# Tan Cheng Kwee v Public Prosecutor
# [2002] SGHC 118

**Case Number** : MA 332/2001

**Decision Date** : 30 May 2002

**Tribunal/Court** : High Court

**Coram** : Yong Pung How CJ

**Counsel Name(s)** : Michael Khoo SC and Dominic Nagulendran (Michael Khoo & Partners) for the appellants; Bala Reddy and Francis Ng (Deputy Public Prosecutors) for the respondent

**Parties** : Tan Cheng Kwee — Public Prosecutor

*Criminal Law – Statutory offences – Road Traffic Act (Cap 276) – Statutory provision creating an offence – Requirement of mens rea – Legal presumption that mens rea necessary – Circumstances where presumption can be displaced – Relevance of severity of penal sanction in determining whether provision creates strict liability offence*

*Criminal Procedure and Sentencing – Sentencing – Whether sentence manifestly excessive – Whether to take into account fact of appellant claiming trial instead of pleading guilty – Disqualification order – Whether mandatory sentence of disqualification from holding all classes of driving licences applicable to charge of 'causing' unlawful user – s 79(4) Road Traffic Act (Cap 276, 1997 Ed)*

*Road Traffic – Offences – Causing heavy motor vehicle exceeding four metres in overall height to be driven without requisite permit – Whether offence of 'causing' unlawful user one of strict liability – Whether appellant causes vehicle to be driven – Whether actus reus of offence proven – Whether appellant exercising reasonable care – s 79(1) Road Traffic Act (Cap 276, 1997 Ed)*

## Judgment

### GROUNDS OF DECISION

*The facts*

The appellant, Tan Cheng Kwee ('Tan'), was the director in charge of Henry Transport & General Agency Company Pte Ltd ('the company'), and was the sole person running the operations of the company. The company transported goods in containers from warehouses to the Port of Singapore Authority ('PSA') Container Terminal, and vice-versa.

2 The company owned two prime movers, one of which bore the licence plate number XA 6305 S ('the prime mover'). At the material time, it had two drivers under its employ – Selamat bin Sa'man ('Selamat') and Yahya bin Noordin ('Yahya').

3 On 13 May 2000, Tan instructed Selamat to drive the prime mover to Admiralty Road West in order to transport a container to the PSA Container Terminal. At approximately 12:12 p.m. that day, after loading up the container onto his trailer, Selamat was driving the prime mover along Hillview Road in the direction of Hillview Avenue when the top of the container hit a height restriction gantry. The vehicle proceeded on, but, due to its height, subsequently found itself wedged beneath the railway bridge that passed over the road. Selamat managed to free the vehicle. Whilst attempting to continue along its journey, the top of the container struck and damaged a second height restriction gantry, causing it to tilt precariously to one side.

4 The police arrived shortly and detained Selamat. Tan was called to the scene. It was quickly

discovered that the company did not possess the licence to operate a heavy motor vehicle that had an overall height exceeding four metres. The height of the prime mover with trailer and container was 4.465 metres. Tan appeared to be unaware that such a permit was necessary and promptly applied for one on behalf of the company. Height restriction permits are valid for one year and are issued free of charge.

*The charge*

5 Selamat was indicted on a number of charges. Unfortunately, he absconded whilst on bail. Tan was later charged for the following offence:

> You,
>
> TAN CHENG KWEE, M/47 YRS
> NRIC NO. S0126513Z
>
> are charged that you on the 13th day of May 2000 in Singapore, did cause to be driven on public roads, a heavy motor vehicle XA 6305 S that has an overall height which exceeds 4 metres, without there being in force a permit from Deputy Commissioner of Police and you have thereby committed an offence punishable under section 79(1) of the Road Traffic Act, Cap. 276

6 Section 79 of the Road Traffic Act ('the Act') read as follows:

> 79. – (1) Where the overall height of a heavy motor vehicle exceeds 4 metres, any person who, without a permit from the Deputy Commissioner of Police, is in charge of or drives or causes to be driven the vehicle on a road shall be guilty of an offence and shall be liable on conviction –
>
> (a) for a first offence, to imprisonment for a term of not less than one year and not more than 3 years and, in addition, to a fine not exceeding $2,000; and
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> (b) for a second or subsequent offence, to imprisonment for a term of not less than 2 years and not more than 5 years and, in addition, to a fine not exceeding $5,000.

