Public Prosecutor v Lee Meng Soon
[2007] SGDC 149

Case Number : DAC 2305/2007, 2306/2007, 2308/2007, 2309/2007, MA 91/2007

Decision Date : 16 May 2007

Tribunal/Court : District Court

Coram : Terence Chua Seng Leng

Counsel Name(s) : DPP Jason Chan (AGC) for the Prosecution; Loke Vi Ming with Derek Kang for the accused

Parties : Public Prosecutor — Lee Meng Soon

16 May 2007

District Judge Terence Chua

1 The accused, Lee Meng Soon ("Lee" or "the defendant"), pleaded guilty to four charges under the Road Traffic Act ("the Act"). The charges were read to him in English. He understood the nature and consequences of his plea and admitted to the Statement of Facts as laid out by the Prosecution without qualification. I found him guilty of the charges and convicted him accordingly. The Prosecution then submitted that Lee had no previous antecedents. Counsel then submitted a written plea in mitigation.

2 In sentencing the defendant, I felt it appropriate to give oral grounds for the decision. There being an appeal against my decision and there not being a need to add to my own oral grounds, I thus reproduce the same, in written form.

Introduction

3 "The following are oral grounds for my decision in this case. They do not necessarily constitute all the grounds for my decision and may be added to or elaborated upon should the need arise.

4 Counsel for the defendant has submitted quite a substantial plea in mitigation, which I have previously read. In the plea, Counsel has made a number of submissions as to what the appropriate sentence should be concerning these charges, and I would like to take the opportunity to comment on some of those submissions. I do not intend to comment much on the Section 65 offence, save to agree that a fine is appropriate for that offence, but will concentrate primarily on the charges under Section 67 and Section 84.

Section 67(1)(b)

5 Driving while over the prescribed limit under Section 67(1)(b) is punishable, as a first offence, with a fine up to $5,000 or up to 6 months' imprisonment and, in addition, disqualification for a term not less than 12 months unless the Court for special reasons thinks otherwise. For a first offender, usually a fine and disqualification are imposed.

6 Counsel submits that Lee had not set out to deliberately drink and drive. To quote from paragraph 30 of the plea in mitigation: "he took precautions as he anticipated he would drink that night. His mistake lay in the misapprehension that the alcohol concentration in his body was below the prescribed limit when he drove that night. The walk back from International Building, the lengthy rest he had at the apartment was to Mr Lee a mental break between the drinks and his drive to Kitchener Road. This takes it out of the normal circumstances under which drink driving is concerned."

7 Unfortunately, the misapprehension of one's alcohol level is all too common, or "normal" a circumstance in cases of drink driving. In my time here in Court 21 I have heard numerous pleas in mitigation that include the assertion that a defendant felt that they were in full control of their faculties. The fact that a defendant rested after drinks and thus believed they were below the limit is also a common refrain. However, it is not a requirement for the charge that an accused not be in control of his faculties or his vehicle. The charge under 67(1)(b) merely requires that the level of alcohol in a defendant's system be over the prescribed limit, and in this case, it was 77 microgrammes, more than twice the prescribed limit of 35 microgrammes of alcohol per 100 millilitres of breath.

8 It is perhaps not generally known to the public that the rate of alcohol absorption varies from individual to individual and is not static but dynamic, relying on a myriad of variables including gender, weight, metabolism, amount of food consumed, the blood-breath ratio, among others. A dynamic rate of alcohol absorption also means that the level of alcohol in one's system can actually be on the upswing for a period following the cessation of consumption before dipping again. The important thing to note is that all this means a person will not be able to tell, without recourse to scientific equipment and expert examination and opinion, just whether they are over or under the limit within the span of a few hours after consuming alcohol. Equally, since these variables and rates are not generally known, there is no reasonable basis to believe that a person can calculate this mentally.

