Chew Ah Kiat v Public Prosecutor
[2001] SGHC 242

Case Number : MA 372/2000

Decision Date : 28 August 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Jeyaraj Indra Raj and Harold Seet (Harold Seet & Indra Raj) for the appellant; Tan Boon Gin (Deputy Public Prosecutor) for the respondent

Parties : Chew Ah Kiat — Public Prosecutor

Courts and Jurisdiction – Appeals – Power of appellate court to reverse trial judge's findings of fact – Relevant considerations

Criminal Law – Offences – Causing death by negligent act – Collision between appellant's bus and deceased – Prosecution's case solely on circumstantial evidence – Whether possible to infer collision from circumstantial evidence – Appeal against conviction and sentence – Whether sentence appropriate – s 304A Penal Code (Cap 224)

: This was an appeal against the decision of District Judge Suriakumari Sidambaran, who convicted the appellant, Chew Ah Kiat (`Chew`) of a charge under s 304A of the Penal Code (Cap 224) (`the Code`) and sentenced him to pay a fine of $6,000 and to be disqualified from driving and riding all classes of vehicles for a period of five years. Chew appealed against both his conviction and sentence. I dismissed both appeals and I now give my reasons.

The charge

The appellant was charged in DAC 22659/2000 as follows:

> *You,*
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> *Chew Ah Kiat, Male/41 years,*
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> *NRIC No: S2687801B*
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> *are charged that you, on the 5th day of January 2000, at about 6.41 a.m., at the signalised controlled T-junction of Bedok North Avenue 3 by Bedok North Street 1, Singapore, being the driver of motor bus SBS 9455M, did cause the death of one Ahmad Bin Mohamet Rawi, Male/89 years, NRIC No: S0456440F, by doing a negligent act not amounting to culpable homicide, to wit, by failing to keep a proper lookout when making a right turn from Bedok North Avenue 3 into Bedok North Street 1, and thus causing motor bus SBS 9455M to collide into the deceased who was riding a bicycle at the pedestrian crossing of Bedok North Street 1, and consequently causing his death and you have thereby committed an offence punishable under section 304A of the Penal Code, Chapter 224.*

The facts

The following facts were undisputed. On the morning of 5 January 2000, Chew was driving motor bus SBS 9455M (`the bus`). At about 6.40am, he made a right turn from Bedok North Avenue 3 onto Bedok North Street 1 at a signalised controlled T-junction. At that time, the deceased, Ahmad bin Mohamet Rawi (`Ahmad`) was riding his bicycle along the pedestrian crossing at Bedok North Street 1 and he fell from his bicycle. As a result, Ahmad suffered injuries to his head and died at 12.10pm on the same day. The forensic pathologist certified that the cause of Ahmad`s death was a fractured skull.

The bus and the bicycle that Ahmad was riding were inspected at the scene by initial investigator Staff Sergeant Govindharajoo Ramlingam (`Rajoo`). He noted the following damage: (1) a fresh scratch mark on the front right corner of the bumper of the bus; (2) a scratch on the left portion of the black box on the deceased`s bicycle; and (3) the glass windscreen on the front right lower corner of the bus was cracked.

At the time of the incident, the weather was fine, the road surface was dry, traffic volume was light and visibility was clear.

The prosecution`s case

At the trial, the prosecution conceded that there was no direct evidence because there were no eyewitnesses to the accident. It therefore sought to rely on circumstantial evidence to prove its case.

The prosecution`s first witness was Dr Wee Keng Poh (`Dr Wee`), a forensic pathologist. Dr Wee opined that the injuries on Ahmad`s head were sustained when he fell on the surface of the road after the impact of his bicycle with the bus. Dr Wee also gave evidence that although Ahmad had had previous heart attacks, there was no evidence of a fresh heart attack on the day of the accident, according to the autopsy report.

The second witness for the prosecution was the investigating officer, Rajoo. He testified that he arrived at the scene at about 8.20am. At the time he examined the scratch mark on the bumper of the bus, he noted that it was a fresh scratch mark. He could tell that it was fresh because there was no dirt or other substance on it whereas, if it was an old one, it would have been stained. Rajoo gave his opinion that the fresh scratch mark on the bumper of the bus was probably caused by the metal chain guard of the bicycle since that was the lowest point of the bicycle which came closest to the bus. Rajoo also testified that there were brake marks on the road, which suggested that there was heavy and sudden braking by the bus. He also gave evidence that the final position of the bus was that it had already gone past the pedestrian crossing.

Rajoo also testified that he had recorded a statement, P29, from Chew in the course of his investigations. This was unchallenged by Chew.

