

Public Prosecutor v Lee Kao Chong Sylvester
[2012] SGHC 96

Case Number : Magistrate's Appeal No 279 of 2011
Decision Date : 07 May 2012
Tribunal/Court : High Court
Coram : Chao Hick Tin JA
Counsel Name(s) : Ms Sanjna Rai, Mr Prem Raj, and Ms Toh Puay San for the Appellant (Attorney-General's Chambers); The Respondent in person.
Parties : Public Prosecutor — Lee Kao Chong Sylvester

Criminal Law

7 May 2012

Chao Hick Tin JA:

Introduction

1 This appeal, Magistrate's Appeal No 279/2011 ("MA 279/2011"), was brought by the Prosecution against the sentence meted out by the District Judge ("the DJ") in respect of a charge of negligent driving, which caused the death of one Phye Phyo Swe ("the deceased"), under s 304A(b) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). The DJ sentenced the Respondent to a fine of \$6,000 and disqualified him from driving all classes of vehicles for a period of three years. In imposing this sentence, the DJ also took into consideration a second charge under s 337(b) of the Penal Code for causing hurt to Lin Nandar Han ("the victim") by doing a negligent act which endangered human life. Having heard the parties on 7 March 2012, I allowed the Prosecution's appeal and substituted the sentence of a fine with imprisonment for one week. I now give my reasons.

Background

The charge

2 The Respondent pleaded guilty to one charge for causing death by a negligent act under s 304A(b) of the Penal Code. The charge reads as follows: [\[note: 1\]](#)

You, ... are charged that you, on the 26th day of March 2011, at about 9.59p.m., along Upper Serangoon Road, Singapore, being the driver of motor car bearing registration number SGA8826T, did cause the death of a pedestrian, one Pyie Phyo Swe (male/ aged 31 years old), by doing a negligent act not amounting to culpable homicide, *to wit*, by failing to keep a proper lookout while reversing the said motor car along Upper Serangoon Road and thereby resulting in a collision with the said pedestrian, who was crossing from the right to left side along the said road, which resulted in the death of the said pedestrian, and you have thereby committed an offence punishable under Section 304A(b) of the Penal Code, Chapter 224.

[emphasis in original]

The facts

3 The salient facts pertaining to the commission of the offence by the Respondent are as follows. On 26 March 2011, at approximately 9.59pm, the Respondent was driving his motor car along Upper Serangoon Road towards the direction of Serangoon Road. [\[note: 2\]](#) He was driving along the extreme left lane of the three-lane carriageway road. When the Respondent arrived at the entrance of the Singapore Institute of Commerce ("SIC"), he realised that the gate was closed. [\[note: 3\]](#) The Respondent then decided to reverse his vehicle far enough so as to turn left into Lorong Batawi which had an alternative entrance (through a side gate) to the SIC. [\[note: 4\]](#) The Respondent, in order to take advantage of the lull in the traffic flow at that very moment, quickly reversed so as not to cause any obstruction to oncoming vehicles at the rear. [\[note: 5\]](#) In the course of speedily reversing his vehicle, the Respondent did check his rear view mirror and turn his head back (towards the left). [\[note: 6\]](#) However, he failed to look at his speedometer and the right rear view of his vehicle. [\[note: 7\]](#) As a result, he failed to see the deceased and the victim, who were crossing the same stretch of the road at that very moment from the centre divider at the rear (viewed from the Respondent's position, from his right to the left side of the road). [\[note: 8\]](#) Understandably, the victim did not notice the Respondent's vehicle which was reversing as the deceased and the victim would not have expected any vehicles to come from that direction, their right.

4 The collision occurred somewhere between the extreme left and the centre lane of the road. [\[note: 9\]](#) The location was not within 50 metres of any designated pedestrian crossing. [\[note: 10\]](#) The Respondent's vehicle was believed to have run over the deceased. [\[note: 11\]](#) An independent eye witness to the unfortunate event saw the Respondent reversing his vehicle at a fast speed prior to colliding with the deceased and the victim. [\[note: 12\]](#)

5 As a result of the accident, the deceased sustained multiple injuries and was conveyed to Changi General Hospital. [\[note: 13\]](#) The deceased remained in a state of coma until 3 April 2011 when his family decided, in the light of his grave state, to withdraw further medical therapy. [\[note: 14\]](#) The deceased was pronounced dead on the same day at 1.30pm. [\[note: 15\]](#)

6 The Health Science Authority certified that the cause of the deceased's death was pneumonia following severe head injury. [\[note: 16\]](#) The head injury to the deceased was due to the impact of a severe blunt force to the face and skull which could have been sustained by the deceased having been run over by the respondent's vehicle. [\[note: 17\]](#)

7 At the time of the accident, the weather was fine, visibility was clear, and the road surface was dry. [\[note: 18\]](#) In addition, traffic flow was light and there were no inherent mechanical defects detected in the Respondent's vehicle following a mechanical inspection of the vehicle carried out after the accident. [\[note: 19\]](#)

The DJ's decision

8 The DJ first considered the case of *Public Prosecutor v Gan Lim Soon* [1993] 2 SLR(R) 67 ("*Gan Lim Soon*") where Yong Pung How CJ ruled that fines should be imposed as a starting point for such offences (*Gan Lim Soon* at [10]):

Under s 304A the act can be due to either rashness or negligence. If death has been caused by a rash act the proper punishment would be imprisonment for a term not exceeding two years. If

death has been caused instead by a negligent act, it would be sufficient *in most cases* to inflict a fine on the accused. In this case the charge is for causing death by a negligent act, and in my view the appropriate punishment would be a fine. Accordingly I allow the appeal, set aside the order of acquittal, and impose a fine of \$6,000 with a sentence of three months' imprisonment in default of payment. The respondent is also disqualified from driving all classes of vehicles for five years.