*Decision of the district court*

7 The district judge held that s 79 of the Act was intended to create a strict liability offence. He was of the view that the presumption of law that *mens rea* was a requirement of criminal liability was displaced by the fact that the provision was concerned with an issue of social concern and public safety. It was important for vehicles beyond a certain height to be restricted to travelling on certain roads due to height restrictions on others. Strict liability was thus essential for the protection of the public.

8 As such, four elements had to be established in order for the prosecution to prove its case. These were:

> (a) That the prime mover was a 'heavy motor vehicle' within the meaning of s 79

(1) of the Act;

(b) That the overall height of the prime mover exceeded 4 metres;

(c) That no permit was issued in respect of the prime mover;

(d) That Tan had caused this prime mover to be driven on public roads without such a permit.

9 The judge found that all four elements were established. In his opinion, Tan had failed to make out a defence that he had taken reasonable care, since no attempt had been made by Tan to check the height of the container.

10 The district judge found Tan guilty of the charge and sentenced him to 14 months' imprisonment. He was also disqualified from holding or obtaining all classes of driving licences for a period of one year with effect from Tan's date of release from prison. Tan appealed against conviction and sentence but after hearing counsel's arguments I dismissed the appeal. The district judge, in his grounds of decision, realised that he had omitted to impose a fine made mandatory by s 79(1)(a) of the Road Traffic Act (RTA), and asked this Court to exercise its powers of revision in order to correct the error. I therefore imposed a fine of $1,000 on Tan. However, I revoked that part of the district judge's order relating to the disqualification from holding all classes of driving licences. The grounds for my decision are set out below.

*The appeal*

11 There were three key thrusts in the appeal against conviction. The first was that s 79(1) of the Act did not create a strict liability offence. The second was that, in any event, there was no evidence that suggested that Tan knew that the prime mover exceeded four metres in height and therefore he did not 'cause' the vehicle to be unlawfully driven. The final point was that, even if s 79(1) of the Act did create a strict liability offence, Tan's failure to know the facts that constituted unlawful user did not amount to negligence and that therefore the defence of reasonable care was available to him.

12 As for the appeal against sentence, the submission was that the term of 14 months' imprisonment was manifestly excessive, and furthermore the judge seemed to have placed undue weight on the fact that Tan had chosen to claim trial.

*Did s 79(1) create a strict liability offence?*

13 There is a presumption of law that *mens rea* is a necessary ingredient of any statutory provision that creates an offence: *Sweet v Parsley* [1970] AC 132; *Lim Chin Aik v R* [1963] MLJ 50; *PP v Phua Keng Tong* [1986] 2 MLJ 279. This presumption, however, can be rebutted by the clear language of the statute, or by necessary implication, although it is not sufficient if the provision merely lacks terms that are commonly associated with *mens rea*. Where an examination of the language of the statute does not assist, the Court will have to look at all the relevant circumstances to determine the true intention of Parliament. Such considerations include the nature of the crime, the punishment prescribed, the absence of social obloquy, the particular mischief and the field of activity in which the crime occurred.

14 It is well known that the presumption of *mens rea* is often displaced in situations where the statutory offence in question pertains to issues of social concern. This is especially so in cases of public safety where the prohibited act is not one which the public can easily protect itself against through its own vigilance. In *Lim Chin Aik v R* [1963] MLJ 50 at 52, Lord Evershed made the following observation:

> Where the subject matter of the statute is the regulation for the public welfare of a particular activity … it frequently has been inferred that the legislature intended that such activities should be carried out under conditions of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it displaces the ordinary presumption of mens rea.

