

Public Prosecutor v Lim Yong Han, Gabriel
[2010] SGDC 467

Case Number : DAC 34595-6/2010; Magistrate's Appeal No. 402/2010/01

Decision Date : 09 November 2010

Tribunal/Court : District Court

Coram : Low Wee Ping

Counsel Name(s) : Edward Ti (DPP) for the prosecution; Derek Kang (RODYK & DAVIDSON LLP) for the accused.

Parties : Public Prosecutor — Lim Yong Han, Gabriel

9 November 2010

District Judge Low Wee Ping:

The accused

- 1 The accused was Lim Yong Han, Gabriel. He was 21 years old. He was single. He was a property agent.
- 2 The accused was represented. His defence counsel was Mr. Derek Kang.

The 2 charges

- 3 On 18 October 2010, the prosecution preferred 2 charges (C1 and C2), against the accused.

DAC 34595/2010 (C1)

- 4 The first charge was as follows:-

"You, Lim Yong Han, Gabriel ... are charged that you, on the 27th day of December 2008, at about 1.53 a.m, along Braddell Road, Singapore, did cause the death of the rear seat passenger of motor-taxi SHC3121D, one **Tan Sheng Ping** (F/28), by doing a negligent act not amounting to culpable homicide while driving your motor-lorry GQ4303C, to wit, by encroaching onto the path of the said motor-taxi SHC3121D when unlawfully driving across two double white lines, in a left to right manner from the slip-road of Bishan Street 11 into Braddell Road, thus resulting in a collision between your motor-lorry GQ4303C and the said motor-taxi SHC3121D which was lawfully traveling within its own lane, and such collision resulting in an accident causing the death of the said **Tan Sheng Ping**, and you have thereby committed an offence punishable under Section 304A(b) of the Penal Code, Chapter 224".

DAC 34596/2010 (C2)

- 5 The second charge was as follows:-

"You, Lim Yong Han, Gabriel ... are charged that you, on the 27th day of December 2008, at about 1.53 a.m, along Braddell Road, Singapore, did cause hurt to one **Teo Cheng Liang** (M/41), driver of motor-taxi SHC3121D, by doing an act so negligently as to endanger human life while driving your motor-lorry GQ4303C, to wit, by encroaching onto the path of the said motor-taxi SHC3121D when unlawfully driving across two double white lines, in a left to right manner from the slip-road of Bishan Street 11 into Braddell Road, thus resulting in a collision between your motor-lorry GQ4303C and the said motor-taxi SHC3121D which was lawfully traveling within its own lane, and such collision resulting in an accident causing bodily injuries to the said **Teo Cheng Liang**, and you have thereby committed an offence punishable under Section 337(b) of the Penal Code, Chapter 224."

Plea of guilt

6 The accused pleaded guilty to the 2 charges.

Statement of facts

5 The prosecution tendered the following statement of facts (PS1):-

"1. The accused is one **Lim Yong Han, Gabriel** (M/21) ("accused"). He was the driver of motor-lorry GQ4303C at the time of the accident. Having obtained his Class 3 driving license on 25th April 2008, he had probation status at the time of the accident.

2. The deceased is one **Tan Sheng Ping** (F/28). She was the rear seat passenger of motor-taxi SHC3121D at the time of the accident.

3. The victim is one **Teo Cheng Liang** (M/41). He was the driver of motor-taxi SHC3121D at the time of the accident.

Facts relating to the charges

4. Investigations revealed that on 27th December 2008 at about 1.53 a.m., the accused was driving motor-lorry GQ4303C along Bishan Street 11 towards Braddell Road. Upon reaching the slip road of Bishan Street 11, exiting into Braddell Road, the accused unlawfully drove across a pair of double white lines on his right, thus encroaching onto the path of the motor-taxi SHC3121D, when switching lanes in a left to right manner from the slip road of Bishan Street 11 into Braddell road. The accused's act resulted in a collision between his motor-lorry and the motor-taxi SHC3121D which was lawfully traveling within its own lane on his right.

5. As a result of the accident, the deceased sustain severe head injuries and was conveyed to Tan Tock Seng Hospital by ambulance. She was pronounced dead on the same day at 3.27 a.m. The victim complained of pain on his right side of his head, left arm and left upper limb. He was conveyed to Tan Tock Seng Hospital by ambulance. The defendant was uninjured in the accident.

