Public Prosecutor v Poh Teck Huat
[2003] SGHC 82

Case Number : MA 12/2003

Decision Date : 09 April 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Hui Choon Kuen (Deputy Public Prosecutor) for the appellant; Edmond Pereira (Edmond Pereira & Partners) for the respondent; Benjamin Choo (Edmond Pereira & Partners) for the respondent

Parties : Public Prosecutor — Poh Teck Huat

Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Benchmark sentences – Sentence to be imposed in case of causing death by rash driving

1 The respondent was charged in the subordinate courts on the following charge:

> You, Poh Teck Huat, M/23 years, NRIC No: S7926687F are charged that you, on the 5th day of April 2002 at about 7.45 am, along the junction of Loyang Lane and Loyang Drive, Singapore, being the driver of motor car SBZ 6536X, did cause the death of a motor cyclist Goh Koon Jee, male 45, by doing a rash act not amounting to culpable homicide, to wit by failing to stop your vehicle at the stop line and driving your car into the middle intersection and colliding into a motorcycle FR 1231 C that was travelling on your left along the major road of Loyang Drive and in doing so, resulted in the death of the rider, Goh Koon Jee, male 45 years and you have thereby committed an offence punishable under Section 304A of the Penal Code, Chapter 224.

2 He pleaded guilty to the charge and was sentenced to a fine of $8,000 and disqualified from driving all classes of vehicles for five years. The Public Prosecutor appealed against the sentence imposed. I heard the appeal on 1 April 2003 and I allowed the appeal. I now give my reasons.

Background

3 This case involved a collision between a motor car and a motor cycle after the motor car driver failed to comply with a stop-line. The respondent, Poh Teck Huat ("Poh"), had just started work at Loyang Industrial Estate on 1 April 2002. On 5 April 2002, he was on his way to work at about 7.45am. He was driving his motor-car along Loyang Lane and was looking for a parking lot. There was light traffic flow, visibility was clear and the road surface was dry.

4 At the junction of Loyang Lane and Loyang Drive, Poh failed to stop at the stop line, but merely slowed down. He saw no traffic and continued to cross the junction. At the middle of the intersection, he suddenly saw a motor cycle coming from his left and he collided with it when he could not stop his car in time.

5 After the accident, Poh immediately stopped his car and called for an ambulance before proceeding to help the motor cyclist, Goh Koon Jee ("Goh"), a 45 year old man. Goh was conscious and able to walk. Poh spoke to him and Goh told him that his chest hurt and his ribs felt painful. Poh then helped Goh to the side of the road where he and a passer-by helped to clean up Goh. Shortly after, the ambulance arrived and Goh was taken to the hospital. He was diagnosed as having multiple abrasions and three fractured ribs. He passed away two days later. The certified cause of death was 'multiple injuries' consistent with those sustained as a result of a road traffic accident.

6 The vehicles were subsequently sent for inspection and it was found that the front bonnet and left lower bumper of Poh's car were dented and both signal lights broken, while the right handle, the right fork and the left side of the oil tank of Goh's motorcycle were dented.

Decision of the trial judge

7 The trial judge, before passing sentence, rejected the prosecutor's application to amend the statement of claim to specify that Poh did not slow down his car. The trial judge stated that this was, first, not essential to support the charge of rash driving and, secondly, it would be unfair to Poh to allow the prosecution to adduce potentially aggravating facts, after his plea of guilt, merely to counter Poh's mitigation when the mitigation did not qualify his plea of guilt.

8 In passing sentence, the trial judge examined the two cases of *Sim Chong Eng v PP* (MA 119/93) and *Tay Kok Soon v PP* (MA 245/97). He held that these two cases were pertinent because they both involved drivers who had failed to stop their vehicles before moving onto a major road. After examining these two cases, the trial judge was of the opinion that Poh's degree of rashness and culpability appeared to correspond more closely to that of the accused in *Sim Chong Eng v PP* who was sentenced to a fine of $6,000 and disqualified from driving all classes of vehicles for five years.

