Lim Hong Eng v Public Prosecutor
[2009] SGHC 92

Case Number : MA 187/2008

Decision Date : 17 April 2009

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Subhas Anandan and Sunil Sudheesan (KhattarWong) for the appellant; Francis Ng (Attorney-General's Chambers) for the respondent

Parties : Lim Hong Eng — Public Prosecutor

Criminal Law – Offences – Causing death by rash or negligent act – Difference between rash and negligent act – Road traffic accident – Accused beat red light negligently – Section 338 Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Charge – Alteration – Charge of causing death by rash or negligent act amended to charge of dangerous driving – No prejudice to accused – Case would have proceeded in same manner if charge of dangerous driving proceeded with at outset – Section 338 Penal Code (Cap 224, 1985 Rev Ed) – Section 64(1) Road Traffic Act (Cap 276, 2004 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Appeals – Traffic offence – Dangerous driving causing death – Accused beat red light negligently – Long custodial sentence for traffic offence only appropriate when offender acted rashly or recklessly – Section 64(1) Road Traffic Act (Cap 276, 2004 Rev Ed)

Road Traffic – Offences – Dangerous driving – Irrelevance of intention to drive dangerously – Subjective intention or knowledge of accused relevant only for purposes of sentencing – Road traffic accident – Accused beat red light – Section 66(1) Road Traffic Act (Cap 276, 2004 Rev Ed)

17 April 2009 Judgment reserved.

Choo Han Teck J:

1 The appellant was convicted of one charge of causing death by dangerous driving, an offence punishable under s 66(1) of the Road Traffic Act (Cap 276, 2004 Rev Ed) with imprisonment for a term not exceeding five years, and one charge of causing grievous hurt by doing a rash act, an offence punishable under s 338 of the Penal Code (Cap 224, 1985 Rev Ed) with imprisonment for a term which may extend to two years, or a fine of up to $1,000, or both. The District Judge sentenced the appellant to 18 months' imprisonment and disqualified her from holding or obtaining a driving licence for all classes of vehicles with effect from the date of release from prison for the first charge, that is, the charge for causing death by dangerous driving. She was sentenced to six months' imprisonment for the second charge, that is, the charge for causing grievous hurt by doing a rash act. Both terms of imprisonment were ordered to run concurrently, making her total term of imprisonment 18 months. The Appellant has appealed against the conviction and sentence of both charges.

2 The charges against the appellant concerned a road accident which resulted in injury to a motorcyclist and the death of his pillion rider. The accident occurred at the junction of Whitley Road and Dunearn Road ("the Junction") on Christmas Eve in 2006. At the material time, about 3.48 pm, the appellant was driving her car along Whitley Road in the direction of Orchard Road, and had intended to make a right turn into Bukit Timah Road and then a U-Turn to Raffles Town Club after the Junction. As her car crossed into the Junction she collided with a motorcycle that was travelling along

Dunearn Road towards Newton Circus. As a result of the collision, the motorcyclist and the pillion were flung off the motorcycle. The motorcyclist suffered a compound fracture to his left leg while the pillion subsequently succumbed to her injuries and died.

3 The appellant submitted that the District Judge had erred in fact by placing undue weight on the evidence of one Lim Kian Seng ("Lim"), a taxi driver at the scene at the material time. Lim, a prosecution witness, testified that the motorcyclist moved forward into the Junction when the traffic light turned green in his favour. The obvious implication was that the appellant drove through the Junction against the red light (NE pp 20–21). The appellant also submitted that the District Judge had erred by failing to give due credit to the appellant's consistent evidence that, *inter alia*, she did not know that the traffic light was not in her favour, and finding that the appellant intentionally drove in a dangerous manner. On the evidence, I see no reason to impugn the finding that the appellant drove through the Junction when the traffic lights were not in her favour. Having regard to the overall evidence, and in particular, the evidence of Lim, whose testimony was accepted by the trial judge, I am of the view that this finding of fact cannot be challenged. As regards the finding that the appellant drove through the Junction intentionally when the traffic lights were not in her favour, I am of the view that this finding was irrelevant so far as guilt was concerned. The offence of dangerous driving is not an offence that depended on an intention to drive dangerously. Whether the accused was driving dangerously is a question of fact to be determined by the court. The subjective intention or knowledge of the accused is relevant only for the purposes of sentencing. Thus, in *Lim Chin Poh v PP* [1969-1971] SLR 247, Choor Singh J held (at [10] and [13]):

> 10 … In my opinion the expression "driving in a manner which is dangerous to the public" indicates some dangerous act or manoeuvre on the part of the driver of a vehicle, *eg* overtaking a vehicle on the wrong side of it, or overtaking in the face of oncoming traffic, or overtaking when unable to see oncoming traffic, or crossing a junction against traffic light, and so on. There must be some positive act on the part of the driver which is dangerous having regard to all the circumstances.
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> …
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> 13 … Careless driving may well be dangerous though all careless driving are not necessarily dangerous. This court is not going to attempt to lay down what is or is not dangerous driving. The question in these cases always is: "Did the conduct of the accused amount to dangerous driving?" And to answer this question the court must consider whether or not the act or manoeuvre of the accused, viewed objectively, involved danger to other road users in the prevailing circumstances?

