IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 74

Magistrate's Appeal No 9529 of 2020

Between

Lu Shun

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law] — [Offences] — [Causing grievous hurt by doing an act so negligently as to endanger human life]

[Criminal Procedure and Sentencing] — [Sentencing]

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND FACTS **2**

THE ISSUES IN DISPUTE **2**

MY DECISION **4**

LOCATION OF THE COLLISION AND WHETHER THE VICTIM HAD ATTEMPTED TO OVERTAKE THE VAN 4

WHETHER THE APPELLANT HAD KEPT A PROPER LOOKOUT AND CHECKED HIS BLIND SPOT 6

THE APPELLANT'S ALLEGATIONS OF BIAS ETC **10**

SENTENCE **12**

CONCLUSION **13**

ANNEX A **14**

ANNEX B **15**

Lu Shun
v
Public Prosecutor

[2021] SGHC 74

General Division of the High Court — Magistrate's Appeal No 9529 of 2020
See Kee Oon J
19, 22 February 2021

31 March 2021

See Kee Oon J:

Introduction

1 The appellant was convicted after trial before a Magistrate's Court. The trial judge's grounds of decision ("GD") are reported as *Public Prosecutor v Lu Shun* [2020] SGMC 43.

2 The appellant was sentenced to 12 days' imprisonment and 20 months' disqualification from driving all classes of vehicles in respect of an offence of causing grievous hurt by his negligent driving, an act which endangered human life under s 338(*b*) of the Penal Code (Cap 224, 2008 Rev Ed)("Penal Code"). He appealed against his conviction and sentence. I delivered brief oral remarks in dismissing the appeal and now set out the full reasons for my decision.

Background Facts

3 Briefly, the undisputed facts were as follows. The appellant was a delivery driver driving his Toyota Hiace commercial van along the Kranji Expressway ("KJE") on 30 November 2018 at about 4.10pm. He was heading towards the Bukit Timah Expressway ("BKE"). He was relying on a Global Positioning System to guide him as he was unfamiliar with the directions to his intended destination at Choa Chu Kang.

4 Adopting the trial judge's terminology at the trial, the road lanes along the KJE were marked lanes 1 to 5, with lane 1 being the left-most lane. As the appellant prepared to filter left from lane 2 into the lane 1 of the KJE to exit into Sungei Tengah Road, the victim, Samynathan Balakrishnan ("the victim"), who was riding his motorcycle along lane 2 behind the appellant collided into the left side panel of the appellant's van. The victim was travelling along the KJE towards the direction of the BKE.

5 As a result of the accident, the victim was hospitalised from 30 November 2018 to 7 December 2018, and given hospitalisation leave thereafter until 1 February 2019. A medical report from Khoo Teck Puat Hospital showed that the victim suffered multiple rib as well as skull and facial fractures.

The issues in dispute

6 The trial turned on two major factual disputes. The main issue in contention centred on whether the appellant had kept a proper lookout before attempting to filter left into lane 1, the exiting lane from the KJE for Sungei Tengah Road. A related issue was whether he had failed to see the victim approaching his van from behind him in lane 2. Consequently, the second issue in contention, also related to the first, was whether the ensuing accident in which

the victim's motorcycle collided into the left side panel of the appellant's van was caused in the manner described by the prosecution's witnesses. This included the evidence of an independent eyewitness, Pubalan s/o Subramaniam ("Pubalan"). Pubalan was driving a tow-truck along lane 2 behind the victim's motorcycle and had witnessed the accident which occurred right in front of him.

7 The thrust of the appellant's testimony at trial was that as he filtered left, he could only rely on his van's rear-view mirror in the middle of the windscreen and his passenger side mirror to check for any oncoming vehicles from behind. His own evidence indicated that his view of vehicles in his blind spot to his rear left side would have been at least partially obscured, given that the rear left side panels of his van were "all sealed", *ie* there were no windows on the rear left side.[1] He said that he did not and could not have checked his blind spot and "was not able to see" his blind spot to his rear left side.[2] The appellant maintained nevertheless that he *did* check his rear-view mirror and side mirror, but he did not see the victim behind him. In his own words, he saw that "there was nothing" and he "could not see anything".[3]

8 The appellant's defence was essentially that the victim was solely to blame for the accident. According to him, the victim had attempted to overtake his van from the left side, while he had reduced his van's speed from 60 km/h to 20 km/h in order to prepare to exit in good time from the KJE into Sungei Tengah Road.