6. Principal Forensic Consultant Pathologist Dr. Wee Keng Poh performed autopsy on the deceased and certified the Cause of Death as **1(a) CONTUSED AND LACERATED BRAIN due to 1(b) FRACTURED SKULL**. This was an unnatural cause of death. The external and internal injuries were consistent with that sustained as a result of a road traffic accident.

8. The motor-taxi SHC3121D sustained the following damage following the accident:-

(1) Front left headlight and signal light smashed;

(2) Front left tyre punctured;

- (3) Front left rim dented;
- (4) Front bumper. Number plate, bonnet, left fender, left door, rear left door and rear left body panel crushed;
- (5) Front support core twisted and front windscreen cracked.

The motor-lorry GQ4303C was damaged as follows:-

- (1) Front right signal light smashed;
- (2) Front bumper, body panel plastic moulding, right door dented and grazed;
- (3) Front right side panel dented, right rim, left centre spare tyre and left side metal board grazed;
- (4) Rear right outer rim dented and grazed.

9. Both vehicles were brought to the Traffic Police department for mechanical inspection. However, no mechanical defect in either vehicle was detected.

10. The medical report of the victim dated 21 January 2009 revealed tenderness over his right temporal area and over his left arm. He was treated conservatively and subsequently discharged with analgesics and given outpatient medical certificates for 3 days.

11. At the material time, the weather was clear, road surface was dry, visibility was clear and flow of traffic was light.

12. The accused has thus committed one count of causing death punishable under section 304A(b) of the Penal Code, Chapter 224, and one count of negligently causing hurt punishable under section 337(b) of the Penal Code, Chapter 224. He is charged accordingly."

6 The accused admitted to the statement of facts.

Convicted

7 I found the accused guilty and convicted him on the 2 charges.

Antecedents

8 The accused did not have any criminal records.

Mitigation

9 Mr. Derek Kang tendered a written plea in mitigation (D1).

10 In summary, the mitigation was as follows:-

- a. The accused is a first-time offender.
- b. The accused was driving within the speed limit and otherwise observing the Road Traffic Rules.

c. The original 2 charges were based on "rash acts". They were reduced to the present 2 charges based on "negligent acts". Thereafter, the accused immediately pleaded guilty to these reduced charges. The accused is deeply remorseful and accepts responsibility.

d. The accused is a young offender. He was 20 years old at the time of the offence. If he had been prosecuted then, the Court would "have the option of sentencing Gabriel to probation". However, he has only been prosecuted 2 years later.

e. The deceased had not buckled up her seat belt at the time of the accident. The taxi-driver did. The taxi-driver "ought to share in some of the blame as well, as it was his duty to ensure that all of his passengers followed the necessary safety regulations. ... The tragic consequences of the accident may have been moderated (e.g. the deceased may have suffered injuries but not serious injuries to cause death) had the deceased remembered to wear her seat belt, and had the taxi-driver ensured that the deceased did so".

f. The accused does not deserve a custodial sentence. "In fact, previous offenders facing the same charges as he does, and with more aggravated cases, have been sentenced to fines." The accused should receive a lower fine and a shorter disqualification period.

g. The accused is a young and inexperienced driver. He passed his driving test only 8 months before the accident.

Prosecution's submission

11 The deputy public prosecutor, Mr. Edward Ti, submitted as follows:-

- a. The accused was a probation driver for only 8 months. He should be more careful.
- b. The accused should receive a substantial disqualification from driving.
- c. The investigations confirmed that the deceased was not wearing her seat belt.

Sentence

12 I imposed the following sentences:-

- (a) First charge - DAC 34595/2010 (C1) - a fine of \$7,000;
- (b) Second charge - DAC 34596/2010 (C2) - a fine of \$2,000;
- (c) In default of paying the total fine of \$9,000, the accused was to serve 9 weeks' imprisonment; and
- (d) A disqualification from holding or applying for all classes of driving license for 12 months from the date of conviction.

