Siti Hajar bte Abdullah v Public Prosecutor
[2006] SGHC 24

Case Number : MA 118/2005

Decision Date : 14 February 2006

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : The appellant in person; Lee Lit Cheng (Deputy Public Prosecutor) for the respondent

Parties : Siti Hajar bte Abdullah — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Disqualification order – Accused permitting use of car without valid third-party insurance – Whether any "special reasons" warranting exemption from mandatory disqualification – Section 3(3) Motor Vehicles (Third-Party Risks & Compensation) Act (Cap 189, 2000 Rev Ed)

14 February 2006

Yong Pung How CJ:

1 This was an appeal against sentence, in particular, a disqualification order imposed for violating the requirement of third-party risks insurance under the Motor Vehicles (Third-Party Risks & Compensation) Act (Cap 189, 2000 Rev Ed) ("the MVA"). The appellant, a 23-year-old female, was the registered owner of an "off-peak" car SFJ 9025 X ("the car") at all material times. The relevant charge against the appellant read:

> That you, on 27.10.2004, at about 4.50pm at Jalan Anak Bukit Slip Road into Pan- Island Expressway, did permit the use of the motor car no. SFJ 9025 X when there was not in force in relation to the user of the said vehicle such a policy of insurance in respect of third party risks as complies with the requirement of the Motor Vehicles (Third Party Risks & Compensation) Act, Chapter 189 and you have thereby committed an offence under section 3(1) and punishable under section 3(2) of the said Act, Chapter 189.

The appellant pleaded guilty and was sentenced by the district judge to a $400 fine, with two days' imprisonment in default, and to one year's disqualification from driving all classes of vehicles ("the disqualification order"). The appellant also pleaded guilty to and was convicted of two other charges of allowing her "off-peak" car to be driven without a valid supplementary licence and allowing a person without a licence to drive her car.

2 In the present appeal, the appellant sought a reduction of the period of disqualification. Her contentions were directed solely against the disqualification order; none of the other sentences were in dispute before this court. After examining the evidence before me, I dismissed the appeal and now give my reasons in writing.

The facts

3 The offences here arose from the use of the car by the appellant's cousin, one Muhammad Yazid bin Ahmad Mashon ("Yazid"), on 27 October 2004. On that day, Yazid was stopped for a routine check by the complainant, one Station Inspector Sim Thiam Hee ("Sim"), an officer with the Land Transport Authority. Sim discovered that the supplementary licence for the car was not valid as the relevant month and day tabs had been torn and folded back instead of being completely torn out as

they were supposed to be. Further investigation also revealed that Yazid's usage of the car was not covered by any insurance policy because he did not have a valid driving licence.

4 Under the MVA, the sentencing regime for motor vehicle insurance offences is premised on the concept of mandatory disqualification tempered with judicial discretion to grant exemptions. Section 3(1) of the MVA prohibits any person from using or permitting another person to use a motor vehicle if such usage is not covered by third-party risks insurance. Section 3(3) of the MVA further prescribes that a person convicted of such an offence "*shall …* be disqualified" from holding or obtaining a driving licence for a *minimum period of 12 months* from the date of the conviction "unless the court for *special reasons* thinks fit to order otherwise" [emphases added]. The effect of s 3(3) is that an accused convicted under s 3(1) of the MVA will automatically be disqualified from driving unless there are "special reasons" to order otherwise.

5 In her written mitigation plea to the district judge, the appellant stated that her omissions to ensure that Yazid had a valid licence and that there was a valid supplementary licence were due in part to the fact that she was unwell when the incident took place. On the day of the offence, she had been in school taking an examination. As her "cramps were coming again" and she had started vomiting, she called Yazid after her examination and asked him to come and drive her home. The appellant expressed her remorse and pleaded for the district judge to show leniency because she was a first-time offender and needed her licence to drive her elderly grandparents to prayers on evenings and weekends.