9 It is therefore never safe to conclude that, just because a certain number of hours have elapsed, or that because one feels in full control of their faculties and movement, that one is below the prescribed limit. There is no magic hour or magic number of drinks, and to claim that anyone can do this is self-deluding or naïve at best and disingenuous or cynical at worst. Public education by the Traffic Police has never centred on claims that a certain number of drinks is safe, or that a certain number of hours is safe. The simple lesson that the Traffic Police have tried to impress on the public time and again is that if you drink, you should not drive, and if you do, you take the risk upon yourself.

10 Anyone who has read the newspapers in recent days would notice that there has been a spate of road accidents, several of them resulting in injury, and in one case, a fatality. The fatal accident was also a hit and run, and the suspect was apparently above the prescribed limit as well. The Straits Times reported on 8 May that two others were arrested in separate incidents on Sunday and Tuesday, also for drink driving accidents. To draw further from the Straits Times on the rising number of drink driving cases: between January and March this year, 914 motorists were arrested for drink driving, of which 141 were involved in accidents. In the same period for 2006, 753 people were arrested for drink driving, of which 134 were involved in accidents. Drunken drivers were responsible for one in four fatal accidents in 2006, killing 25 people.

11 Total accident numbers are alarming. Last year, there were 7,499 road traffic accidents. Some 10,000 were injured and 190 people were killed. Singapore's accident rate is higher than cities like Tokyo and states like New South Wales. In terms of the number of people killed or injured in drink driving related accidents, overall figures provided by the Traffic Police show a rise of 48.6% between 2005 and 2006, from 243 in 2005 to 361 in 2006. Breaking it down, there were 5 more people killed, 2 more people seriously injured and 111 more people slightly injured in 2006 over 2005. I refer to these numbers not to say that the defendant should be made an example of, but to emphasise, as I have often done in similar cases, that the Court, while maintaining proportionality in the severity of sentences meted out, must both impress upon the defendant and send a message to the public that such risks are not acceptable and will continue to be sternly treated.

12 That being said, of the charges that the defendant faces in this case, the offence of drink driving, while still very serious, is not the most serious one, and I feel that given the circumstances, a fine and disqualification is sufficient for this charge.

Section 84

13 The Section 84, or "hit and run" offences, with the exception of the charge under Secton 84(3), are punishable under Section 131(2) of the Act, which provides, for a first offender, a fine not exceeding $1,000 or imprisonment for a term not exceeding 3 months. However, because serious injury was caused, Section 84(3) attracts an enhanced penalty under Section 84(8) of a fine not exceeding $3,000 or imprisonment for a term not exceeding 12 months. Disqualification from driving vehicles of all classes for a term can also be imposed. For an offence punishable under Section 84(8), the Court usually imposes a custodial term.

14 I restated the rationale for such a serious view of the offence in my decision in Koh Liang Choon [2006] SGDC 234, and much of what I say now is taken from that decision. The rationale was stated in PP v Masrani bin Hassan (DAC11023/2001 & Ors), where the Senior District Judge noted at paragraph 10 that:

> "The act of hit and run is not the act of a decent and responsible human being. The offender has a moral obligation to stop after the accident and assist the victim. Such assistance can make a difference between life and death. Fleeing from the scene after knocking down a person is to say the least, a cowardly and irresponsible act."

15 Parliament increased the maximum punishment prescribed by law for hit and run offences where serious injury or death is caused in 1996. During the second reading of the Road Traffic (Amendment) Bill, the Minister of Home Affairs observed:

> "The number of hit and run accidents has been rising over the years from two in 1991 to eight and seven in 1994 and 1995 respectively. We take a serious view of such accidents because fleeing from the scene after knocking down a person is an irresponsible act. The driver has a moral obligation to stop after an accident to assist the victim. It can make a difference between life and death. … We need to address this problem urgently, firstly, because fleeing from the scene of an accident is an irresponsible act and, secondly, because it is difficult to trace such culprits, and, finally, because the number of deaths in such accidents has been on the rise."

16 DJ Christopher Goh, in the unreported case of PP v Tan Hin Tat MA 4/2002/01, stated that sentences imposed by the Court must aim to promote a sense of responsibility in the accused and all like-minded offenders. The sentence imposed must seek to discourage like-minded offenders from fleeing the scene of an accident, especially in cases where injury has been caused. Since such assistance can prove to be crucial for the victim, such "cowardly and irresponsible" behaviour on the road must be discouraged.