---

1 Record of Proceedings ("ROP") p 105 ln 26

2 ROP p 107 ln 21-25; p 108 ln 1-2

3 ROP p 107 ln 12-13

My decision

9 This appeal turned on findings of fact. It is settled law that an appellate court should be slow to disturb a trial judge's findings of fact that hinge on the trial judge's assessment of the witnesses' credibility and demeanour, unless the findings are found to be plainly wrong or against the weight of the evidence: *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [16(a)]. I focused on examining whether the trial judge's findings of fact revealed any fundamental errors in reasoning and judgment.

Location of the collision and whether the victim had attempted to overtake the van

10 The appellant prepared a sketch plan for the appeal, a copy of which is attached at **Annex A**.[4] This sketch plan was not produced at the trial below. The sketch is of course not drawn with precision but it depicts his van located just at the apex of the chevron marking, about to switch lanes to enter lane 1. As such, the undisputed evidence, taking the appellant's case at its highest, was that he was in lane 2 when the collision occurred. On the basis of the appellant's evidence and the sketch plan at Annex A, it would plainly indicate that he had not filtered into lane 1 when the collision occurred.

11 I began by observing, as the trial judge had done, that on the appellant's account of the alleged overtaking by the victim, the scenario he put forward was consistent to some extent with the evidence of the victim and Pubalan, which was to the effect that the appellant had tried to change lanes only at the last minute. The trial judge found that he did so only after the start of the chevron marking separating lanes 1 and 2.

---

[4] Appellant's Bundle of Authorities dated 19 Feb 2021 p 88

12 Pubalan gave very clear evidence that he saw the appellant's van "cutting across" in front of him from another lane and "speeding" in attempting to filter left to "squeeze through the chevron".[5] The appellant did not challenge Pubalan's evidence in cross-examination. He only asked Pubalan to confirm where the collision took place. This was marked 'X' on lane 2 by Pubalan in exhibit P4 (attached at **Annex B**).

13 The appellant did not accept that 'X' was the point of collision, but as the trial judge correctly found, this position is entirely consistent with the prosecution's case that the appellant was cutting across the expressway lanes only at the last moment to avoid missing the exit from the KJE to Sungei Tengah Road. It would have meant that to enter the exiting lane 1, the appellant would inevitably have had to cut across the chevron marking.

14 As for the appellant's claim that the victim was trying to overtake him from the left, this was a completely implausible scenario. It would have meant having to infer that the victim was bent on ploughing straight into the left side of the appellant's van since the van was already allegedly in the process of filtering left slowly from the KJE into Sungei Tengah Road. Whether the appellant did turn on his signal indicator while filtering left was neither here nor there; it would not absolve him of liability if a collision were to occur, as it unfortunately did, on account of his failure to keep a proper lookout before filtering.

---

5 ROP pp 47–50

Whether the appellant had kept a proper lookout and checked his blind spot

15 In filtering quickly across in an attempt to turn left into the exit lane from the KJE to Sungei Tengah Road, the appellant would clearly have had even more difficulty checking for any oncoming vehicles from behind. But in all his submissions, the appellant had conveniently glossed over the fact that he himself had said that he *did not check*, and indeed *could not check*, and "was *not able to see*" his blind spot, as I had noted above at [7].

16 The trial judge pointedly noted that the appellant had conceded his own failure to keep a proper lookout (GD at [46]-[51]). She observed at [49] that in the appellant's own closing submission, he stated that he did not see the victim "as he was at my blind spot".[6] The appellant appeared to have believed that because he was driving a panel van with sealed rear window panels, it made it difficult if not impossible for him to check all his blind spots, but this is a totally unacceptable excuse for what was evidently a blatant failure to keep a proper lookout. It presupposed that the van's rear-view and side mirrors were practically useless for such a purpose.