6 According to the district judge, disqualification was mandatory as there were no "special reasons" under s 3(3) of the MVA: *PP v Siti Hajar bte Abdullah* [2005] SGDC 220 at [12] – [15]. The fact that the appellant was unwell when the offence was committed was not a "special reason" since she could have taken other modes of transport or sought the assistance of someone with a valid driving licence. In addition, the appellant's responsibilities to ferry her grandparents constituted "circumstance[s] peculiar to the offender", which, according to case law, could not amount to "special reasons" falling within the exception. Though disqualification was mandatory, in light of the above facts, the district judge was of the view (at [12]) that disqualification for the mandatory *minimum* period of 12 months was appropriate.

The appeal

7 The central issue arising here was whether the appellant had established the existence of "special reasons" within the meaning of s 3(3) of the MVA so as to dispense with the prescribed mandatory disqualification. It is trite law that a "special reason" within the meaning of s 3(3) of the MVA is a "mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, … which the court ought properly to take into consideration when imposing punishment": *Whittall v Kirby* [1947] 1 KB 194 ("*Whittall*") at 201, affirmed locally in *MV Balakrishnan v PP* [1998] 3 SLR 586 at [6] and [13].

8 The test for "special reasons" is a stringent one and is only satisfied in exceptional circumstances. The MVA must be construed strictly in order to preserve its policy of protecting road users: *Chua Chye Tiong v PP* [2004] 1 SLR 22 ("*Chua Chye Tiong*") at [53]. A less restrictive approach would render the legislative stipulation of mandatory disqualification nugatory and defeat its underlying objectives. In *Stewart Ashley James v PP* [1996] 3 SLR 426 at 429, [17], this court held that:

> Section 3(2) [the present s 3(3) of the MVA] is primarily concerned with ensuring that persons using the roads take adequate steps to ensure that compensation would be available to persons

involved in accidents with them. *A contravention of s 3(1) is a serious offence. … [I]t is clear that a strict prophylactic approach is necessary to ensure that there is adequate provision for compensation*. [emphasis added]

In the final analysis, due regard should be accorded to the fact that the discretion conferred on the courts to grant relief from disqualification is a limited one: *Re Kanapathipillai* [1960] MLJ 243 ("*Kanapathipillai*") at 243.

9 Before this court, the appellant presented a number of reasons which, in her view, warranted a reduction of the period of disqualification imposed by the district judge. After hearing the appellant, it was my view that none of these reasons amounted to "special reasons" within the meaning of the MVA. The overarching approach delineated above, as applied to the present facts, unequivocally mandated the imposition of the disqualification order. The purported justifications forwarded by the appellant were facts characteristic of many offences under s 3(1) of the MVA. To allow these unexceptional circumstances to displace the application of s 3(3) would severely handicap the efficacy of the mandatory disqualification regime in deterring would-be offenders of the MVA.

The appellant's need for medical attention

10 The first ground advanced by the appellant was the purported fact that she had been unwell on the day the offence took place and that asking Yazid to drive her was the only feasible means of getting to a doctor. According to the appellant, taking the bus was "not an option" as she was "barely sober" and thus required the assistance of someone to fetch her to the doctor. In addition, she knew from previous experience that it would have been extremely difficult to hail a taxi at that time. Finally, she was unable to seek assistance from her fellow course mates taking the examination since they were still in the examination hall, the appellant having left the examination early due to her illness. The rest of the school was almost vacant as it was the school holidays and the examination period.

11 In my view, the factual matrix depicted by the appellant was insufficiently pressing to amount to a "special reason" under s 3(3) of the MVA. In *PP v Mohd Isa* [1963] MLJ 135 ("*Mohd Isa*") at 136, Thomson CJ gave, as an example of a "special reason", a situation where "it is *urgently necessary* to take a sick person to hospital and the *only conveyance available* is a motor vehicle whose insurance has happened to run out" [emphasis added]. The present facts fell short of such a scenario on two counts.

