

Public Prosecutor v Poh Kay Leong  
[2003] SGDC 138

**Case Number** : R 02500454AD, MA 36/2003/01

**Decision Date** : 13 June 2003

**Tribunal/Court** : District Court

**Coram** : Ronald Gwee Tiong Kee

**Counsel Name(s)** : Peter Madhavan (Madhavan Partnership) for the Defendant; DPP Derek Kang for the Prosecution

**Parties** : Public Prosecutor — Poh Kay Leong

1. The accused, Poh Kay Leong ("Poh"), was charged under Section 65 of the Road Traffic Act ("RTA") for having driven his motorcar licence number Q8P on 19 August 2001 at about 9.49 pm along Circular Road, without due care and attention for other road users, in that he failed to exercise care whilst reversing his vehicle and collided with a pedestrian one Zhang Wanbo.

2. After hearing the evidence and submissions from the Defence and the Prosecution, I found Poh guilty as charged and convicted him accordingly. I sentenced Poh to a fine of \$900 in default 9 days imprisonment, and disqualified him from holding or obtaining a driving licence for all classes of vehicles for a period of 3 months. Poh paid the fine and did not appeal against the conviction or sentence.

3. After sentence was passed, the Prosecution made an application for Poh to be ordered to pay a part of the Prosecution's costs, pursuant to Section 401(1)(a) of the Criminal Procedure Code ("CPC"). The Prosecution were only claiming a sum of \$43,196.50, being a portion of the total Prosecution costs. This sum of \$43,196.50 represented disbursements incurred for the procurement of 3 foreign witnesses, including the said victim Zhang Wanbo, for the trial. The economy air fare for Zhang Wanbo alone came up to a sum of \$21,470, almost half of the amount of \$43,196.50 claimed by the Prosecution, as Zhang Wanbo was rendered paralysed from the neck down after the accident on 19 August 2001, and had to be flown in from China apparently on a stretcher. Zhang Wanbo gave evidence in Court before me, on a stretcher. I made the order sought by the Prosecution, for Poh to pay that part of the Prosecution's costs, valued at \$43,196.50. Poh appealed against this order.

4. In respect of the trial proper, I found as a fact that Poh had, whilst reversing, driven without due care and attention in that he failed to exercise care and collided with Zhang Wanbo. In my brief oral grounds delivered at the end of the trial I said the following:

"One of the crucial points which had to be decided was whether there had indeed been a collision between the accused's car and PW5 (Zhang Wanbo).

On this point, it is my finding of fact that there had indeed been such a collision.

PW4 had given evidence that he had seen the collision with his own eyes. PW7 had given evidence that she had seen PW5 fall forward after something had collided into PW5.

It was the evidence of PW5 that something had impacted the back of his leg. There was nothing else that could have caused PW5 to fall. The Defence had suggested that PW5 had fallen, but as mentioned, there does not appear to have been anything in the vicinity to have caused PW5 to fall. Upon considering all the evidence, I thus found, as a fact, that it was an impact from the accused's car that had caused PW5 to fall.

The next question was whether the accused had driven without due care and attention by failing to exercise care in reversing his vehicle thus colliding with PW5.

I found that the accused's actions in his preparation to reverse into the car park lot did not satisfy the required standard of care required of a driver reversing his car.

At the material time, the accused's attention was firmly on the right hand side of his vehicle to ensure that there was sufficient clearance on the right.

The accused only started to check his rear whilst the car was already in a reversing motion. It was whilst the car was reversing that the impact with PW5 must have occurred.

The accused ought to have checked his rear, and his left to ensure that his path into the car park lot was clear, before he set his car into motion by allowing the car to reverse, whether with acceleration or not.

But for this failure, the accident could have been avoided. By failing to keep this proper look out and ensuring that the way behind was clear before reversing, I find that the accused had driven without due care and attention by failing to exercise care whilst reversing his vehicle, thus colliding into PW5.

I am satisfied that the Prosecution have proven the charge against the accused beyond a reasonable doubt.

I therefore find the accused Guilty and convict him accordingly."