17 The appellant was in fact fully conscious that he would have to exercise care in checking his rear-view and side mirrors. The risks were heightened by his speed in "all the way dashing across" the lanes, as described by Pubalan,[7] and exacerbated by the fact that he was driving a panel van with sealed rear window panels. At any rate, if the appellant *had* taken reasonable care to keep a proper lookout, he ought to have seen the victim riding along lane 2 behind him. According to Pubalan, apart from the tow-truck that he was driving along

---

6 ROP p 310

7 ROP p 50 ln 5

lane 2 behind the victim's motorcycle, there was also another 14-foot lorry behind him. Yet the appellant maintained that he saw that "there was nothing".[8]

18 The appellant further contended that Pubalan had committed perjury by falsely implicating him. From the evidence at trial, there was plainly no reason whatsoever for Pubalan to have come to court to commit perjury. Pubalan was a complete stranger to both the victim and the appellant. It could reasonably be inferred that Pubalan was only testifying out of civic-mindedness, as he was in a position to give direct eyewitness testimony of what had occurred. Yet the appellant made the spurious claim that Pubalan had "blatantly lied",[9] because of some presumed hidden motive. Pubalan could have forgotten or failed to notice some details of the incident, and that would be understandable given that the accident occurred suddenly and there had been some lapse of time. For instance, Pubalan candidly admitted that he could not remember whether the van's signal lights were switched on. However, all the material aspects of Pubalan's evidence were clear and coherent and also consistent with the evidence of the victim.

19 The appellant vehemently denied any responsibility. He was insistent that he had been correct in his perception that "there was nothing" when he looked at his rear-view and side mirrors and purportedly saw no approaching vehicles from behind. Hence, he asserted his firm belief that he could not have been guilty of a negligent act and that correspondingly, the victim must have been riding dangerously. This was a wholly self-serving and subjective view. It was highly presumptuous as well. The appellant had given himself far too much

---

8 ROP p 107 ln 12

9 ROP p 9

credit for his own infallibility. He failed to recognise that he himself had conceded that he did not check his blind spot.

20 The appellant chose to ignore the gaps and contradictions in his own defence, just as he had overlooked the importance of checking his blind spot when filtering across lanes. Unfortunately, his perception and objectivity appeared to have been gravely impaired by his personal bias. He maintained that only his assertions and beliefs were correct. It is not the court's role to attempt to convince him otherwise. But it is important to point out that his perceptions were not borne out by the evidence adduced at trial.

21 As an illustration, a plausible explanation was offered for why Pubalan's in-car camera footage was not available. The trial judge accepted Pubalan's explanation that he had to jam his brakes at the time of the accident and the camera mounting had been dislodged.[10] At the conclusion of the trial, the appellant rejected the explanation outright and attributed the non-availability of the footage to sinister motives, while alleging without compunction that Pubalan had lied to implicate him on account of a presumed "impulsive xenophobic reaction".[11] The appellant simply disregarded SI Norashikin Daud's evidence that she had retrieved and checked the SD (Secure Digital) card from Pubalan's in-car camera during her investigations and did not find any recordings of the accident. The appellant had also failed to challenge both Pubalan and SI Norashikin Daud on this aspect of the evidence when they were on the witness stand.

---

10 GD at [33]; ROP p 53 ln 8

11 ROP p 309

22 The appellant also speculated that there was expressway CCTV footage capturing the accident which would absolve him of liability. He engaged in further speculation that the footage must have been destroyed to deny him access to such exculpatory material. There was no evidence that any CCTV footage capturing the accident was available to begin with. If such CCTV footage had been available, it stands to reason that it would have been produced during the investigations, regardless of whether the footage was incriminating or not. The fact that no such footage was produced at trial hardly permits an irresistible adverse inference of a cover-up. After all, there were actual witnesses to the accident, *ie* the victim and Pubalan. The absence of such CCTV footage at trial was a neutral point.

23 I should also add that at the appeal, the appellant made reference in his oral submission to the prosecution's alleged breach of its duty of disclosure under the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). I should first highlight that the disclosure provisions in the CPC do not apply unless the matter is tried before a District Court. The present case was tried in a Magistrate's Court and heard by a District Judge in her *ex officio* capacity as a Magistrate. That said, as a general rule, the prosecution should disclose relevant material in its possession which is relevant towards exculpating the accused. There was no basis however in the present case to infer that it had breached such a duty.