17 Numbers from the Traffic Police also indicate that the number of fatal and injury cases arising from hit and run accidents are on the rise. There was an increase in such cases from 207 in 2005 to 302 in 2006, an overall increase of 45.9%. Breaking it down as before, there was 1 more fatal accident, 7 more serious accidents and 87 more slight accidents between the two years. I note specifically that there were 2 serious accident cases in 2005 and 9 serious accident cases in 2006, a dramatic 350% increase for that category.

18 These considerations lead me to conclude, as I have in other hit and run cases and continue to do so, is that where serious injury is caused, the starting point for the Court must be a custodial term and a period of disqualification. Of course, there are always exceptions, and the Court must be flexible enough to consider and determine cases where the circumstances are such that a fine rather than a custodial sentence is appropriate. However, such a departure from the standard sentence should be justifiable and an exception rather than the norm.

19 Counsel submits in the plea in mitigation that such exceptional cases include where there is an objective and subjective assessment that "due to the minor nature of the accident (of which minimal impact is a significant consideration), there was no basis to think that there was endangerment of life or that serious injury had occurred." Counsel contrasts this with Koh Liang Choon, where the appellant in that case knew he had knocked down a pedestrian.

20 I find this submission surprising. The statement of facts indicates that Lee saw the accident scene. Going by his plea in mitigation, Lee knew that had he collided onto something, perhaps a motorcycle. Unless the motorcycle was ridden by a phantom, there was every possibility that some injury could have resulted to a rider or riders, particularly in a car to motorcycle collision. At the very least, there would have been some appreciation that damage to the vehicle was a possibility. Indeed, if the impact was as minimal as counsel suggests, why was the defendant dazed and in shock from it? Simply because

he had never been in a car accident before? But then that goes to show his consciousness that there had indeed been an accident. And after all, he was supposedly in control of his faculties and movements, and managed to move his car a few hundred metres away.

21 Counsel goes on to state that "to our client, it would not have seemed that it was a matter of life and death for the motorcyclist and pillion, or that they were likely to have suffered serious injuries." I also find this submission surprising. While obviously one is more culpable if a person fails to render reasonable assistance while knowing for a fact that serious injury has been caused, it does not follow that ignorance of what injuries there are mitigates a person's culpability for not stopping to render such assistance when he knows an accident has occurred. The submission that "the greater the perceived injury, the greater the moral obligation to render assistance" is too simplistic, particularly in a case where no effort was made towards determining what the extent of the injury was. Section 84 imposes an active duty on a person to *stop and check in any case*, not just if they think the injury is serious. Ignorance, in this case, is not and cannot be bliss.

22 Counsel also submits the case of Tan Siong Chin where the defendant Tan was sentenced to a fine of $1,000 and disqualified for 8 months for failure to render assistance in an accident involving a lorry and a motorcycle. However, Tan Siong Chin's charge was not framed under the serious injury limb, but was punishable with a maximum of $1,000 fine or 3 months' imprisonment or both – a fact that I pointed out when distinguishing Terence Yap Giau Beng v PP MA371/96/01 in Koh Liang Choon. Counsel also cites the 2nd edition of Sentencing Practice in the Subordinate Courts and quotes The Queen v Chau Tai [1999] 1 HKSLR 341 in submitting that "fortune (or misfortune) should not play that significant a role in determining a road traffic offender's culpability." That may be generally true, but in zeroing in on the criterion of serious injury in the enhanced punishment under Section 84(8), Parliament was signalling its intention that the consequences of serious injury or death should definitely play a role in offences of this nature.

23 Counsel also submits that the defendant was in shock and not thinking straight. "Had he the presence of mind to do so," counsel states, "he would certainly have rendered assistance to the motorcyclist and pillion in this case." The fact remains, however, he did not. And as I have pointed out, he continued to have the presence of mind, after a minor collision after all, to move the car a few hundred metres. To paraphrase from my decision in Koh Liang Choon, the collision was an accident. Not stopping was a choice.