15 Even then, it must be shown that the creation of strict liability will be effective in promoting the objects of the statute by encouraging greater care to prevent the commission of the prohibited act: *Gammon Ltd v AG of Hong Kong* [1984] 3 WLR 437.

16 The question as to whether s 79(1) of the Act was one that imposed strict liability had been previously dealt with by the Magistrate's Court in the case of *PP v Yeo Gim Lam* TAC No. 844 of 1987 (unreported). In that case, the accused was charged with driving a cargo crane, with an overall height exceeding four metres, without the relevant licence. The boom of the loader had struck the underside of the Change Alley aerial plaza that spanned Collyer Quay from Clifford Pier to the Singapore Rubber House. The judge held that s 79(1) did create a strict liability offence. He said:

> It is easy to discern the legislative intent on placing upon a person driving on the road a heavy motor vehicle which exceeds 4.00 metres, the duty of ensuring that there is a permit from the Deputy Commissioner of Police. Under subsection 2 of section 79 of the Act, in granting such a permit, the Deputy Commissioner of Police may impose such conditions as he thinks fit including conditions relating to the overall height of the vehicle, the lateral projection of any load carried by the vehicle, the maximum speed of the vehicle, the requirement for police or other escort; and of particular relevance to the present case, the route the vehicle is permitted to travel. In land scarce Singapore, it is to be expected that there will be, and as a matter of fact there are, numerous flyovers, pedestrian overhead bridges, aerial plazas and other similar overhanging structures above the roads which the public uses frequently. It is very clear promotion of safety. It performs the social utility of ensuring that drivers of heavy motor vehicles above a certain height are in possession of and, more importantly, are cognisant of the conditions imposed therein so that their vehicles would not pose a potential hazard to these overhanging structures and endanger the lives of those using them.

17 It was patently clear to me that s 79(1) of the Act fell within that class of statutory offences that dealt with public safety. Indeed, such was the tenor of the speech by the then Minister of Home Affairs, Mr Chua Sian Chin, during the second reading of the Road Traffic (Amendment) Bill in Parliament on 2 March 1984, at which the Government first sought to make it an offence for vehicles above the height of 3.2 metres to be driven without a licence. He said:

> It is clear that some drivers and owners of motor vehicles which carry loads of excessive heights are not concerned with the dangers that they pose and the

> damage that they could cause with their irresponsible behaviour. It is also evident that the present penalties provided under out existing legislations are insufficient to deter such behaviour. It was fortuitous and fortunate that no one was hurt in all the four incidents I have recounted. However, we cannot rely on such good fortune and allow pedestrians to be constantly exposed to such risks until somebody has been hurt … The recklessness of some inconsiderate drivers and owners must be curbed without delay. It would be too late to punish them after the harm is done. In view of grave danger to public safety, it is necessary to provide for strict deterrent measures and heavy penalties to prevent the occurrence of another incident of a vehicle with a high load hitting a pedestrian overhead bridge.

18 In pressing his case that s 79(1) of the Act was not to be construed as a strict liability offence, counsel for Tan argued that the district judge had failed to consider the significance of the mandatory minimum sentence of one year's imprisonment. The severity of the penalty, he said, suggested that Parliament could not have intended this to be a strict liability offence. In support of this proposition, counsel relied on a passage in *M V Balakrishnan v PP* [1998] 1 CLAS News 357, a judgment of mine, which read:

> In his book, "Public Welfare Offences" … Professor Sayre suggested that if the penalty is slight, involving, for instance, a fine, particularly if adequate enforcement depends upon wholesale prosecution, or if the social danger arising from violation is serious, the doctrine of basing liability upon mere activity rather than fault is sound.