24 The trial judge's findings on the two issues I have outlined at [6] above were reflected in her GD (at [45]–[52]). I was of the view that the trial judge was justified in finding on the facts that the prosecution's case was consistent and convincing. She concluded that the appellant's version was not credible. I accepted that she correctly found that the ensuing accident in which the victim's

motorcycle collided into the side panel of the appellant's van was caused in the manner described by the prosecution's witnesses.

The appellant's allegations of bias etc

25 It is necessary for me to make some observations in relation to the appellant's barrage of allegations ranging from bias and incompetence to perjury and conspiratorial cover-ups. He portrayed himself as a victim of a conspiracy but offered no credible explanation why any of the prosecution witnesses would have had any nefarious motive to collude and falsely implicate him. He resorted to victim-blaming and sought to pin the blame entirely on the victim. He also engaged in personal attacks on the witnesses, the investigators, the prosecution, the court interpreter and the trial judge.

26 As a litigant-in-person ("LIP"), the appellant may be afforded some leeway by the court as he is assumed to be unfamiliar with the law and legal process. It is not realistic to expect that a LIP will be fully cognisant as trained lawyers are of how to put his case to witnesses and of the need to observe the rule in *Browne v Dunn* (1893) 6 R 67. It would not be appropriate to place inordinate weight on the failure on the appellant's part to cross-examine or challenge each and every contentious aspect of the prosecution witnesses' evidence. The appellant is however expected to state his defence while giving evidence and I note that a number of the allegations that he had made in his closing submission[12] were not previously raised in the course of the trial. This strongly suggested that some of the appellant's contentions in his defence were afterthoughts which were stitched together only after all the evidence had been presented at trial.

---

12 ROP p 307

27 The mere fact that the appellant was unrepresented did not entitle him to make unsubstantiated and scandalous allegations which were devoid of any basis. From my perusal of the record, it demonstrated clearly that the trial judge had taken pains to ensure that the appellant was able to follow the court proceedings. She had patiently briefed him before the trial commenced on what to expect at the various stages of trial. She assisted and guided him as the trial progressed. Regrettably, the appellant had instead chosen to cast serious and unfounded aspersions on the trial judge for allegedly having prejudged his case. He maintained twice that she was "biased", even claiming that she was biased "right from the beginning of the trial".[13] He accused her of cherry-picking and distorting the evidence "to fit her narrative" and derided her "paltry knowledge" as an embarrassment.[14] He alleged that she had only "appeared to be sympathetic" in "explaining to [him] certain court processes … as though [he] was a 5 year-old kid".[15]

28 The appellant was understandably dissatisfied with the outcome of the trial. However, there is no place in our justice system for contemptuous remarks under the guise of submissions, even if they are prepared by a LIP. Equally, there was absolutely no justification for the appellant's baseless attacks on the ethics, integrity and professionalism of the police officers, prosecutors and the court interpreter. Like the trial judge, they were simply performing their duties without any apparent trace of bias, prejudice or ill-will.

29 I pause to note that there may have been errors in the witnesses' recollection as well as procedural flaws. One obvious error was discernible from

---

13 ROP p 9; Appellant's Skeletal Arguments ("ASA") para 5

14 ASA para 5

15 ROP p 9

the evidence of Senior Staff Sergeant Rafael Tan Soon Peng, who testified that the appellant was driving a tipper truck.[16] In addition, another procedural error was apparent from exhibit D1 which the appellant had tendered while giving his defence at the trial.[17] D1 appeared to be a copy of a holding charge which erroneously mentioned that the victim had suffered serious bodily injuries which included "an amputation of the lower left knee". The duly amended charge was of course placed before the court[18] and the trial had proceeded on that basis. Lapses such as these were indeed regrettable and greater care ought to have been exercised. Nevertheless, in the overall analysis, they did not cause the appellant any serious prejudice.

Sentence

30 In relation to sentence, the trial judge correctly applied the analytical framework with respect to road traffic cases under s 338(*b*) of the Penal Code which I had set out in *Tang Ling Lee v Public Prosecutor* [2018] 4 SLR 813 at [31]. She concluded that the case fell under Category 2, involving higher culpability and moderate harm. In my view, the sentence of 12 days' imprisonment and disqualification of 20 months was not manifestly excessive. Given that the appellant was convicted after trial and having regard to the absence of any significant mitigating factors other than his prior clean record, the sentence could justifiably have been calibrated slightly higher.

