

Public Prosecutor v Fizul Asrul bin Efandi
[2018] SGHC 119

Case Number : Magistrate's Appeal No 9003/2018/01
Decision Date : 14 May 2018
Tribunal/Court : High Court
Coram : Tay Yong Kwang JA
Counsel Name(s) : Kumaresan Gohulabalan (Attorney-General's Chambers) for the appellant; the respondent in person.
Parties : Public Prosecutor — Fizul Asrul bin Efandi

Criminal Law – Offences – Hurt – Road rage

Criminal Procedure and Sentencing – Sentencing – Principles – Disqualification orders

14 May 2018

Tay Yong Kwang JA:

Introduction

1 The respondent claimed trial to one charge of voluntarily causing hurt under s 323 of the Penal Code (Cap 224, 2008 Rev Ed) ("PC"). He was convicted by the District Judge ("the DJ") and sentenced to 16 weeks' imprisonment. The respondent did not appeal against his conviction or sentence and has completed serving his imprisonment sentence. The present appeal is the Prosecution's appeal against the DJ's refusal to impose a driving ban by way of a disqualification order under s 42(2) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA") in addition to the imprisonment term. This section on "Disqualification for offences" provides:

(2) Where a person (referred to in this section as the offender), is convicted of an offence under section 267B, 304, 304A, 323, 324, 325, 326, 341, 342, 350, 352, 426 or 427 of the Penal Code (Cap. 224) and —

(a) at the time of the commission of the offence the offender was the driver or was in charge of a motor vehicle on a road or other public place;

(b) the person against whom the offence was committed was the driver of another vehicle on the road or public place, a passenger in that other vehicle or a pedestrian on the road or public place;

(c) the court convicting the offender of the offence is satisfied that the commission of the offence arose from or was connected with a dispute between the offender and that other person over the use of the road or public place; and

(d) having regard to the circumstances under which the offence was committed and the behaviour of the offender, the court is of the opinion that it is undesirable for the offender to continue to be allowed to drive a motor vehicle,

the court may, in addition to imposing on the offender the punishment provided for such offence, make an order disqualifying him from holding or obtaining a driving licence for life or for such period as the court may think fit.

2 Having heard the parties, I allowed the Prosecution's appeal and ordered that the respondent be disqualified from holding or obtaining a driving licence for all classes of vehicles for a period of 12 months. I set out my reasons below.

Facts

3 The respondent was 30 years old and the victim, Chong Kok Soon, was 54 years old at the time of the incident. The offence took place at around 11pm on 11 September 2016 at the three-lane road in front of Block 4A Woodlands Centre Road, Singapore, which leads into a car park. Each of the three lanes was separated by road dividers and could accommodate the width of only one vehicle. Vehicles in the lanes therefore could not switch lanes.

4 That night, the respondent drove his car into the innermost left lane. He stopped his car, turned off its engine and alighted to go to a nearby ATM to withdraw money. There was a female passenger in his car. Its hazard lights were not turned on at that time. Sometime later, the victim drove into the same lane without realising that the respondent's car ahead of him was stationary. As a result, his way forward was blocked and the only way out was for the victim to reverse his car out of the lane. However, this was complicated by a third car which subsequently came up behind the victim's car.

5 When the respondent returned to his car several minutes later, the victim sounded his horn. The respondent confronted the victim through the latter's wound-down car window, saying: "You cannot wait ah?" The victim replied that he could not. The respondent then challenged the victim to step out of the car and the victim did so. The respondent spat on the victim's face. The victim spat back but apparently his spittle did not reach the respondent. The respondent then punched the victim once on the right side of his face at the lower cheek area, knocking him to the ground.

6 When the victim tried to call the police on his mobile phone, the respondent approached him and punched him a second time in the same part of the face, in order to prevent the victim from making the phone call. The respondent's female passenger then intervened and pulled the respondent away. The respondent and his passenger then left in his car. As a result of the altercation, the victim suffered a contusion at his right cheek, superficial laceration in the right buccal cavity and tenderness in his right hip with full range of movement.

The proceedings in the District Court

7 The Prosecution sought a sentence of at least four months' imprisonment and a disqualification order of at least 12 months. The DJ agreed with the Prosecution and decided that a custodial term which was double that for the respondent's previous conviction in 2014 was warranted in order to deter the respondent from resorting to violence in resolving conflicts. As the previous imprisonment term was eight weeks, she imposed an imprisonment term of 16 weeks. As stated earlier, there was no appeal by either party against this part of the sentence.