24 Ultimately, none of these factors persuade me that the circumstances in this case are anywhere near exceptional. Indeed, these circumstances are, as I noted in my comments about Section 67, sadly all too common in cases of this nature. I am therefore of the view that a custodial sentence for Section 84(3) punishable under Section 84(8) is appropriate, and should not be departed from in this case in favour of a fine.

General mitigating factors

25 I would emphasise that my decision as to the appropriate sentence also takes into account some of the general mitigating factors advanced by counsel in the plea in mitigation. Counsel submits that the defendant is deeply remorseful for his actions and has shown concern about the victims in this case. He also points out the various "precautions" that Lee took, by using taxis to commute earlier in the evening, walking back to the apartment at Cuscaden Road and then waiting for a few hours before driving again. Counsel submits that the walk and rest constitute an intervening event that takes it out of the ordinary into the exceptional. While Lee concedes that he was at fault for failing to ascertain how quickly he could resume driving, counsel submits that he does not deserve to have the book thrown at him for that mistake.

26 I am afraid that I am unable to agree that these precautions are exceptional. As I have said, there is no way that anyone can tell what their individual alcohol absorption rate is and feeling sober is no guarantee. Again, I have heard numerous cases where people have rested between drinks and driving, or said they have always taken public transport, and that this particular incident was an aberration. The fact remains that knowing full well that driving while intoxicated was against the law, and having taken such precautions, Lee still took the risk and chose to drive. While I do not find anything particularly aggravating in the way the offence of drink driving was committed, neither am I giving this particular submission any exceptional weight in determining the appropriate sentence.

27 Counsel also notes that Lee has compensated the victims for their injuries, sold his car at a loss and has imposed on himself an indefinite driving ban since the accident, which I take as evidence of his remorse. I also note the testimonials annexed to the plea in mitigation and his work for charity in the last few years as evidence of his good character. I should note,

however, that the weight given to compensation as a mitigating factor depends on the overall circumstances of each case – civil liability for the incident is a completely separate matter from criminal liability, so saying that the amputation of a toe is only a permanent 3% loss of earnings is not entirely pertinent when serious injury under the Road Traffic Act is already defined. While indicative of remorse and good character, compensation must be taken in context and not given more weight than it deserves, lest the impression be given that a hit and run driver can escape the more serious consequences of his actions by "paying off" the victims. Similarly, Lee's fame plays no part in my consideration of the appropriate sentences.

28 The sad fact is that, as far as drink driving and hit and run cases go, this case is almost entirely average. Given the rising number of vehicles in Singapore and the blasé attitude that Singaporeans seem to take towards drink driving and other offences that contribute to accidents, like speeding or beating red lights, unless people start to take seriously the reality that there are grave consequences to their actions – not just personal consequences but to other people – accidents will continue to happen with alarming frequency. While the Courts can punish, to reduce the number of accidents needs the cooperation and consideration of everyone. As Professor Ho Peng Kee said just a fortnight ago at the United National Global road safety week and road safety outreach 2007 at Vivo City, we must "internalise and embrace a courteous and safety-first mindset… whether as driver, motorcyclist, bicyclist or pedestrian."

Sentence

29 Taking all these factors and others mentioned in the plea in mitigation into account, I am sentencing the defendant as follows:

(a) Section 67(1)(b) – $3,000 fine in default 15 days' imprisonment, and disqualified from holding or obtaining a license for all classes of vehicles for 2 years with effect from today

(b) Section 65(b) – $800 fine in default 4 days' imprisonment

(c) Section 84(3) punishable under Section 84(8) – 4 weeks' imprisonment and disqualified for all classes for 3 years from his date of release

(d) Section 84(4) – $700 fine in default 4 days' imprisonment."

30 Dissatisfied with the decision of the Court, the accused now appeals against the sentence in the third charge. The Prosecution is also appealing against the sentences imposed.

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