The prosecution`s third witness, Gan Swee Seng, was a bus starter with the Singapore Bus Service (`SBS`). He testified that bus drivers from the SBS would report any damage to their buses to him. He confirmed that the cracked glass on the windscreen of the bus was sustained before the date of the accident. However, he was not aware of any scratch marks on the front bumper of the bus. He testified that scratch marks were a minor matter and that bus drivers would not need to report scratch marks to him.

The final witness for the prosecution was Senior Investigation Officer Allan Low. He was the current

investigating officer of this case, having taken over from Rajoo two days after the accident. He testified that he recorded a statement, P30, from Chew. This statement was not challenged by Chew either.

At the end of the prosecution`s case, the prosecution submitted that it had made out a prima facie case against Chew. It submitted that the fact of collision could be inferred by the following: (1) the fresh scratch mark on the bus; (2) the final position of the bus, which had gone past the pedestrian crossing; and (3) Chew`s own statements in P29 and P30. In these statements, he said that he was travelling at about 20 to 30 kilometres per hour. In P29, he said he only saw Ahmad when he was four feet away; in P30, he said he only saw Ahmad when he was seven feet away; in any case, this led to the inference that Chew could not brake in time to avoid a collision, albeit a light one because of the slow speed. The judge was satisfied that the prosecution had made out a prima facie case against Chew. She accordingly called upon Chew to enter his defence. Chew elected to give evidence.

The defence case

Chew was the only witness for the defence. He gave testimony to the effect that there was no collision between the bus and Ahmad`s bicycle. He said he stopped the bus ***before*** Ahmad fell off his bicycle. He claimed that Ahmad fell off his bicycle because he saw the `massive size` of the bus. Chew also claimed that there was an eyewitness to the accident, a taxi driver who had been on the opposite side of the road at the time of the accident. However, Chew did not call this witness to testify on his behalf.

The decision below

The judge accepted Dr Wee`s testimony that Ahmad had died of a fractured skull and that his injuries were consistent with those resulting from a road accident. The judge also accepted Rajoo`s testimony that the scratch mark on the bumper of the bus was fresh, that there were brake marks on the road caused by heavy and sudden braking and that the bus had already gone past the pedestrian crossing before it came to a stop. The sketch plan produced by Rajoo and the photographs depicting the final position of the bus clearly showed that Chew did not stop the bus before it reached the pedestrian crossing.

Although Chew tried to give contradictory explanations to certain parts of his statements, the judge accepted the contents of the statement P30 to be the accurate version after considering the straightforward manner in which the questions had been posed and after assessing the contradictory versions against the objective evidence such as the sketch plan produced by Rajoo and photographs taken at the scene. In this statement, Chew admitted that he did not check his right side before he made the right turn. He also stated that he did not know whether his bus had collided into the cyclist or not. However, on the stand, Chew contradicted this by claiming that there was no collision at all and Ahmad fell only at the sight of his `massive bus`. The judge dismissed this explanation as incredible.

The judge noted that the voluntariness of both the statements P29 and P30 was unchallenged by Chew. In the statement P29, Chew said he saw Ahmad when Ahmad was four feet away from the bus. He changed his testimony in P30 where he said Ahmad was seven feet away. On the stand, Chew gave yet a different story and claimed that Ahmad was ten feet away from the bus when Chew saw him. Taking the totality of the evidence: (1) that Chew admitted that he had seen Ahmad on the pedestrian crossing, (2) the final positions of both vehicles as depicted by Rajoo`s sketch plan and

the photographs and (3) the fresh scratch mark on the bus, the judge concluded that there must have been a collision between the bus and the bicycle, the impact of which caused Ahmad to fall to the ground.

Furthermore, the judge found that the presumption in s 116 illustration (g) of the Evidence Act (Cap 97, 1997 Ed) operated against Chew, since Chew alleged that there was a taxi driver who was a witness to the accident, and yet failed to call this taxi driver as his witness to give evidence, despite the fact that the taxi driver would be crucial to his defence.

The judge also did not accept Chew`s evidence that he did not sound his horn at Ahmad, although he had time to do so, and the reason for this was that it was his `personal habit` not to do so. The judge found on the evidence that Chew had no time to even sound his horn as a warning to Ahmad. She further found that if Chew had kept a proper lookout when making the right turn in the direction of the pedestrian crossing, he would have had time to sound the horn. More importantly, if he had kept a proper lookout, he would have been able to stop his vehicle before the pedestrian crossing without the need for heavy braking.