5. Section 401(1) of the CPC states:

"The court before which a person is convicted of any crime or offence may, in its discretion, make either or both of the following orders against him:

an order for the payment by him of the costs of his prosecution or such part thereof as the court directs;

....."

6. After a case in which the accused had been convicted and the Prosecution makes an application for the payment of Prosecution's costs or part thereof, the Court would then have to change its focus from the hitherto facts in dispute, to the manner in which the accused had conducted his defence. In exercising its discretion whether to order payment of the Prosecution's costs, the Court would have to have regard to certain principles laid down by the High Court.

7. The Honourable the Chief Justice Yong Pung How said in *Arts Niche Cyber Distribution Pte Ltd v Public Prosecutor* [1999] 4 SLR 111, at page 127, paragraph 55:

"I also upheld the trial judge's order that the appellant should pay the costs of prosecution in the court below pursuant to s 401(1) of the CPC. The court has a wide discretion to order costs under this section. In exercising its discretion, the court is entitled to take all the circumstances into account, including the strength of the prosecution's case, the accused's knowledge of this, and his conduct of his defence. In particular, where the accused loses his case and the court is of the view that his defence has been conducted 'extravagantly and unnecessarily', he may be ordered to pay some of the costs

which he has caused the prosecution to incur (*Oh Cheng Hai v Ong Yong Yew* [1993] 3 SLR 930 at 937). One way of determining whether the accused's defence has been conducted 'extravagantly and unnecessarily' would be to consider whether the line of defence mounted has advanced his case: *Jasbir Kaur v Mukhtiar Singh* [1999] 2 SLR 349....."

8. These principles, as set out in the cases of *Oh Cheng Hai v Ong Yong Yew* and *Arts Niche Cyber Distribution Pte Ltd v PP*, were reiterated in the case of *Abex Centre Pte Ltd v Public Prosecutor* [2000] 2 SLR 681 at page 684, paragraph 13 by The Honourable the Chief Justice Yong Pung How.

9. Does payment of Prosecution's costs amount to further punishment for the accused? This is what Poh's Counsel sought to argue in closing submissions. Quite clearly, the order for payment of Prosecution's costs is not an additional punishment. In the case of *Frederick Oliver Seaward III & Koh Siew Kiat Sheree v Public Prosecutor* (DAC 7535-7536/90 & DAC 7648/90; MA 9/93/01 & 02), unreported, the Senior District Judge Richard Magnus said,

"It must be intended that an order under section 401 is to be regarded, not as a sentence but purely for indemnification and compensation. This view is not unlike the view in *R v Tottenham JJ, ex parte Joshi* (1982 I WLR 631 *infra*) that an award for Prosecution's costs is not to inflict an additional sentence on the Accused but rather that the "public purse" should not be made to suffer as a result of the Accused's misdeeds."

10. How were the material facts to be found, to be approached in a case like this? In relation to the charge, there was no doubt that Poh was driving the stated vehicle at the stated place, date and time. There were 2 points in dispute which the Prosecution had to prove beyond a reasonable doubt. Firstly, it had to show that Poh had collided with Zhang Wanbo. Secondly it had to show that this collision was as a result of Poh having driven without due care and attention when he reversed.

11. As far as the first point was concerned, Poh could only offer that he did not know whether he collided with Zhang Wanbo or not. What he perceived was that whilst in reversing motion, in the act of parking his vehicle, Wu Baoyan (Zhang Wanbo's wife) stopped him by tapping on his car. When Poh came out of his car he saw Zhang Wanbo in a sitting position behind the car. Wu told Poh that Poh had knocked Zhang Wanbo. In examination-in-chief, Poh said,

"I have no idea if I knocked the man down because I didn't feel any impact at all. I only realised that I might have knocked into the man when the woman told me."