4 The state of mind of the appellant at the time, however, was relevant where the question was whether the offence of causing grievous hurt by a rash act had been made out. A rash act should be distinguished from a negligent act by the state of mind of the accused, as would be demonstrated in the following cases that were cited by M P H Rubin JC in *PP v Teo Poh Leng* [1992] 1 SLR 15. In *Nidamarti Nagabhushanam* (1872) 7 MHC 119, Holloway J stated (at 120):

> 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 (luxuria). 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 that if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection.

Similarly, in *Empress of India v Idu Beg* (1881) ILR 3 All 776, Straight J stated (at 779–780):

> [C]riminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. 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.

Likewise, in the case of *Bhalchandra Waman Pathe v The State of Maharashtra* (1969) 71 Bombay LR 634 (SC), it was held (at 637):

> 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.

5 Rashness thus implies a disregard to the possibility of injury or death. The appellant, in the present case, did not appear to have shown such disregard. It appears from the evidence that she was not aware that the traffic lights had turned red. This was a finding of fact made by the District Judge, who held that the appellant did not intend to beat the red light, and had entered the Junction unaware not only of the fact that the lights were red against her but also that the motorcycle was passing through the Junction (Judgment at [44]). The court's finding was supported by Lim's evidence that the appellant's vehicle moved at a constant speed without any evasive action being taken (NE at p 22). In fact, the prosecution, in its submissions below, conceded (NE at p 150):

> Position of the prosecution is clear. *Prosecution is not trying to prove that the accused was speeding and neither is the prosecution trying to prove that the accused beat the red light intentionally knowing that the red light was clearly against her but yet chose to speed crossing the junction*.
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> *Prosecution's case is that the unfortunate accident happened because the accused failed to keep a proper lookout*. [emphasis added]

6 In my view, the appellant's conduct was more negligent than rash. The prosecution's concession in its submissions below that the appellant's conduct was one of omission (see the previous paragraph) further reinforces this view. The prosecution, in its submissions to this court, stated that if the appellant had not acted rashly, the charge of causing grievous hurt by doing a rash act should be amended to one of dangerous driving *simpliciter* under s 64(1) of the Road Traffic Act,

which is an offence punishable with imprisonment for a term not exceeding 12 months, or a fine of up to $3,000, or both. In my view, there is no prejudice to the appellant if the charge was amended as the prosecution suggested, since the case would have proceeded in the same manner if a charge of dangerous driving had been proceeded with from the outset. As such, I would amend the second charge to a charge of dangerous driving under s 64(1) of the Road Traffic Act and convict the appellant accordingly.

7 As I mentioned, the state of mind of the appellant would have an impact on her culpability, and thereby, her punishment. In the present case, the prosecution conceded that the appellant did not intentionally disregard the red light at the Junction. It seemed clear from the evidence and the trial judge's findings that the nature of the appellant's culpability lay in her failure to keep a proper lookout. That, in my view, did not merit a harsh custodial sentence. A long custodial sentence for a traffic offence is appropriate when the offender endangered the lives of others in a rash or reckless manner (such as driving at an excessive speed) and not when her conduct was merely negligent.

8 Having regard to the facts and circumstances, I am of the view that a sentence of one day's imprisonment, as well as a long period of disqualification from holding or obtaining a driving licence, would be an adequate punishment in respect of the first charge.

9 For the reasons above, I dismiss the appellant's appeal in regard to her conviction for dangerous driving in the first charge but allow her appeal on sentence, and reduce the sentence to one day's imprisonment. The disqualification order, namely, a disqualification from holding or obtaining a driving licence for all classes of vehicles with effect from the date of release from prison, is to remain. As for the second charge, I amend the charge of causing grievous hurt by doing a rash act to one of dangerous driving and convict the appellant accordingly. The sentence is varied to a fine of $2,000 with two months' imprisonment in default of payment. The sentence of one day's imprisonment will be served today.