Appeal against sentence

13 On 8 October 2010, the Public Prosecutor filed a notice of appeal against the above "sentence".

14 I now give the reasons for my decision.

Punishment prescribed by law

15 Section 304A(b) of the Penal Code (Cap 224) states:-

“Causing death by rash or *negligent* act

304A Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished —

(a) in the case of a rash act, with imprisonment for a term which may extend to 5 years, or with fine, or with both; or

(b) *in the case of a negligent act, with imprisonment for a term which may extend to 2 years, or with fine, or with both.*”

Sentencing considerations

16 First, I was guided by the commentary on s 304A of the Penal Code in the *Sentencing Practice in the Subordinate Courts (2nd Ed)*, at page 898. It states as follows:-

“2 Commentary

Under section 304A, the act can fall under the rashness or negligence limb. The leading judgment is *PP v Gan Lim Soon* [1993] 3 SLR 261, where the High Court stated at p 264:

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.*

.....

General deterrence is the primary consideration in sentencing. ‘The object of imposing penalties in a case of this kind is to bring home to the public, in the interest of road safety, the fact that even momentary lapses may have serious or dangerous consequences’ (See *Beeby* (1983) 5 Cr App R (S) 56.) A period of disqualification of five years is usually ordered. The period of disqualification is not only part of the punishment which a person guilty of this offence has to suffer, but also a part of the course which the trial judge is entitled to take to protect the public from the repetition of this kind of offence: *Rae* 7/11/84 CCA Vic cited with approval in *PP v Peck Teck Siong* (DAC 12155/98 & MAC 12208/98).” (My emphases are in italics.)

Sentencing precedents

17 Second, Mr. Derek Kang, the defence counsel, referred to 3 cases as sentencing precedents (at paragraphs 23 to 30 of his written plea in mitigation D1). I applied these 3 precedent cases. They were as follows:-

(a) *PP v Lim Eng Kiang* (MA 48/92/01-02);

(b) *PP v Sim Chong Eng* (MA 119/93/01); and

(c) *PP v Yee King Poh* [2004] SGDC 168.

18 In summary, the 3 accused in the above 3 cases had been convicted under s 304A(b) of the Penal Code. They were sentenced as follows:-

- (a) *PP v Lim Eng Kiang* – a fine of \$7,000 and disqualified from driving for 10 years (all classes);
- (b) *PP v Sim Chong Eng* – a fine of \$6,000 and disqualified from driving for 5 years (all classes); and
- (c) *PP v Yee King Poh* - a fine of \$7,000 and disqualified from driving for 5 years (all classes)

Mitigating Factors

19 Third, the accused did not have any antecedents. I accepted that this was a significant mitigating factor.

20 Fourth, the accused had pleaded guilty, immediately after the prosecution had reduced the 2 charges of “rash act” to the present charges of “negligent act”. In 2 of the above 3 precedent cases cited by the defence, the offenders had claimed trial. In the 3rd case, the offender had claimed trial but pleaded guilty in the midst of the trial. I accepted that the plea of guilt by the accused in this case was a mitigating factor.

21 Fifth, the accused was a young offender. He was 20 years old at the time of the offence. I accepted that this was a mitigating factor.

22 Sixth, Mr. Derek Kang emphasized that the deceased had not put on her seat belt at the time of the accident. The taxi-driver did. He submitted that, “the taxi-driver ought to share in some of the blame as well, as it was his duty to ensure that all of his passengers followed the necessary safety regulations. ... The tragic consequences of the accident may have been moderated (e.g. the deceased may have suffered injuries but not serious injuries to cause death) had the deceased remembered to wear her seat belt, and had the taxi-driver ensured that the deceased did so”. The prosecution also confirmed that the deceased had not put on her seat belt.

23 The circumstances of the accident, and the damage to the 2 vehicles, showed that it was a “side to side” collision between the 2 vehicles. The accused was not speeding. It was not a head-on collision. It was also not a direct front-to-side collision. The deceased was not wearing her seat-belt. The taxi-driver did not ensure that she did so. He himself had put on his seat belt. He suffered only minor injuries. In my judgment, the deceased and the taxi-driver had been negligent themselves. They had significantly contributed to the death of the deceased. I found that this was the most significant mitigating factor.