[emphasis added]

9 The DJ then considered that the Respondent's level of culpability was mitigated by the steps that he had taken to reverse responsibly – *ie.*, by checking his rear view mirror and by turning his head to the left and back whilst reversing – although he failed to take the critical step of checking the rear right of his vehicle (see [24] of the GD).

10 The DJ further considered two precedents. Firstly, the case of *Sim Chong Eng v Public Prosecutor* Magistrate's Appeal No 119 of 1993, where the offender, a driver of a bus belonging to the Singapore Bus Service ("SBS") at the time of the commission of the offence, was charged with causing death by doing a negligent act, namely encroaching onto the path of an oncoming bus. The offender was turning out of a bus interchange. Upon reaching the T-junction of the driveway of the interchange, he turned left without stopping and encroached onto the path of another SBS bus, which was on its proper side and hence had the right of way, coming from the opposite direction. A collision occurred between the two buses and the driver of the oncoming vehicle was killed. The offender was sentenced to a fine of \$6,000 and disqualified from driving all classes of vehicles for five years.

11 The DJ next considered the case of *Chew Ah Kiat v Public Prosecutor* [2001] 2 SLR(R) 886. The offender in this case was charged with causing death by doing a negligent act, namely, by failing to keep a proper lookout. The offender, who, at the material time was driving a bus belonging to SBS, failed to notice an elderly cyclist crossing a pedestrian crossing and collided into him when he made a right turn at a signalled controlled T-junction. The victim fell from his bicycle and died from a fractured skull. For this offence, the offender was sentenced to a fine of \$6,000 and disqualified from driving for 5 years.

12 All matters considered, the DJ concluded (at [25] of the GD):

...In our present case, the court considered that the accused did take some degree of caution in ensuring that the road was clear before reversing but unfortunately, he failed to look at the right rear view of his vehicle and check his speedometer. Moreover, the deceased and the victim were not crossing within the 50 metres zone from any designated pedestrian crossing. Taking all the circumstances of this case into consideration, the court imposed a fine of \$6000 and ordered a disqualification from all classes of vehicles for 3 years. The prosecution is appealing against the sentence imposed.

The Prosecution's contentions

13 The Prosecution contended, in the main, that the sentence meted out by the DJ was manifestly inadequate and that the DJ had failed to properly appreciate the aggravating features present in this case and the need for general deterrence. The Prosecution highlighted the following factors which the DJ had failed to place adequate, if any, weight upon:

(a) The Respondent caused the death of the deceased whilst committing another traffic

offence;

(b) The Respondent had reversed his vehicle for an extended distance of 65.7 metres against the flow of traffic; and

(c) The Respondent had reversed his vehicle at a high speed.

14 In relation to factor (a) above, the Prosecution contended that the Respondent's actions in reversing his vehicle against the flow of traffic constituted a violation of traffic rules. As for factor (b) above, the Prosecution submitted that the Respondent had reversed his vehicle, against the flow of traffic, for a significant distance of 65.7 metres. As a result, it was submitted, the Respondent's culpability was aggravated because of the sustained manner of negligent driving.

15 In the light of the factors highlighted above (at [13]), the Prosecution contended that the Respondent's actions – when viewed in totality – bordered upon gross recklessness and that a custodial term was warranted in this case.

My decision

16 As stated at the outset of this Grounds of Decision, the appeal is in relation to sentence. In this regard, the law as to when appellate courts will interfere with sentences meted out by trial courts was succinctly stated by the Court of Appeal (*per* Chan Sek Keong CJ) in *Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("*PP v UI*") as follows (at [12]):

It is, of course, well established (*see, inter alia*, *Tan Koon Swan v PP* [1985-1986] SLR(R) 976 and *Ong Ah Tiong v PP* [2004] 1 SLR(R) 587) that an appellate court will not ordinarily disturb the sentence imposed by the trial court except where it is satisfied that:

- (a) the trial judge erred with respect to the proper factual basis for sentencing;
- (b) the trial judge failed to appreciate the materials placed before him;
- (c) the sentence was wrong in principle; or
- (d) the sentence was manifestly excessive or manifestly inadequate, as the case may be.