19 The passage quoted above should not be misconstrued. The severity of the penal sanction is but one of the many factors that the Court has to take into account in trying to ascertain Parliamentary intent. While a slight penalty may be a factor in favour of construing an offence as one based on strict liability, there is by no means a definitive correlation. Parliament has the power to prescribe severe penalties for strict liability offences in order to achieve its legislative purpose. The speech of the then Minister for Home Affairs, parts of which have been reproduced in 17 above, revealed that the legislature had strong deterrence on its mind following the numerous collisions that had taken place, one after another, with pedestrian overhead bridges and aerial plazas in 1983 alone. In this regard, I found the approach taken by the Privy Council in *Gammon Ltd v A-G of Hong Kong* [1984] 3 WLR 437 very instructive. Defence counsel in that case had advanced the argument that the severity of the maximum penalties prescribed in the provision in question pointed away from a strict liability construction of s40(2A)(b) of the Hong Kong Building Ordinance. Rejecting this, Lord Scarman remarked:

> … there is nothing inconsistent with the purpose of the Ordinance in imposing severe penalties for offences of strict liability. The legislature could reasonably have intended severity to be a significant deterrent, bearing in mind the risks to public safety arising from some contraventions of the Ordinance.

20 Counsel's next argument was that s 79(1) of the Act should only have been interpreted as a strict liability offence if that was a matter of necessary implication. It was not the case if it could only be reasonably implied as such. He then referred to the Second Reading of the Road Traffic (Amendment) Bill 1984 and pointed out that the then Minister of Home Affairs had not explicitly indicated that a strict liability offence was intended. On the contrary, he had said that the "recklessness of some inconsiderate drivers and owners must be curbed without delay". This, argued Counsel, showed that knowledge of, or at least recklessness to, the fact of unlawful user was a necessary ingredient of s

79(1) of the Act.

21 While a provision should only be taken to impose strict liability if it was a matter of necessary implication from all the circumstances, I disagreed with the submission that knowledge or recklessness was a requisite ingredient of s 79(1). The aim of the legislation was to curb recklessness. It did not follow that the prosecution had to prove that an accused person had a mental element of recklessness or, for that matter, any other mens rea element. A strict liability reading would rigorously promote the intention of Parliament by encouraging, or coercing, drivers and owners of heavy motor vehicles to exercise a fair degree of care and consideration in their activities. On the contrary, imputing a state of mind as a necessity for every single element of the offence would not only severely stultify the legislative purpose but would actually go against its very grain. After all, drivers and owners of heavy motor vehicles with high loads risked causing serious public harm if they did not positively take care. Harm might also be done if they were merely passive, knew nothing or were honestly mistaken about the facts and did not know that they had to obtain the requisite licences that would immediately tell them which roads were out of bounds to their vehicles. Therefore, it did not make sense that a conviction should hinge on proof of positive knowledge or intention.

22 In the result, I was of the firm opinion that s 79(1) of the Act did create a strict liability offence.

*Did Tan cause the prime mover to be driven on public roads?*

23 The district judge had noted in his grounds of decision that "[t]he offence of 'causing' unlawful user requires proof of *mens rea* in knowledge of the facts rendering the user unlawful". Counsel for Tan argued that the facts which Tan must be shown to have had knowledge of were, firstly, that the overall height of the vehicle exceeded four metres, and secondly, that there was no permit issued by the Deputy Commissioner of Police in respect of that prime mover. He then claimed that Tan did not possess such knowledge because he had not been told about the height of the container by the company that wanted the container transported from Admiralty Road to the PSA Container Terminal.

24 I was of the view that Counsel had misunderstood the district judge's decision on this particular issue, which grounds read as follows:

> 24 The offence of "causing" unlawful use requires proof of *mens rea* in knowledge of the facts rendering the user unlawful. In the case of a limited company, such knowledge had to be of someone exercising a directing mind over the company's affairs. (see *James & Sons Ltd v Smee* [1955] 1 QBD 78, *Ross Hillman Ltd v Bond* [1974] RTR 279).
>
> 25 "To cause", as pointed out by the defence, involves some express or positive mandate from the person "causing to the other person, or some authority from the former to the latter arising in the circumstances of the case. (see *Mcleod v Buchanan* [1940] 2 All ER 179). It has also been held in English cases that the term "to cause" involves some degree of control and direction (see *Shavner v Rosner* [1954] 2 All ER 280).
>
> 26 In the instant case, it is clear that the accused had knowledge of the facts rendering the user unlawful. In the statement of agreed facts, the accused has admitted that he is a Director of Henry Transport was the sole person in charge of the company's motor container services. He has given evidence that it was him who had, on 13 May 2000 [see evidence-in-chief of the accused], instructed