8 However, the DJ declined to make the disqualification order for these reasons:

(a) First, while the requirements in s 42(2)(a) and (b) of the RTA were satisfied, the DJ was not entirely convinced that the commission of the offence "arose from or was connected with a

dispute between the offender and that other person over the use of the road or public place” within the meaning of s 42(2)(c). The first punch did not appear to arise directly from the respondent’s indiscriminate parking but happened as a result of the victim’s sounding of his horn which agitated the respondent. The incident did not arise from the driving behaviour of the victim or the respondent and neither was it a situation connected to driving. The second punch arose from the respondent’s agitation over the victim’s use of the mobile phone. The section therefore did not apply on the facts of the case.

(b) Second, even if the section was applicable, the facts of the case did not warrant the imposition of a disqualification order. The assault was not so violent that a disqualification order was necessary in addition to an imprisonment term.

(c) Third, while the respondent was aggressive and younger and bigger in build than the victim, it was not apparent that the victim was intimidated and had disengaged himself from the confrontation. This was shown by the exchange of vulgarities and the spitting incidents.

(d) Finally, the respondent’s parking did not cause significant inconvenience to road users. The victim could have reversed his car and entered another lane, although doing so would have required coordination with the driver of the car that was behind the victim’s.

The Prosecution’s submissions on appeal

9 On appeal, the Prosecution made three main submissions as to why a disqualification order ought to have been made against the respondent:

(a) First, the offence in the present case was one that arose from or was connected with a dispute over the use of a road within the meaning of s 42(2)(c) of the RTA. The Prosecution submitted that the DJ’s approach, which analysed the respondent’s motivation in relation to each punch (see [8(a)] above), was unjustifiably narrow and wrongly imposed a requirement that the offence must arise directly and only from the dispute over the use of the road.

(b) Second, where offenders have antecedents for road-related violence offences, the public interest demands that a sentence which meets the need for specific deterrence and prevention be imposed. Therefore, apart from exceptional circumstances, a disqualification order would usually be appropriate for repeat offenders. The Prosecution pointed out that the respondent was such an offender. In his road-related violence antecedent in 2013, where he was convicted after trial in May 2014, also for an offence under s 323 of the PC, he cut abruptly into another driver’s lane, prompting the victim there to flash his high-beam headlights and to sound his horn. In response, when the two vehicles stopped at a junction, the respondent alighted and confronted the victim. He then kicked the side mirror of the victim’s car and punched the victim once on the face and once on the chest. As a result, the victim in the earlier case suffered an abrasive wound on the inner aspect of his lower lip. For that offence, the respondent was sentenced to an imprisonment term of eight weeks.

(c) Third, there were no factors militating against the imposition of a disqualification order. To the contrary, the following aggravating factors warranted its imposition: (i) the respondent was the aggressor at all times; (ii) the respondent’s indiscriminate parking took place at a location that would cause significant inconvenience to other road users; and (iii) the respondent had a previous conviction in 2008 for rioting with a dangerous weapon under s 148 of the PC for which he was sentenced to four years’ imprisonment and ten strokes of the cane.

Mv decision

My decision

10 The sole issue before this Court was whether the DJ was right in refusing to order a disqualification order under s 42(2) of the RTA. In my view, s 42(2) of the RTA was applicable and a disqualification order was warranted on the facts.

11 The first question was whether the statutory requirements in s 42(2) of the RTA were satisfied. The present offence was clearly one which arose from or was connected with a dispute over the use of a road within the meaning of s 42(2)(c) of the RTA. The respondent and the victim were two drivers who got into an argument because of the respondent's indiscriminate parking which blocked off one lane of traffic without warning other drivers, thereby trapping the victim's car in that lane even if it was temporary. One action then led to a corresponding reaction but they were all linked causally and closely to the respondent's irresponsible and selfish hoarding of the road space.

12 It is not realistic to dissect the sequence of events into distinct parts and assign a specific reason for each part when they flowed continuously as part of one incident. The actions of the persons involved should be viewed as an overall assessment to see whether those actions could be said, as a matter of common-sense, to have occurred as a result of a dispute over the use of the road or public place. Actions which are far removed in time, place and context from the said dispute could, where appropriate, be considered not to have arisen from or connected with such dispute.

13 The next question concerned whether the Court should exercise its discretion under s 42(2)(d) of the RTA to impose a disqualification order on the respondent. In exercising this discretion, the Court should bear in mind the need for deterrence of unruly or violent behaviour as well as the need to protect other road users. The "circumstances under which the offence was committed" would also encompass the behaviour of the victim and any other persons present before and during the commission of the offence.

14 Parliament has made it clear that s 42 of the RTA is meant to protect innocent road users from the potential danger posed by motorists who show violent behaviour when reacting to situations connected to driving (see *Singapore Parliamentary Debates, Official Report* (20 January 1999) vol 69 at col 1932 (Wong Kan Seng, then Minister for Home Affairs)). Further, general and specific deterrence are the primary sentencing considerations for offences involving violence on our roads (see *PP v Lim Yee Hua and another appeal* [2017] SGHC 308 at [2]). Thus, the imposition of a disqualification order serves the objectives of protection of the public and deterrence. The offender would not have the opportunity to be a menace on the roads and, for the duration of the disqualification order, which could conceivably be longer than any imprisonment term imposed, the offender would be reminded that he was not permitted to drive because of his bad behaviour on the roads.

