

Cai Mei Ying v Public Prosecutor
[2019] SGHC 24

Case Number : Magistrate's Appeal No 9224 of 2018/02
Decision Date : 07 February 2019
Tribunal/Court : High Court
Coram : Aedit Abdullah J
Counsel Name(s) : Lok Vi Ming SC, Tang Jin Sheng and Walter Yong (LVM Law Chambers LLC) for the appellant; Christina Koh, Tang Shangjun and Sarah Ong (Attorney-General's Chamber) for the Prosecution; Clarence Ding (Wong & Leow LLC) as young amicus curiae.
Parties : Cai Mei Ying — Public Prosecutor

Criminal Law – Statutory offences – Penal Code (Cap 224, 2008 Rev Ed)

7 February 2019

Aedit Abdullah J (delivering the judgment of the court *ex tempore*):

1 I am grateful for the assistance of all counsel. I have considered the submissions, the evidence and the judgment of the learned District Judge. I appreciate in particular the efforts made by Mr Lok Vi Ming SC (“Mr Lok”) on behalf of the appellant. But taking all of these matters into consideration, I am satisfied that the appeal against sentence should be dismissed.

2 The charge against the appellant, being under s 338(b) of the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”) for causing grievous hurt by doing an act so negligently as to endanger the personal safety of others, was established on the facts admitted. The facts showed that the appellant was cycling in a market compound where cycling was not permitted. She approached a cross-junction at which the victim was walking in a direction at right angles to her travel. Whilst the appellant managed to see the victim, she was unable to stop in time, and collided with the victim. The victim, an elderly lady of about 77 years old, sustained a fracture which required a screw to be fixed. I think it is quite telling that the collision occurred in front of a “No Bicycles” sign.

3 I am afraid I do not accept the characterisation of the cases put forward by the appellant. Instead, I accept that the specific circumstances of this case merited the imposition of a custodial sentence.

4 I agree with the District Judge that the appellant’s culpability was moderate, given that she knowingly cycled in a narrow and confined area that prohibited cycling. This is thus a place where pedestrians are less likely to be aware of cyclists and where they are entitled to feel safe from harm and injury from negligent cycling. I agree that the categorisation of the present case by the District Judge within the second category of *Tang Ling Lee v Public Prosecutor* [2018] SGHC 18 as involving greater harm and lower culpability or lesser harm and higher culpability would be appropriate. But in any event, I do accept that the harm in this case is at the “greater” rather than the “lesser” end of the spectrum. The victim’s injuries affected her mobility and required surgical correction. I also agree with the District Judge that there was a need for general deterrence, given the recent rise in bicycle and personal mobility device-related accidents.

5 In the circumstances, I find that the sentence of two weeks' imprisonment is not manifestly excessive. I see no reason to depart from the sentence imposed by the District Judge.

6 I appreciate the efforts of Mr Clarence Ding ("Mr Ding"), who was appointed as the young *amicus curiae* in this case to assist with the consideration of a sentencing framework for offences under s 338(b) of the Penal Code where grievous hurt is caused by the negligent riding of bicycles and personal mobility devices ("PMDs"). I do note that it is likely that a sentencing framework would be needed for cases involving bicycle or PMD accidents on pavements with pedestrians as victims. But I suspect that such situations would call for careful consideration of a number of other factors and sentencing imperatives; it may be best to allow a number of cases to be brought before the courts before such a framework is established, so that the relevant considerations can be sieved out through the adversarial process. I would thus leave it for another day for the framework to be laid down. Mr Ding's contributions have not been in vain, and I would suggest that he be considered again for such a case, subject of course to his availability and willingness at that time.

7 It remains for me then to also reiterate that shared spaces, whether roads or pavements, require most of all consideration and courtesy between all users. I hope that it will not come to pass that we will need a sentencing framework for pavement collisions, but real life will probably prove otherwise. I would strongly urge those on bicycles and PMDs to exercise such due care and consideration; where injuries do arise because of the fault of the rider, it is likely that the courts will take a stern view and impose custodial sentences, which may be higher than what has been imposed in this case.

8 To reiterate, the appeal is dismissed. I will, however, hear from Mr Lok on when the sentence can be commenced.