12. In the Report of a Traffic Accident made by Poh the very next day {20 August 2001} (P11) it was stated that "...whilst complainant (Poh) was reversing his vehicle into car park lot 16, complainant's vehicle, Q8P knocked down a pedestrian." The very next sentence appears contradictory, for it is then stated: "There was no impact during the collision with the pedestrian." How could Poh, in knocking down or colliding with Zhang Wanbo, not have caused any impact? However, on the front of the Report, under the column "Type of Collision", it is characterised as "Moving Vehicle Against Pedestrian" with a further notification in writing "Driver's vehicle hit onto pedestrian". It is therefore clear that, on a consideration of all these statements in P11, that Poh accepted that he had collided with Zhang Wanbo as that is the tenor of the report.

13. In cross-examination, when confronted with these statements in P11, this is what Poh said (NE page 106),

DPP: Did you think or believed that you had knocked down man – it states you knocked down pedestrian?

Poh: Yes, when I recorded this statement, my mind was telling me what the lady claimed, that I had knocked down the man which actually I had no idea what occurred.

DPP: Why did you not say in report you did not know what happened, and say what you said today?

Poh: It didn't occur to me.

14. In re-examination, Poh sought to explain his statements in P11 as follows (NE page 110):

DC: P11 – second page. (Reads) “There was no impact during the collision with the pedestrian.” Confirm.

Poh: Yes.

DC: You had said in your mind, first sentence was to repeat what man’s wife said to you?

Poh: Yes.

DC: Sentence that qualified first sentence – no impact to reflect whose intention, explanation?

Poh: Mine.

15. Considering that Poh had given in examination-in-chief: “I have no idea if I knocked the man down because I didn’t feel any impact at all. I only realised that I might have knocked into the man when the woman told me.”, the most that can be said is that Poh did not feel any impact. His statements in P11 that it was a case of a “Moving Vehicle Against Pedestrian”, “Driver’s vehicle hit onto pedestrian”, “...vehicle...knocked down a pedestrian” and “...collision with the pedestrian.” lead to the conclusion that Poh had, as early as the day after the accident, accepted that he had indeed collided with Zhang Wanbo.

16. The next point to be considered was whether, in reversing and colliding with Zhang Wanbo, Poh had been in breach of Section 65 of the RTA.

17. Whilst driving a motor vehicle on a road, it is incumbent upon all motorists to do so with due care and attention and with reasonable consideration for other persons using the road. Should a motorist drive without due care and attention, or without reasonable consideration for other persons using the road, he would be guilty of an offence under section 65 of the RTA..

18. It must be apparent to any motorist that the vehicle he is driving is potentially a lethal instrument, if not wielded with the due care and attention required. One basic tenet of driving is that before a motorist causes a vehicle to move from a stationary position, it is absolutely essential to be aware of what is in the path of the vehicle. When that movement is in a forward direction, this precaution is usually a simple step to take. The motorist would have to keep a proper lookout of what is in front of the vehicle, in its direct path.

19. When a vehicle is reversing, the prior steps to be taken before the vehicle is set in motion are a bit more complex. This exercise is complicated further when the reversing motion is not in a straight line, such as when executing a parallel parking procedure. There are several fields of view which the motorist has to pay special attention to, including blind spots.

20. Upon a consideration of the evidence, I found that there was a crucial time frame (about 2 seconds) where Poh’s attention was not properly concentrated on whether there was anything or anybody in the full backward path of his vehicle. It was during this unfortunate lapse when the collision must have occurred. I found that this lapse was indeed wrongful and in breach of Section 65 of the RTA. Poh was therefore convicted accordingly.

21. In cross-examination, Poh’s neglect came through quite clearly (NE pages 101, 102):

DPP: How long did you take while checking to your right?

Poh: This takes a bit longer, about four to five seconds.

DPP: After you checked four to five seconds, at which point did you engage reverse gear?

Poh: From the third second.

DPP: Third second of your check to the right?

Poh: Yes.

DPP: For the last one or two seconds of your check to the right, you had already let go of the brake and were reversing under no acceleration?

Poh: Yes.

DPP: After that you physically turned to left to look through rear windscreen?

Poh: Yes, behind the car.

DPP: In your evidence-in-chief you said, I looked for clearance, then checked left for full clearance. What do you mean, for full clearance?

Poh: Hopefully there's no one behind me.

