make rational judgments and decisions, not that he could not plan and perform complex actions.

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Consideration of Dr Winslow's Opinions

- ❑ Dr Winslow conceded that Jeffery's consideration of the legal consequences of transporting Erimin-5 demonstrated an ability to appreciate risk.
- ❑ However, he also opined that the PDD and Ketamine Dependence influenced the way Jeffery thought and behaved – “an impaired brain making stupid decisions.”

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Judge's Considerations

- ❑ Even when someone is aware that their actions are wrong and risky, they may still lack the will to resist the commission of the offence.
- ❑ Jeffery had been focused on getting his immediate needs met while disregarding the future consequences of his actions.
- ❑ Jeffery's case is complex and the issue of whether the abnormality of mind led to a substantial impairment of his mental responsibility could not be answered with direct evidence.

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Judge's Conclusion

- ❑ Jeffery's ability in decision making and impulse control would have been impaired throughout the 2-week period leading up to the commission of the offence.
- ❑ The abnormality of the mind substantially impaired his mental responsibility for the act.

Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73

Judge's Conclusion

- ❑ Jeffery was “probably incapable of resisting any internal rationality that might have dissuaded him from committing the offence.”
- ❑ Recognized Jeffery as “a young man who has a mental illness and who also had a ketamine addiction” and that he was “amenable to rehabilitation.”
- ❑ Justice Choo imposed the sentence of imprisonment for life.

Similar Case with Different Finding

Public Prosecutor v Hashim bin Ismail and others [2023] SGHC 165
Azuin bin Mohd Tap v Public Prosecutor [2025] SGCA 8

Dual Diagnosis

- ❑ Charged with trafficking; level of involvement as a courier undisputed
- ❑ Case for section 33B(3) of the MDA hinged on expert witness testimony that he had PDD (“abnormality of mind”)
- ❑ Both sides agreed on diagnoses of Opioid Use Disorder and Stimulant Disorder

Similar Case with Different Finding

Public Prosecutor v Hashim bin Ismail and others [2023] SGHC 165
Azuin bin Mohd Tap v Public Prosecutor [2025] SGCA 8

Dual Diagnosis

- ❑ Judge believed Azuin had been lying about the circumstances that led to the PDD diagnosis by the expert witness.
- ❑ Found guilty as charged and sentenced to death.

Similar Case with Different Finding

Public Prosecutor v Hashim bin Ismail and others [2023] SGHC 165
Azuin bin Mohd Tap v Public Prosecutor [2025] SGCA 8

Dual Diagnosis

- ❑ Appealed on the basis of new expert witness testimony by Dr Rajesh and Ms Low Yung Ling - Opioid Use Disorder and generally low intelligence.
- ❑ Appeal was dismissed as the diagnosis of Opioid Use Disorder did not arise from one of the three recognized aetiologies under section 33B(3)(b) of the MDA.

References

- 1) Public Prosecutor v Phua Han Chuan Jeffery [2011] SGHC 209
 - https://www.elitigation.sg/gd/s/2011_SGHC_209
- 2) Phua Han Chuan Jeffery v Public Prosecutor [2016] SGHC 73
 - https://www.elitigation.sg/gd/s/2016_SGHC_73
- 3) Public Prosecutor v Hashim bin Ismail and others [2023] SGHC 165
 - https://www.elitigation.sg/gd/s/2023_SGHC_165
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