> Selamat, an employee of the company, via mobile radio, to proceed to Admiralty Road to pick up the container in order to send it to the PSA Container Port.
>
> 27 It is therefore clear that the accused knew of the facts rendering the user unlawful. There is also no doubt that as the person in charge of the company's motor container services, he had some degree of control and direction over Selamat, an employee of the company. I was thus of the opinion that the accused did cause XA 6305S to be driven on a public road.

25 It was obvious to me from a reading of the text above that the judge had intended the knowledge of unlawful user to relate *only* to the fact that Tan knew that the prime mover was being driven on public roads and that he had control and direction over that act. This was especially evident from 26, quoted above, where the only evidence that the judge cited as proof of knowledge of unlawful user was (i.) that Tan was the director solely in charge of the company, and (ii.) that Tan had given instructions to his driver, Selamat, to pick up the container and send it to the PSA Container Terminal. It was not necessary, and it certainly did not appear to be the judge's intention, to require the prosecution to show *further* that Tan had knowledge that the vehicle exceeded four metres in height since the user was unlawful the moment the actus reus of driving without the required permit took place.

26 Having said that, it must also be pointed out that the citation of the English cases of *Ross Hillman Ltd v Bond* [1974] RTR 279 and *James & Son Ltd v Smee* [1955] 1 QB 78 in the district court's grounds of decision as support for the proposition that "[t]he offence of 'causing' unlawful user requires proof of *mens rea* in knowledge of the facts rendering the user unlawful", may unfortunately have provided some inspiration for Counsel's present submission. These cases, however, appeared unhelpful to the present appeal in view of the policy considerations behind, as well as the present state of law relating to strict liability offences in Singapore.

27 In *Ross Hillman Ltd v Bond* [1974] RTR 279, s 40(5) of the UK Road Traffic Act 1972 provided that "a person … (b) who uses on a road a motor vehicle … which does not comply with any such regulations or *causes* or permits a vehicle to be so used, shall be guilty of an offence" [emphasis added]. The defendant, a company owning vehicles, had explicitly warned the drivers under its employ, via notices in their pay packets and signs displayed at its premises, to be careful not to overload their vehicles in breach of regulation 121 of the Motor Vehicles (Construction and Use) Regulations 1969. That regulation prohibited the overloading of vehicles beyond that stipulated in the certificate issued to specific vehicles. Notwithstanding the warning, one of the defendant's drivers in the course of his employment took an unloaded lorry out of the premises and overloaded it. The defendant was charged for causing a breach of the regulation. Distinguishing the earlier case of *Sopp v Long* [1969] 1 All ER 855, May J, giving the main judgment of the Court of Appeal, held that in order to prove that one had "caused" an absolute liability offence to be committed, the prosecution would have to prove the *mens rea* of knowledge of the facts that *rendered* the user unlawful. The defendant was thus acquitted because it did not know that its employee had filled the vehicle beyond the maximum prescribed load; it had also explicitly forbidden such overloading. Therefore, the defendant did not "cause" the primary offence to take place.

28 The first observation to be made about this case was that the common law defence of due diligence or reasonable care, as enunciated in the Canadian case of *R v City of Sault Ste Marie* (1978) 85 DLR (3d) 161 and adopted in our jurisdiction by the case of *M V Balakrishnan v PP* [1998] 1 CLAS News 357, was not a concept available to the English Court of Appeal at that time. This was unlike the factual matrix in *Sopp v Long* [1969] 1 All ER 855, where the defendant employer had the benefit of statutory exceptions in the UK Weights and Measures Act 1963 to the offence of 'causing' a

contravention of the Act. These exceptions to liability required the defendant to prove that he had taken all reasonable precautions and exercised all diligence to prevent his employee from committing the offence. The court in *Ross Hillman's* case, on the other hand, was confronted with the situation where the defendant had explicitly warned its employees against committing the offence and done everything in its power to prevent breaches from occurring. To have convicted the defendant under such circumstances would have invoked the spectre that Devlin J (as he then was) had raised in *Reynolds v G H Austin & Sons Ltd* [1951] 2 KB 135 at 149, where he said:

> [I]f a man is punished because of an act done by another, whom he cannot reasonably be expected to influence or control, the law is engaged, not in punishing thoughtlessness or inefficiency, but in pouncing on the most convenient victim.