DPP: Why, although you engaged reverse gear at third second, why did you not check for full clearance first before you reversed, on no acceleration, while still checking on right?

Poh: Because I was trying to make sure that the line I'm reversing in to the parking lot is correct.

DPP: Would it not have been more important to check to rear first before you drift back slowly for the one to two seconds?

Poh: Yes.

22. This was therefore a case where the Defence were relying on the Prosecution not being able to prove their case against Poh beyond a reasonable doubt. The Defence could not put forward an alternative case. There was no other real alternative to concluding that Poh had collided with Zhang Wanbo. From the evidence, it was clear that Poh had failed to show that he had not run foul of Section 65 of the RTA.

23. It is however not sufficient to just show that the Prosecution had a strong case, and that the Defence must have, at least, from the weight of the evidence, quietly realised this. It is accepted that the Defence is entitled to claim trial and require the Prosecution to prove its case beyond a reasonable doubt. However, if the Defence is conducted "extravagantly and unnecessarily", the convicted accused can be ordered to pay the Prosecution's costs or a part thereof. One way of establishing this is to consider whether the line of defence mounted had advanced the case for the Defence.

24. The fact of Poh's culpability having been established quite strongly from his own evidence, it allowed this Court to then review the way the Defence was conducted, especially with regard to the cross-examination of the Prosecution's witnesses, and come to the clear conclusion that the Defence had indeed been conducted extravagantly and unnecessarily.

25. A review of the cross-examination of the Prosecution witnesses by Defence Counsel shows that the Defence was trying to show that Zhang Wanbo was contributorily negligent for the mishap, using the road without due care and attention himself. The Defence was also trying to show that the other 2 Prosecution witnesses were also using the road without due care and

attention.

26. This line of questioning by the Defence led the Prosecution, in its submissions, to characterise the Defence strategy as one of holding a “dress rehearsal” for the civil claim by Zhang Wanbo against Poh, which hearing was then pending in the High Court. I was in full agreement with the Prosecution’s submission on this point. The questions which sought to show that Zhang Wanbo was contributorily negligent would only be relevant in the High Court trial. The evidence was quite clear that Poh had collided with Zhang Wanbo. The finding of whether Poh had run foul of Section 65 of the RTA was, in the circumstances, to be judged solely from the point of view of Poh’s conduct, as a driver at the material time. If Poh had taken the required steps, he would have seen Zhang Wanbo and avoided colliding into him.

27. As far as the other 2 Prosecution witnesses were concerned, it was their eyewitness testimony that was crucial. The fact that they may have been using the road in a manner showing want of due care and attention did not affect the strength of the eye-witness accounts which they gave, or their credibility in this respect.

28. Zhang Wanbo was also cross-examined as to his post-accident conduct and the post-accident treatment he received; this again was not relevant to the case. The degree of the injuries suffered by Zhang Wanbo were not relevant as the charge related only to Poh having collided with Zhang Wanbo and did not relate how and to what extent Zhang Wanbo was injured.

29. I therefore came to the conclusion that the line of questioning which had been employed by the Defence did not and could not advance the case for the Defence. To reiterate, this was a case where all the Defence could really offer was that Poh did not feel any impact when he collided with Zhang Wanbo. The surrounding evidence (coupled with the consideration of P11) led to the conclusion that Poh must have collided with Zhang Wanbo, causing the latter to fall. In the circumstances, Poh must have realised that he had collided with Zhang Wanbo, or had resigned to the fact that he must have, in all probability, so collided.

30. Following from that, the Defence would then have to show that his acts were all that a reasonable driver could do in the circumstances, demonstrating the required standard of care and attention. As shown, this would in these circumstances, require a minute examination of Poh’s own actions, not the actions of the Prosecution witnesses, in the final analysis.

31. The line of defence mounted did not advance Poh’s case. This confirmed the finding that the defence had been conducted “extravagantly and unnecessarily”. The Prosecution, as set out above, were only claiming a portion of the Prosecution costs incurred. In the exercise of my discretion under Section 401(1) of the CPC, I therefore made the Order sought by the Prosecution, for the payment of the sum of \$43,196.50 by Poh.

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