As to credibility, having observed the witnesses before her, the judge found that the prosecution witnesses were truthful and had no reason to give false evidence against Chew. They maintained their respective versions of the events despite being subjected to thorough cross-examination. Moreover, material aspects of their evidence were corroborated and hardly challenged by the defence. On the other hand, the judge found Chew to be an untruthful and evasive witness and that his evidence was unreliable. His evidence was riddled with contradictions. In his statement P30, he said he was not sure whether or not there was a collision but, on the stand, he clearly claimed that there was no collision. Also, he gave three different versions - in P29, P30 and on the stand - as to how far away Ahmad was from the bus when he first saw Ahmad.

Taking all the facts and circumstances of the case, together with the evidence produced, the judge found that Chew had been negligent in having failed to keep a proper lookout when making the right turn, thereby causing the bus to collide with Ahmad`s bicycle and consequently causing Ahmad`s death. She was satisfied that the prosecution had discharged its burden under s 304A of the Code and that Chew failed to raise a reasonable doubt in the prosecution`s case. As a result, she convicted Chew and sentenced him to pay a fine of $6,000 and to be disqualified from driving and riding all classes of vehicles for a period of five years.

The appeal against conviction

Before me, the primary argument raised by Mr Indra Raj, the counsel for Chew, was that there had been no collision. Mr Raj submitted that the prosecution had not succeeded in proving the elements of the charge because the fact of collision had not been conclusively established.

To support this argument, Mr Raj first referred to the evidence of Dr Wee. Mr Raj said that Dr Wee`s evidence showed that Ahmad was elderly and that even the slightest force could cause injury to Ahmad. It seemed to me that Mr Raj was trying to imply that due to the advanced age of Ahmad, it was highly probable that his fall from the bicycle was due to factors such as his impaired vision, hearing, dexterity or reflexes as opposed to a collision with the bus. In his written submissions for the purposes of this appeal, he even produced quotes from the book `The Autumn Years - A Guide for Caregivers of the Elderly`, some of which read as follows: `... the risk of an elderly person falling is higher for various reasons` and `(d)egeneration of joints and the weakening of muscles affects balance, and the thinning of bones results in fractures even when the impact is small`.

I was of the view that this line of argument was completely without merit. The issue to be determined was this: what caused Ahmad to fall? Dr Wee`s testimony was that, in his opinion, Ahmad sustained his injuries from a fall ***after the impact of the bicycle with the bus*** .

On the other hand, the issue of Ahmad`s age was never brought up at the trial, nor did Mr Raj provide any support whatsoever for the implied contention that Ahmad`s fall could have been due to factors relating to his old age and not due to a collision. This was but a bare allegation that had to be dismissed. I accepted Dr Wee`s clear testimony that Ahmad`s injuries were consistent with those sustained from a fall after a collision.

Next, to further support his contention that there was no collision, Mr Raj also refuted parts of Rajoo`s testimony. He questioned Rajoo`s opinion that the fresh scratch mark on the bumper of the bus was probably caused by the metal chain guard of the bicycle. Mr Raj pointed out that it was questionable whether the bumper of the bus did indeed hit the chain guard of Ahmad`s bicycle. He claimed that it was inconceivable that the bus could have knocked and pushed the bicycle beyond the pedestrian crossing and yet there was no damage to the bicycle nor was Ahmad`s clothing torn. He further submitted that if the height of the scratch mark from the road and the height of the chain guard from the road had been measured, they would have shown that the chain guard would not have caused the scratch mark. Since these measurements were not taken, Mr Raj urged me to direct that measurements be taken in the interest of justice.

I declined to make such an order. I noted Rajoo`s testimony that he had been a Traffic Police Investigator for the past two years and had been to numerous sites and scenes of accidents. In his experience, he had seen many types of scratches and brake marks and had put up 200 to 300 damage reports before this accident in question. The judge chose to accept Rajoo`s professional opinion regarding the fresh scratch mark and she found him to be a credible witness whose testimony withstood a thorough cross-examination.

I concluded that the lack of measurements was water under the bridge and that even in the absence of these measurements, there was overwhelming circumstantial evidence which nonetheless led to the reasonable inference that a collision had occurred. The judge considered all the evidence and made the finding of fact that the bumper of the bus hit the chain guard of the bicycle. It was my opinion that the judge was correct to make such an inference.

The circumstantial evidence was as follows:

(1) there was a fresh scratch mark on the front bumper of the bus;

(2) there were brake marks on the road which indicated heavy and sudden braking;

(3) the final position of the bus as shown in the photographs tendered in the court below was that the bus had already crossed the pedestrian crossing before it managed to stop and the final position of the bicycle was in front of the right bumper of the bus; and

(4) there was medical evidence to the effect that Ahmad`s injuries were consistent with those sustained from a fall as a result of a collision.