29 The second observation about *Ross Hillman's* case was that it created an absolute liability offence of unlawful user for which proof of *mens rea* was unnecessary, and a diagrammatically-opposite offence of causing unlawful user that was a 'true criminal offence' requiring proof of full *mens rea*, amongst the various limbs of a single statutory provision. In our jurisdiction, however, it is now recognised that strict liability occupies the position of a halfway-house between absolute liability and true criminal liability, in the sense that strict liability is made out on proof of *actus reus* but a defence of reasonable care is open to the accused: *M V Balakrishnan v PP* [1998] 1 CLAS News 357. With regard to the word "cause" in relation to strict liability offences, Dickson J gave the following instructive comments in the judgment of *R v City of Sault Ste Marie* (1978) 85 DLR (3d) 161:

> The present case concerns the interpretation of two troublesome words frequently found in public welfare statutes: "cause" and "permit". These two words are troublesome because neither denotes clearly either full *mens rea* nor absolute liability. It is said that a person could not be said to be permitting something unless he knew what he was permitting. This is an over-simplification. There is authority both ways, indicating that the Courts are uneasy with the traditional dichotomy. Some authorities favour the position that "permit" does not import *mens rea*: see *Millar v The Queen* (1954) 1 DLR 148; *R v Royal Canadian Legion* (1971) 21 DLR (3d); *R v Teperman & Sons Ltd* [1968] 4 CCC 67… For a *mens rea* construction see *James & Son Ltd v Smee*, [1955] 1 QB 78; *Somerset v Hart* (1884), 12 QBC 360 … The same is true of "cause". For a non-*mens rea* construction, see *R v Peconi* (1907), 1 CCC (2d) 213; *Alphacell Ltd v Woodward*, [1972] AC 824; *Sopp v Long*, [1969] 1 All ER 855; *Laird v Dobell*, [1906] 1 KB 131; *Korten v West Sussex County Council, supra*; *Shave v Rosner*, [1954] 2 WLR 1057. Others say that "cause" imports a requirement for a *mens rea*: see *Lovelace v DPP*, [1954] 3 All ER 481; *Ross Hillman Ltd v Bond*, [1974] 2 All ER 287; Smith and Hogan, *Criminal Law*, pp 89-90…
>
> The conflict in the above authorities, however, shows that in themselves the words "cause" and "permit" fit much better into an offence of strict liability than either full *mens rea* or absolute liability …
>
> Proof of the prohibited act *prima facie* imports the offence, but the accused may avoid liability by proving that he took reasonable care.

30 As a final point, Counsel's proposed approach to proving that one had 'caused' unlawful user, in the context of s 79(1) as a strict liability offence, did not make sense in light of the approach taken towards proving unlawful user itself. A person who drove a motor vehicle that exceeded four metres in

height without possessing the requisite permit commits the strict liability offence whether or not he was aware of the actual height of the vehicle, unless of course he could show that all due care had already been taken. How could it be, then, that a person who 'caused' that same motor vehicle to be driven on the road without the permit could get away by proving that he did not know about the height of the vehicle? I could see no rational basis for allowing such inconsistency in approach. As far as s 79(1) of the Act was concerned, Parliament's intention was to cast the burden of taking care, not only on the drivers of heavy motor vehicles, but also on the owners of these vehicles.