Disqualification

24 In addition, I had ordered that the accused be disqualified from driving all classes of vehicles for 12 months. In my view, this would be an equitable balance between the need to protect the public from the repetition of this kind of offence, and that there were several mitigating factors in this case. As I have stated, the most significant mitigating factor was that the deceased had not put on her seat belt, and that the taxi-driver had not ensured that the deceased did so. Consequently, the deceased and the taxi-driver had significantly contributed to the death of the deceased.

Conclusion

25 On the first charge (DAC 34595/2010) (C1) - for these reasons, I sentenced the accused to a fine of \$7,000; and ordered that he be disqualified, from holding or applying for all classes of vehicles, for 12 months.

Second charge - DAC 34596/2010 (C2)

Punishment prescribed by law

26 Section 337(b) of the Penal Code (Cap 224) states:-

“Causing hurt by an act which endangers life or the personal safety of others

337 Whoever causes hurt to any person by doing any act so rashly or *negligently* as to endanger human life or the personal safety of others, shall be punished —

(a) in the case of a rash act, with imprisonment for a term which may extend to one year, or with fine which may extend to \$5,000, or with both; or

(b) *in the case of a negligent act, with imprisonment for a term which may extend to 6 months, or with fine which may extend to \$2,500, or with both.*”

Sentencing considerations

27 First, I was guided by the commentary on s 337 of the Penal Code in the Sentencing Practice in the *Subordinate Courts (2nd Ed)* at page 189. It states as follows:-

“Commentary

The offence encompasses a wide range of criminal behavior, and the range of sentence is accordingly broad. *In sentencing, the material considerations would be whether the act falls within the negligence or rashness limb, and the end consequences of the act.* In general, a term of custody would be appropriate where the act falls under the rashness limb, *and a fine where the act falls under the negligence limb*: see *Ngian Chin Boon v PP* [1999] 1 SLR 119. However, in an appropriate case, an offender charged under the negligence limb may still be sentenced to imprisonment.” (My emphases are in italics.)

Mitigating Factors

28 Second, the accused did not have any antecedents. I accepted that this was a significant mitigating factor.

29 Third, initially, the prosecution preferred 2 charges against the accused on the basis that the accused had been “rash”. They were reduced to the present 2 charges based on “negligent acts”. Thereafter, the accused immediately pleaded guilty to these reduced charges. I accepted that this was a mitigating factor.

30 Fourth, the accused was a young offender. He was 20 years old at the time of the offence. I accepted that this was a mitigating factor.

31 Fifth, as I have stated at paragraph 23 above:-

“The circumstances of the accident, and the damage to the 2 vehicles, showed that it was a “side to side” collision between the 2 vehicles. The accused was not speeding. It was not a head-on collision. It was also not a direct front-to-side collision.”

32 I found that this was a mitigating factor.

33 Sixth, as stated in the statement of facts (PS10, the medical report of the victim, the taxi-driver, revealed "tenderness over his right temporal area and over his left arm. He was treated conservatively and subsequently discharged with analgesics and given outpatient medical certificates for 3 days". In my view, the injuries were minor.

Conclusion

34 On the second charge (DAC 34596/2010) (C2) - for these reasons, I sentenced the accused to a fine of \$2,000.

Conclusion

35 In summary, the sentencing practice and case precedents on s 304A(b) and s 337(b) of the Penal Code had been well established and have been applied repeatedly. The norm for a punishment under s 304A(b) for causing death by a "negligent act" is a fine. The norm for a punishment under s 337(b) for causing hurt by a "negligent act" is also a fine.

36 There were several mitigating factors in this case. Some were significant. However, there were no aggravating circumstances. I, therefore, did not have any reasons to depart from the norm of a fine, as set out in the above commentaries and precedent cases.

37 For all these reasons, I imposed the following sentences on the accused:-

- (a) On the first charge (DAC 34595/2010) (C1) - a fine of \$7,000;
- (b) On the second charge (DAC 34596/2010) (C2) - a fine of \$2,000;
- (c) Total sentence - a fine of \$9,000 (in default of payment, to serve 9 weeks' imprisonment; and
- (d) An order - that the accused be disqualified, from holding or applying for all classes of vehicles, for 12 months.

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