In addition, I also found that the judge had good reasons to find that Chew was evasive and not a credible witness. He vacillated on crucial issues such as whether or not there was a collision, claiming in his earlier statement that he did not know and then becoming very sure that there was no collision

when he was on the stand. He gave three different versions of how close he was to Ahmad`s bicycle when he first spotted it - in statement P29 he said that he was four feet away; in statement P30 he said that he was more than six feet but less than seven feet away; and on the stand he said that he was ten feet away. In addition, although he claimed that there was an eyewitness to the accident, he did not call this crucial person as a witness to support his version of events.

It is trite law that an appellate court will be reluctant to overturn the trial judge`s findings of fact unless they were clearly reached against the weight of the evidence or they were plainly wrong (see **Tan Hung Yeoh v PP** [1999] 3 SLR 93 and **PP v Azman bin Abdullah** [1998] 2 SLR 704 ). Chew provided no reason for this court to overturn the judge`s finding that he was guilty of criminal negligence under s 304A of the Code, as defined by the cases of **Nidamarti Nagabhushanam** [1872] 7 MHC 119 and **Empress of India v Idu Beg** [1881] ILR 3 and followed by Rubin JC (as he then was) in **PP v Teo Poh Leng** [1992] 1 SLR 15 . The judge provided cogent reasons for her findings of fact, which were neither clearly against the weight of evidence nor plainly wrong. She made her finding of fact that there was a collision after assessing the evidence of Dr Wee, Rajoo and Chew and considering the strong circumstantial evidence. By contrast, the defence submission that there was no collision bordered on speculation, not supported by any of the evidence produced at the trial.

On my part, I had no doubt that Chew failed to exercise reasonable and proper care to keep a proper lookout for Ahmad when he made the right turn in the direction of the pedestrian crossing. If he had done so, he should have been able to stop the bus before the pedestrian crossing without the need for heavy and sudden braking. Mr Raj`s contentions in this appeal failed to support his argument that there was no collision. Since no reasonable doubt against the prosecution`s case was raised, I dismissed the appeal against Chew`s conviction.

The appeal against sentence

Chew also appealed against his sentence on the ground that it was manifestly excessive. However, neither before me nor in the written submissions for the purposes of this appeal did Mr Raj put forth any reasons for the contention that Chew`s sentence was manifestly excessive.

I perused the notes of evidence at the trial below and saw that in Chew`s mitigation plea, it was stated that he was 41 years old and a bachelor. He came to Singapore to earn a living as a bus driver, which is the only occupation he has had. As such, defence counsel at the trial below urged the court not to impose a disqualification that would end his livelihood. Nevertheless the judge found it appropriate to sentence Chew to a fine of $6,000 and to be disqualified from driving and riding all classes of vehicles for a period of five years.

Under s 304A of the Code, it is stipulated that the punishment for an offence under this section would be imprisonment for a term which may extend to two years, or a fine, or both. This sentencing provision was discussed in the case of **PP v Gan Lim Soon** [1993] 3 SLR 261 , where I held that where death is caused by a rash act, the appropriate punishment would be imprisonment for a term not exceeding two years. However, where death has been caused by a negligent act, the appropriate sentence is a fine.

The facts in ***Gan Lim Soon*** were somewhat similar to those in the present case. There, a bus driver was making a left turn when he collided with and killed a pedestrian who was at a pedestrian crossing. He was charged under s 304A of the Code for causing death by a negligent act. The sentence meted out was a fine of $6,000 and disqualification from driving all classes of vehicles for five years. In **PP v**

Teo Poh Leng [1992] 1 SLR 15 , a car skidded while negotiating a bend, colliding into two pedestrians, causing their death. The driver was charged under the negligence limb of s 304A and was sentenced on appeal to a fine of $10,000 and disqualification from holding or obtaining all classes of driving licences for life. In **PP v Quek Soon Lim** (Unreported) , MA 189/96), the driver of a motor lorry failed to conform to a red light signal at a road junction and collided with an oncoming motorcycle, leading to the death of the motorcyclist. Also charged under the negligence limb of s 304A, the lorry driver was sentenced to a fine of $7,500 and to be disqualified from driving all classes of vehicles for five years.

Having considered these sentencing precedents, I felt that the sentence imposed on Chew by the judge was commensurate with the nature and gravity of the offence he committed. The sentence imposed was well within the benchmarks set by the precedent cases and I could find nothing to support the submission that it was manifestly excessive in the circumstances of the case.

As a result, I also dismissed the appeal against Chew`s sentence.

Outcome:

Appeal dismissed.