31 To reiterate, when a strict liability offence involved "causing" an act that was in itself unlawful, all the prosecution needed to establish was the causal link, or *actus reus*. This involved showing that the accused had some form of control, direction and mandate over the person doing the unlawful act proper which the accused had exercised: *Shavner v Rosner* [1954] 2 All ER 280; *Mcleod v Buchanan* [1940] 2 All ER 179. Once this was proved, it would then become incumbent on the defence to prove on a balance of probabilities that it had taken all reasonable care.

*Had Tan exercised reasonable care?*

32 Counsel for Tan submitted that, even if s 79(1) of the Act did create a strict liability offence, which I ruled that it did, his client had nonetheless exercised reasonable care and was therefore entitled on that defence to an acquittal. That there was no unreasonable failure to know the facts that constituted the offence rested on the following points raised by Counsel:

> (a) In the 1980's, PSA required road traffic permits for containers entering the PSA Container Terminal. It had since ceased enforcing such a requirement and therefore Tan's company had stopped applying for such permits;
>
> (b) In 1999, one of the company's prime movers carrying a load of the same proportions was stopped, and the company charged for exceeding vehicular weight restrictions. The company was not prosecuted for failing to possess a height permit;
>
> (c) Tan had only begun to oversee the company's business shortly before the incident that led to the charge, when his father's health declined. After taking over, Tan had merely carried on the practice of not applying for permits;
>
> (d) The company did not deal with over-heights, which were situations where goods extended out of standard containers. Tan knew that these required permits and he would let other companies do the job instead;
>
> (e) Tan's friends had told him that no permit was required for standard containers such as the one that was involved in the present incident;
>
> (f) The container in question did not belong to Tan's company and Tan did not have the opportunity to see the container for himself.

33 Regrettably, none of the reasons put forward could even come close to showing that Tan had exercised reasonable care. Tan was effectively the managing director of a company whose primary business was the provision of transport services for containerised cargo. He has had some 25 years' experience in the industry. It was Tan's evidence that containers came in standard sizes, and he had applied for height permits from PSA in the past. As a matter of fact, Tan claimed to be rather ignorant

of the laws governing vehicular height limits. This was also not a situation where he had circumscribed the nature of his business by limiting the size of containers that he would accept; neither did he expressly warn his drivers not to accept certain jobs nor ask his clients about the size of their containers.

*Appeal against sentence*

34 When deciding on a suitable penalty to be imposed, the Court should not take into account the fact that an accused person had chosen to claim trial instead of pleading guilty. However, taking into account the culpability of Tan's conduct, I was unable to accept Counsel's submission that the sentence of 14 months' imprisonment in this instance was manifestly excessive. The district judge had noted that "the accused failed to take reasonable care, if at all, to ensure that the vehicle driven by Selamat had a permit … No attempt was made by the accused to check or confirm the height of the container." Furthermore, Tan's neglect had indirectly caused damage to public structures. A catastrophe could have resulted when his prime mover struck the railway bridge.

35 The sentence of imprisonment aside, I quashed the order of the district court disqualifying Tan from holding all classes of driving licence for 12 months. From the grounds of decision, it was apparent that the court had assumed that such disqualification was mandatory by virtue of s 79(4) of the Act, which stated that "the driver or person in charge of a heavy motor vehicle convicted of an offence under subsection (1) or (3) shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification – (a) in the case of a first offence, be disqualified from holding or obtaining a driving licence for a period of not less than one year." From the face of this provision, it was clear to me that the mandatory disqualification did not apply to a charge of "causing" the unlawful user. A power to order disqualification exists under s 42 of the Act but this is a discretionary power.

36 Section 79(1)(a) of the Act made a fine of not more than $2,000 mandatory upon conviction. As the district court had omitted to impose this sentence, I exercised this Court's power of revision to impose a fine of $1,000.

*Conclusion*

37 Having assessed the case in its entirety, I was of the opinion that there was no merit in the appeal against conviction. Save for the imposition of the $1,000 mandatory fine and the quashing of the disqualification order, I also dismissed the appeal against sentence.

Sgd:

YONG PUNG HOW
CHIEF JUSTICE

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