17 For the reasons set out hereunder, this was a case where this appellate court ought, in accordance with principles (a), (b) and (d) enunciated in *PP v UI* (see immediately preceding paragraph), to interfere in the sentence imposed by the DJ. While it is true that a person guilty of an offence under s 304A of causing death by a negligent act will ordinarily be sentenced to a fine (see *Gan Lim Soon* quoted at [8] above), much would depend on the nature and extent of the default (see *Mohamad Iskandar bin Basri v Public Prosecutor* [2006] 4 SLR(R) 440 at [24] and *Public Prosecutor v Poh Teck Huat* [2003] 2 SLR(R) 299 at [19]–[20]). Custodial sentences have been imposed for the causing of death by a negligent act. For example, in *Public Prosecutor v Jamil bin Kassan* [2009] SGDC 167 the offender, a taxi driver, was speeding and did not keep a proper look-out while driving along a four-lane carriageway when he collided into a pedestrian who was crossing the road. The pedestrian was pronounced dead at the scene. The offender was sentenced to one-week's imprisonment and was disqualified from holding or obtaining a driving licence in all classes of vehicles for five years. His appeal against his sentence was later withdrawn. Another example is *Public Prosecutor v Abdul Latiff bin Maideen Pillay* [2006] SGDC 245 where a taxi driver, while travelling on the middle lane of a three-lane road, failed to keep a proper look-out and collided into and caused the

death of a 85 year old pedestrian who was crossing the road. He was sentenced to two weeks' imprisonment and was disqualified from holding driving licences for all classes of vehicle for three years. An appeal against his sentence appears to have been withdrawn.

18 Ultimately, the circumstances under which the offences were committed are decisive and it is not an issue which is amenable to precise definition. It stands to reason that the more serious the negligence, the more justification there is for the imposition of a custodial sentence. It is a fact-sensitive question.

19 In relation to the present case, I am of the view that the DJ's sentence was manifestly inadequate because he did not give sufficient consideration to the aggravating features of this case which were: (i) the accident was not caused by a momentary lapse on the part of the Respondent but due to a deliberate move on his part to reverse his vehicle for an extensive distance in order to be in a position to turn left into Lorong Batawi; (ii) in so reversing, the Respondent had committed a traffic offence; and (iii) in reversing his vehicle at such high speed, he could not completely see what was in the path of his reversing vehicle. In my opinion, reversing a vehicle at high speed over an extensive distance when you cannot see everything in your path is indeed a dangerous act or recklessness. However, the DJ instead seemed to have given credit to the Respondent for checking his rear view mirror and turning his head backwards (from the left) in reversing. What the DJ did not appear to appreciate is that turning his head to the left and towards the back would not and did not give the Respondent a full view of what was in his path. Moreover, the DJ, instead of viewing the fact that the Respondent did the reversing over an extended distance with concern, seemed to have given more consideration to the reason that the Respondent reversed quickly, *viz*, that he "did not want to cause any disruption to the traffic flow". The proper course for the Respondent would have been to drive forward to the next available U-turn which was in fact a fairly short distance away. Instead, the Respondent took a course which caused a dangerous situation to arise. I agree with the Prosecution that the Respondent's culpability, insofar as the manner in which he was negligent, at least bordered upon recklessness. In short, the Respondent was grossly negligent in reversing his vehicle in the manner which he did – and in so doing caused the death of the deceased. In the public interest, it is vitally important not to create the impression that traffic offences due to negligence which causes death are, whatever the circumstances, not serious and will only attract a fine. In the result, I was of the view that a fine, which would ordinarily be imposed for the offence of negligently causing death, should not be followed in this case because of the aggravating circumstances and that a custodial sentence was warranted.

20 I therefore allowed the Prosecution's appeal and imposed a term of one week's imprisonment in place of a fine. The term of disqualification imposed by the DJ (see [\[1\]](#) above) was to remain. I also ordered that the fine imposed by the DJ and already paid by the Respondent was to be refunded to him.

[\[note: 1\]](#) Record of Proceedings ("ROP") at p 3.

[\[note: 2\]](#) Statement of Facts at [5] (ROP at p 4).

[\[note: 3\]](#) Statement of Facts at [6] (ROP at p 4).

[\[note: 4\]](#) *Ibid*.

[\[note: 5\]](#) *Ibid*.

[\[note: 6\]](#) *Ibid.*

[\[note: 7\]](#) *Ibid.*

[\[note: 8\]](#) *Ibid.*

[\[note: 9\]](#) Statement of Facts at [8] (ROP at p 5).

[\[note: 10\]](#) Statement of Facts at [7] (ROP at p 5)..

[\[note: 11\]](#) Statement of Facts at [8] (ROP at p 5)..

[\[note: 12\]](#) Statement of Facts at [9] (ROP at p 5),

[\[note: 13\]](#) Statement of Facts at [10] (ROP at p 5).

[\[note: 14\]](#) *Ibid.*

[\[note: 15\]](#) *Ibid.*

[\[note: 16\]](#) Statement of Facts at [11] (ROP at p 5).

[\[note: 17\]](#) Statement of Facts at [12] (ROP at p 5).

[\[note: 18\]](#) Statement of Facts at [17] (ROP at p 6).

[\[note: 19\]](#) *Ibid.*

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