15 From the respondent's previous road-related violence antecedent (see [9(b)] above) and the circumstances leading to the present offence, it can be seen that the respondent is a person who does not stop to think before resorting to violence whenever he is agitated. The unfortunate incident could have been averted if he had not been too lazy to do a short walk (as he admitted he was) and had moved his car another 20m or so into the carpark ahead. Alternatively, he should have at least turned on the car's hazard lights to signal that he would be stopping in the lane for a while. Further, once he realised that he was impeding the movement of other vehicles, he could have waved to signify that he was sorry or apologised for having obstructed the road. Instead, he chose to be rude.

16 When the victim responded, the respondent became confrontational and behaved in a totally uncivil manner by spitting at him. One can appreciate the victim's outrage at being spat at but, as a mature man with a young daughter next to him, he should have restrained himself from responding in

kind. Nevertheless, the respondent delivered the first punch to a vulnerable part of the victim. The second punch was calculated to prevent the already shaken victim from calling the police (see [6] above). This, as the DJ pointed out correctly, was reprehensible and an aggravating factor in sentencing as the victim had already moved away from the respondent and was trying to call for police assistance. The respondent had to be restrained by his female passenger. It is clearly in the public interest that aggressive drivers who do not control their anger and who pose a danger to the safety of other road users should not be allowed to drive for an appropriate period of time.

17 The other highly relevant sentencing consideration in this case was specific deterrence. The respondent was previously convicted of a similar road-related violence offence which took place in 2013 and for which he was sentenced to eight weeks' imprisonment (see [9(b)] above). The present offence was committed in 2016, only three years later. The Prosecution submitted rightly that the earlier sentence evidently did not rehabilitate the respondent or deter similar conduct. Accordingly, a disqualification order for an appropriately long period was needed this time.

18 For completeness, I should mention that I did not regard the respondent's conviction in 2008 for rioting with a dangerous weapon as an aggravating factor to justify a disqualification order against him. That incident happened when the respondent was younger. Nonetheless, it confirms that violent behaviour is not an uncharacteristic part of him.

19 The respondent informed me that he is presently doing whatever odd jobs came his way. He would work and save up to pay for the rented car that he was driving and which he drove to Court to attend the hearing of the appeal. He is supporting his wife and four young children financially and they are expecting a fifth child soon. He said he needed to drive his two oldest children to school because their schools were in different areas in Singapore and school transport would be expensive. However, I did not think those reasons were sufficient to displace the need for disqualification in this case. It was also odd that the respondent believed that maintaining a rented car would be more viable economically than paying for his two children's school transport.

20 Where the duration of the disqualification order is concerned, s 42(2) of the RTA allows disqualification for life or for such period as the Court thinks fit. The Prosecution cited several unreported cases spanning a variety of factual situations. *PP v Shi Ka Yee* (MAC 906796/2016) involved a first offender who punched the victim there over a parking dispute. The court sentenced her to four weeks' imprisonment and imposed a disqualification order of six months. The case is currently pending appeal in the High Court. *PP v Tan Chon High* (DAC 28533/2010) involved a first offender who punched the victim over some damage to his car. He was sentenced to two weeks' imprisonment and a disqualification order of six months was imposed. *PP v Sunny Thiang Thian Oon* (PSM 2331/2010) involved an offender with a previous conviction for causing death by dangerous driving who punched his victim multiple times after the latter overtook him on the road. He was fined \$5,000 and a disqualification order of 12 months was imposed.

21 Having regard to the respondent's uncouth, aggressive and violent behaviour and his recent conviction for a similar offence in 2014, I considered a disqualification order for 12 months to be appropriate here. Where such bad behaviour on the roads is repeated, it would be highly unusual for the Court to decide not to order any disqualification. This is not to say that s 42(2) of the RTA should be invoked only for repeat offenders. In appropriate cases, even first time offenders may be disqualified from driving for a suitable period. For instance, where the behaviour of the offender is outrageous and he has shown that he is a menace to other road users, a disqualification order should be considered.

Conclusion

22 For the above reasons, I allowed the Prosecution's appeal and ordered the respondent to be disqualified from holding or obtaining a driving licence for all classes of vehicles for 12 months. As the respondent drove his rented car to attend the Court hearing, he was given the opportunity to return the car to the rental company. The disqualification order was therefore made to take effect from Saturday, 12 May 2018. The respondent was reminded by the Court not to drive after midnight on 11 May 2018.

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