12 First, the appellant did not produce a scintilla of evidence to support her need for *immediate* medical assistance; she did not adduce any medical certificates or doctors' reports to prove the severity of the affliction she was suffering from on the date of the offence. Without any details of her condition, it was impossible for me to determine if she indeed required medical attention urgently.

13 Second, and more importantly, as was rightly observed by the learned district judge, the appellant had not shown that she did not have any other viable modes of transport to bring her to a doctor. An emergency cannot be a "special reason" under s 3(3) of the MVA unless the *only* reasonable option was to use a vehicle without valid third-party risks insurance. In *Sivakumar s/o Rajoo v PP* [2002] 2 SLR 73 ("*Sivakumar*") at [17], this court held:

> Before an emergency is capable of amounting to a special reason under law, a *crucial prerequisite* is for the offender to show that there was *no alternative* but for him to drive, and that he had *explored every reasonable alternative* before driving. [emphasis added]

Though *Sivakumar* was a drink-driving case involving the breach of traffic regulations under the Road Traffic Act (Cap 276, 1997 Rev Ed) ("the RTA"), the above *dictum* is equally relevant to motor vehicle insurance violations. As rightly observed in *Whittall* ([7] *supra*) at 202 in relation to the English equivalents of the MVA and the RTA, the same considerations apply under both regimes when determining whether there are "special reasons" not to impose disqualification.

14 The appellant's explanations regarding the impracticality of alternative means of transportation were unconvincing. To begin with, whilst traffic conditions may have made it difficult to *hail* a taxi at that time, she could easily have *called* for one. It appeared from the Petition of Appeal that the appellant would have required the taxi at 4.30pm on the relevant day. This would have been before the office peak hour and it was therefore unlikely that she would have encountered any problems in booking a taxi. There was nothing to suggest that the appellant even attempted to do so before deciding to call Yazid.

15 Further, the appellant's assertion that the school was "almost vacant" was not, in itself, sufficient to justify her decision to enlist Yazid's assistance. As evidenced by the appellant's Written Submission tendered to this court during the hearing, her decision not to seek assistance from one of the few students that was present stemmed from her reluctance to "trust a stranger to drive [her] car". Further, even though the appellant was unable to turn to her course mates who were still taking the examination, she could easily have approached the invigilators present.

16 These considerations convinced me that the appellant's need for medical assistance at the time of the offence did not qualify as a "special reason" excusing her from disqualification under s 3(3) of the MVA. Even if the appellant did in fact require immediate medical attention, this did not give her a *carte blanche* to indiscriminately select the means of getting to a doctor. In the circumstances, she made the inexcusable error of seeking assistance from Yazid when she had other reasonable options at her disposal.

The mistaken belief that Yazid had a licence

17 The second ground upon which the appellant sought to base her appeal was her mistaken impression that Yazid had a valid licence, and therefore that he was covered by an existing insurance policy. In this regard, the appellant advanced two conflicting versions of events before this court to support her plea of ignorance. In her Petition of Appeal, she claimed that she recalled that Yazid had a valid licence and relied on the fact that Yazid neither declined her request to come and fetch her, nor declared that he *did not have* a valid licence when so requested. In contrast, in her written statement subsequently tendered to this court during the hearing of the appeal, the appellant alleged that she had in fact asked Yazid and received his confirmation that he *had* a valid licence before allowing him to drive her car.

18 I found the appellant's shift in position to be wholly unconvincing. If Yazid had indeed positively affirmed that he had a valid licence, it was wholly untenable that the appellant would have omitted to mention it until such a late stage in the proceedings. Further, the appellant's earlier version of events forwarded in the Petition of Appeal, which centred on Yazid's *omission* to mention his lack of a licence, rather than on his *express confirmation* that he had such a licence, was irreconcilable with her subsequent narration during the hearing before me. I therefore found the appellant's sudden allegation that she took *positive* steps to ascertain that Yazid had a valid licence to be no more than a last-ditch attempt at *ex post facto* justification to avoid the consequences dictated by the MVA. Accordingly, this appeal fell to be treated on the basis that the appellant's version of events stated in the Petition of Appeal, *ie*, that she had relied on the fact that Yazid had not declined her request nor declared that he did not have a valid licence, was the accurate one.