9 The trial judge stated that the degree of rashness fell short of gross recklessness which would warrant a custodial sentence of some length. This was because there was no evidence that the respondent had been speeding. The trial judge further took into consideration that there were other strong mitigating factors such as Poh's prompt response to the accident, by acting immediately to render assistance. Poh had also pleaded guilty unreservedly at the earliest opportunity, had no antecedents and had a clean driving record.

10 The trial judge accepted that Poh's view of the traffic approaching from his left was poor as there was a bend in Loyang Drive which meant that a driver travelling along Loyang Lane would have to move far forward into Loyang Drive itself in order to have a clearer view of any oncoming traffic from the left. In addition, the trial judge noted that Poh was unfamiliar with the area and he was of the view that these external factors may have contributed to the accident.

11 As such, the trial judge was of the view that there were no serious aggravating factors to warrant a custodial sentence and he sentenced Goh to a fine of $8,000, in default eight weeks' imprisonment, and disqualified him from driving all classes of vehicles for five years.

The appeal

12 The only issue in this appeal pertained to the sentence imposed. This was a s 304A of the Penal Code (Cap 224) case. For convenience, I have set out the provision below:

> 304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both.

13 The starting point in dealing with this appeal must be to look at *PP v Gan Lim Soon* [1993] 3 SLR 216 in which I had stated that:

> 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.

14 I would take this opportunity to clarify that *Gan Lim Soon* does not mean that a custodial sentence is mandated every time a human life is lost as a result of a rash act. A simple examination of the language of s 304A shows that Parliament had clearly accorded the sentencing court a discretion to impose a fine or sentence of imprisonment regardless of whether death is the result of a rash or negligent act.

15 Instead, what *Gan Lim Soon* stands for is the proposition that, in most cases where death is caused by a rash act, the sentence imposed should be that of a term of imprisonment. This is especially true where the rash act involved is rash driving. It bears repeating that the motor car is clearly a potentially lethal device. Thus any driver who gets behind the wheel must appreciate the responsibility placed upon his shoulders. Such accidents are totally avoidable and such loss of life needless. It seems to me that the only way to bring home the message with regards to this type of rash driving is to remind our drivers that if they continue to take such risks, they face serious punishment which, except in a most unusual case, must take the form of a custodial sentence.

16 Thus, while it must always be necessary to look closely into the individual facts of each case before deciding on the proper sentence to be imposed, there would be no need for aggravating factors to be present before a term of imprisonment imposed.

Distinction between negligence and rashness

17 At this juncture, it would be appropriate to deal with the prosecutor's submission that the trial judge had erred in characterising this case as one akin to negligent driving. I would note that it is undoubtedly correct to state that criminal rashness and criminal negligence involve two different states of mind. This distinction has been emphasised in several decisions and it would be sufficient in this appeal for me to refer to the case of *PP v Teo Poh Leng* [1992] 1 SLR 15 in which M P H Rubin J stated that:

> There is a distinction between a rash act and a negligent act. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted. Negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. *A culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening*. The imputability arises from acting despite the consciousness. *Culpable negligence is acting without the consciousness, that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and if he had he would have had the consciousness*. The imputability arises from the neglect of the civic duty of circumspection. As between rashness and negligence, rashness is a graver offence. (emphasis added mine)

18 This distinction is further shown by the disjunctive language used in s 304A which demonstrates the contrast that the legislature must have meant to impose between the concepts of rashness and negligence.

19 This distinction is of particular importance when the trial judge examines the facts of the case before him to determine whether the charge is made out. It however loses some of its significance at the sentencing stage. At this stage, the concern is to ensure that the sentence reflects and befits

the seriousness of the crime. To do so, the court must look to the moral culpability of the offender.

20 In examining the moral culpability of an offender, the scale would start with mere negligence and end with gross recklessness. However negligence does not end nicely where rashness begins and there is a certain measure of overlap. As such, it is possible for the moral culpability of an offender who has committed a rash act to be akin to that of a negligent act.

