

Lewdness in flight

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In early March 2018, a Bangladeshi man was caught committing lewd acts on a Malindo Air flight departing from Kuala Lumpur International Airport to Dhaka. The 20-year-old man was allegedly a student from a university in Cyberjaya. According to several reports, the man took off his clothes and started watching pornography on his laptop while masturbating. Several witnesses also alleged that he walked to the toilet undressed and urinated on his seat.

When told to put on his clothes, the man started behaving aggressively and attacked the head flight attendant. According to a report, the man tried to hug female crewmembers and became aggressive when he was rejected. Fortunately, the cabin crew and a few passengers managed to restrain him for the rest of the flight.

This update explores the possible legal avenues that could be pursued following an act of lewdness in flight.

Possible offences under criminal laws

It is unclear whether the criminal laws in Malaysia could apply in this case, as available news reports have not yet provided sufficient information. However, assuming that Malaysian criminal laws apply, the man's curious actions may contravene several Malaysian statutes, including the Penal Code. For instance, the alleged assault on the flight attendant appears to fall under Section 377D of the Penal Code, which provides as follows:

Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.

While no Malaysian court has issued a decision on Section 377D in a case with a similar factual matrix, the Federal Court has provided the following guidance:

*Section 25 of Act 559 and s 377D of the Penal Code are not in pari materia. While s 25 of Act 559 deals only with sexual relations between male persons, s 377D of the Penal Code deals with any act of gross indecency involving any person, and it can be between male persons, between female persons, or between male and female persons. **As to what act constitutes indecency or gross indecency, the legislature itself has seen it fit not to give it a definition, but has left it entirely to the court to determine.** It is not possible to define what is an indecent or grossly indecent act. As the High Court judge in this case had stated in his judgment: 'Every person may have a different view of what is indecent. Our individual perception of what is indecent depends upon our upbringing, which includes religious, cultural and family values.' Gross indecency certainly includes sexual relations between male persons. (Emphasis added.)(1)*

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Further, the man's possession of pornography is an offence under Section 5(1) of the Film Censorship Act 2002 and under Section 292(a) of the Penal Code, which carries a punishment of up to three years' imprisonment, a fine or both. Judicial Commissioner Nallini Pathmanathan held that the words "any object whatsoever" within the said provision were sufficiently wide to include visual recordings such as those contained in a video compact disc.(2)

Possible offences under aviation laws

It is unlikely that the man committed any aviation-related offence. However, the relevant statutes in Malaysia which deal with aviation-related offences include the Malaysian Aviation Commission Act 2015 and the Aviation Offences Act 1984. The former deals with "economic matters relating to the civil aviation industry and to provide for its functions and powers and related matters", (3) whereas the Aviation Offences Act gives effect to several conventions to which Malaysia is a party (4) and deals with the specific offences mentioned in the act.

Further, Section 26 of the Civil Aviation Act 1969 provides as follows:

***Any act done by any person on Malaysian aircraft** outside of Malaysia which, if it had been done by him in Malaysia, would have constituted an offence under the laws of Malaysia, shall, for the purposes of criminal proceedings in Malaysia against that person in respect of that act, be deemed to have been done by him in Malaysia. (Emphasis added).*

'Malaysian aircraft' is defined as an aircraft registered in any part of Malaysia. (5) There are no reported court decisions on Section 26 of the Civil Aviation Act.

In turn, Section 3 of the Aviation Offences Act provides, among other things, as follows:

***(1) Any act or omission taking place on board a Malaysian-controlled aircraft** while in flight elsewhere than in or over Malaysia which, if taking place in Malaysia, would constitute an offence under the law in force in Malaysia, constitutes that offence:*

Provided that this subsection shall not apply to any act or omission which is expressly or impliedly authorized by or under that law when taking place outside Malaysia.

(2) No proceedings for any offence under the law in force in Malaysia committed on board an aircraft while in flight elsewhere than in or over Malaysia shall be instituted in Malaysia. (Emphasis added.)

While there are no reported decisions on Section 3, it is important to note that in addition to an aircraft which is registered in Malaysia (which is similar to Section 26 of the Civil Aviation Act), a Malaysian-controlled aircraft could also be considered a Malaysian aircraft:

which, being for the time being registered in some other country, is for the time being chartered by demise to a person who, or to persons each of whom, satisfies the

following requirements, namely—

(i) that he is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in Malaysia; and

(ii) that he resides or has his principal place of business in Malaysia. (6)

If Malaysian criminal law applies, it appears that any offence committed on a flight could fall under either Section 26 of the Civil Aviation Act or Section 3 of the Aviation Offences Act.

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Endnotes

- (1) *Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara, Malaysia* [1999] 2 MLJ 241 page 247.
- (2) *Mohd Rizal bin Mat Yusuf v Public Prosecutor* [2009] 8 MLJ 856 at page 865.
- (3) See the preamble to the Malaysian Aviation Commission Act 2015.
- (4) See the preamble to the Aviation Offences Act 1984.
- (5) Section 2(1) of the Civil Aviation Act. For provisions dealing with registration of aircraft, see the Civil Aviation Regulations 2016, which was created pursuant to Section 3 of the Civil Aviation Act.
- (6) Section 2(1) of the Aviation Offences Act.

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