19 In light of the jurisprudence in this area, I was of the considered opinion that this reason was not a "special reason" justifying non-imposition of disqualification. An accused person's mistaken belief that the car was validly insured can only be a "special reason" if it was *both* innocent as well as based on reasonable grounds: *Sriekaran s/o Thanka Samy v PP* [1998] 3 SLR 402 ("*Sriekaran*") at [3]. For instance, in *Knowler v Rennison* [1947] 1 KB 488 ("*Knowler*"), the accused was convicted under the English equivalent of s 3(1) of the MVA for letting his friend drive his motorcycle without valid third-party risks insurance coverage. Lord Goddard CJ held (at 495) that the accused's belief that his friend had an effective policy in force was not a "special reason" since the accused "never even asked [his friend] the question".

20 The appellant adduced no evidence to support the reasonableness of her belief that Yazid had a valid licence and therefore the requisite insurance coverage. In fact, her belief could hardly be said to be reasonable since it stemmed from her omission to seek Yazid's confirmation that he had a licence, though it would have required minimal effort to do so. This precluded her mistaken belief, albeit an innocent one, from being a "special reason" not to impose the mandatory disqualification order. A less discerning approach would be "an abuse of the legislature's leniency accorded to cases where genuine special reasons exist": *Sriekaran* ([19] *supra*) at [4].

The appellant's need to hold a driving licence

21 The third and final ground which the appellant relied upon to justify exemption from disqualification was her need to ferry her elderly grandparents for religious and medical purposes. It is trite law that a "special reason" under s 3(3) of the MVA must be one which relates to the commission of the offence and not to the circumstance of the offender: see, *eg*, *Kanapathipillai* ([8] *supra*) at 243; *Chua Chye Tiong* ([8] *supra*) at [59]. The appellant's need to hold a driving licence so that she could chauffeur her grandparents clearly fell within the latter category of being a circumstance referable to her particular situation and it therefore could not constitute a "special reason".

22 In her Petition of Appeal, the appellant referred to the inconvenience and expense that the disqualification order had caused her thus far. It is clear from the authorities that the fact that disqualification is likely to cause hardship, whether financial or otherwise, is insufficient to dispense with mandatory disqualification: *Knowler* ([19] *supra*) at 496, affirmed in *Re Muniandy* [1954] MLJ 168. For instance, the fact that an accused would be deprived of his livelihood by the disqualification order is not a "special reason": *Chua Chye Tiong* ([8] *supra*) at [63]. This reasoning applies *a fortiori* to the appellant, who, far from being deprived of her livelihood, would only be inconvenienced and subject to greater expense by having to ferry her grandparents via taxi.

23 The case of *Mohd Isa* ([11] *supra*) was instructive in this respect. It was held there (at 136) that the fact that the offender was a poor man who needed his motorcycle to get to work was not a "special reason" justifying exemption from mandatory disqualification. In a similar vein, the hardship experienced by the appellant in having to find alternative modes of transport to ferry her grandparents, whilst unfortunate, was insufficient to qualify as a "special reason" under s 3(3) of the MVA.

Conclusion

24 In light of the foregoing, I found that the appellant had not shown any "special reasons" within the meaning of s 3(3) of the MVA. Accordingly, a minimum period of one year's disqualification was mandatory under the MVA. As the duration of disqualification imposed by the district judge was already the mandatory minimum period, the appeal for a reduction in the period of disqualification was

therefore devoid of merit. To permit the present factors to have the wholly exculpatory effect of exempting the appellant from disqualification would render illusory the mandatory nature of s 3(3) of the MVA. I accordingly upheld the disqualification order and dismissed the appeal.