Whether the sentence was manifestly inadequate

21 With the above points in mind, I turned to the particular facts of the appeal before this court. There was no dispute that Poh had committed a rash act. Indeed, before me, counsel for the respondent conceded this fact and it was on this basis that the respondent himself had pleaded guilty.

22 Thus, the question was one of Poh's moral culpability. Counsel for the respondent argued that this case involved a driver who, although he had failed to stop at a stop line, had nonetheless slowed down and only proceeded on when he did not see any traffic.

23 However, the facts were not as simple as that. It was pertinent to note that Poh's view of the traffic coming from his left was very poor. In fact, the bend in the road meant that, even at the stop line, Poh's view of the road to his left was impaired. Furthermore, Poh was unfamiliar with the area and I would note that this particular junction had apparently been the scene of several accidents previously. In fact, had Poh been more familiar with the area, he would probably not have driven in the manner that he did on that fateful day.

24 These two important details were regarded by the trial judge as extenuating factors. I was unable to agree. It was to my mind clear that, if a driver fails to stop at a stop line, despite being unfamiliar with the area and unable to see clearly the oncoming traffic, he is clearly more culpable than one who has a clear view of the road as he is essentially driving with blinkers on.

25 Thus, my starting point as to Poh's culpability was that it could not be regarded as being akin to mere negligence, as it showed callousness on Poh's part with regard to the risk that he was exposing other road users to. To this, I was guided by the fact that, by slowing down, Poh was clearly aware of the risk that he was taking, yet he had nonetheless chosen to drive on in the hope that an accident would not occur in the mistaken belief that, by slowing down, he had taken sufficient guard against it.

26 I next turned to the precedent cases on s 304A which the trial judge relied upon. The case of *Sim Chong Eng v PP* involved a case of a bus driver who had failed to stop at a T-junction while he was making a left turn out of the bus interchange. He then encroached onto the path of an oncoming bus and a collision occurred resulting in the death of the driver of the oncoming bus. He was charged under the negligent limb of s 304A of the Penal Code and he claimed trial. As mentioned earlier, he was convicted and sentenced to a fine of $6,000 and disqualified from driving all classes of vehicles for five years.

27 In contrast, the case of *Tay Kok Soon v PP* involved a car driver who had shot out of a minor road onto a major road at an uncontrolled junction. He failed to give way to traffic on the major road and collided with a motor car, flipping it over and killing the driver. The driver was charged under the rash limb of s 304A of the Penal Code and he claimed trial. He was convicted and on appeal was sentenced to a term of imprisonment of six months and disqualified from driving from driving all classes of vehicles for 10 years.

28 Looking at these precedents, I was of the opinion that the trial judge had erred when he held that the degree of rashness and culpability discernible from the facts appeared to correspond more closely to that displayed by the bus driver in *Sim Chong Eng*. The key act of negligence in *Sim Chong Eng* was not so much the bus driver's failure to stop at the stop line but rather his negligence in keeping to his lane such that he encroached onto the path of the oncoming bus.

29 Indeed, the present appeal was more akin to that of *Tay Kok Soon* as the key act of rashness there was similarly the failure to give way to traffic that had the right of way. However, I recognised that *Tay Kok Soon* was a more serious case as the accused's culpability there was aggravated by the fact that he was speeding so fast that the impact threw the victim's car into the air, causing it to roll twice before it stopped with its wheels facing skyward.

30 In the final analysis, however, it could not be ignored that there were strong mitigating circumstances in Poh's favour. He had rendered immediate assistance to Goh. He had been driving at a low speed as evidenced by the minor damage caused to both vehicles. More importantly, he had pleaded guilty at the earliest available opportunity, even though the prosecution had declined to accede to representations to proceed under a lower charge, which reflected well on his remorsefulness and willingness to take responsibility for his acts. He had no antecedents and he had a clean driving record.

Conclusion

31 Weighing up all these factors, I was of the opinion that the sentence imposed by the trial judge of a fine of $8000 was manifestly inadequate. I set aside the fine and imposed a sentence of four weeks' imprisonment. The sentence with respect to the order of disqualification was to remain.

Appeal allowed.