---

16 ROP p 68-69

17 ROP p 94

18 ROP p 5

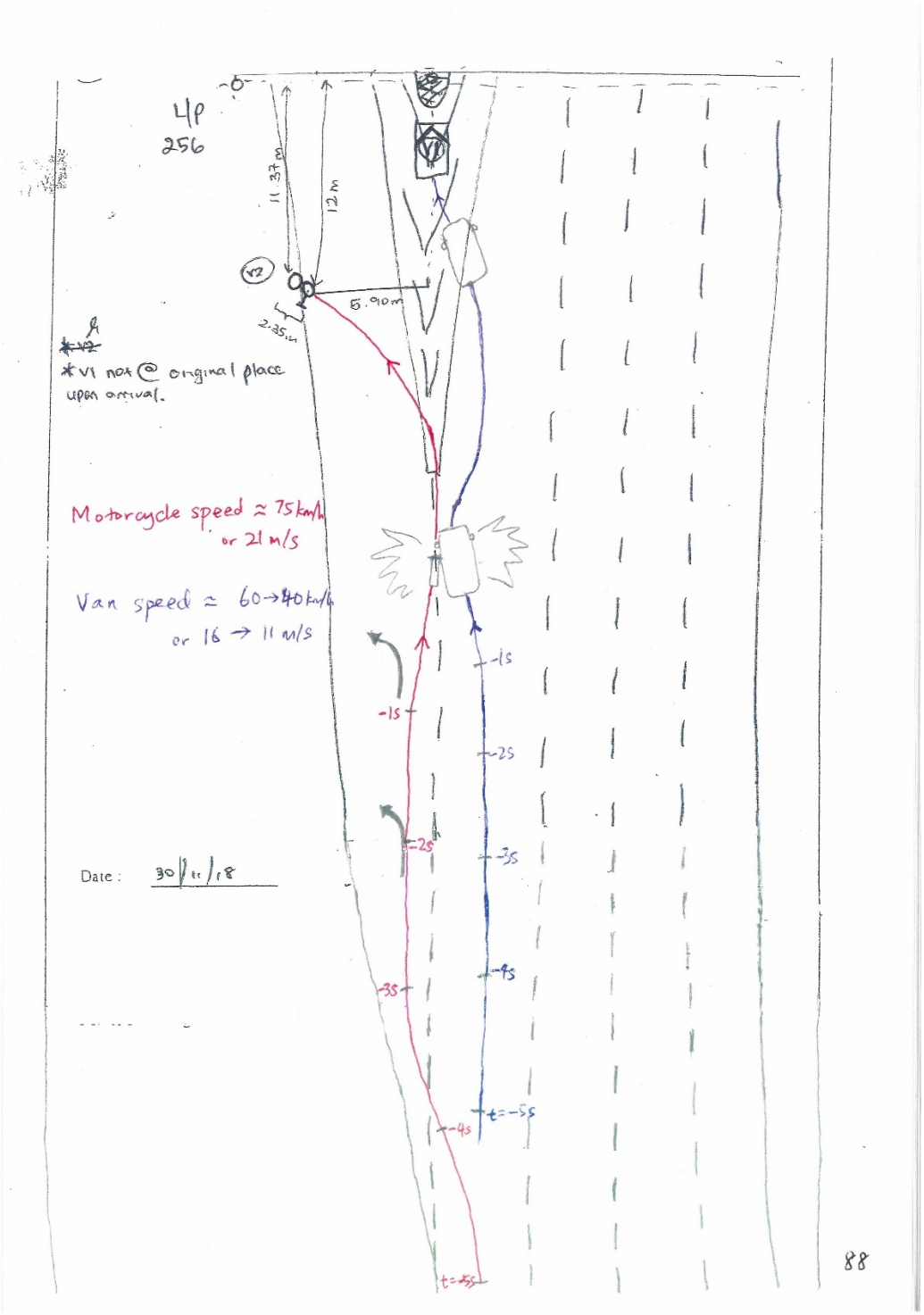
Conclusion

31 Having reviewed the record and evaluated the submissions, I was satisfied that the evidence established the ingredients of the charge beyond reasonable doubt. There was no basis to find that the trial judge had erred or made findings against the weight of the evidence. The appellant's appeal against conviction and sentence was therefore dismissed.

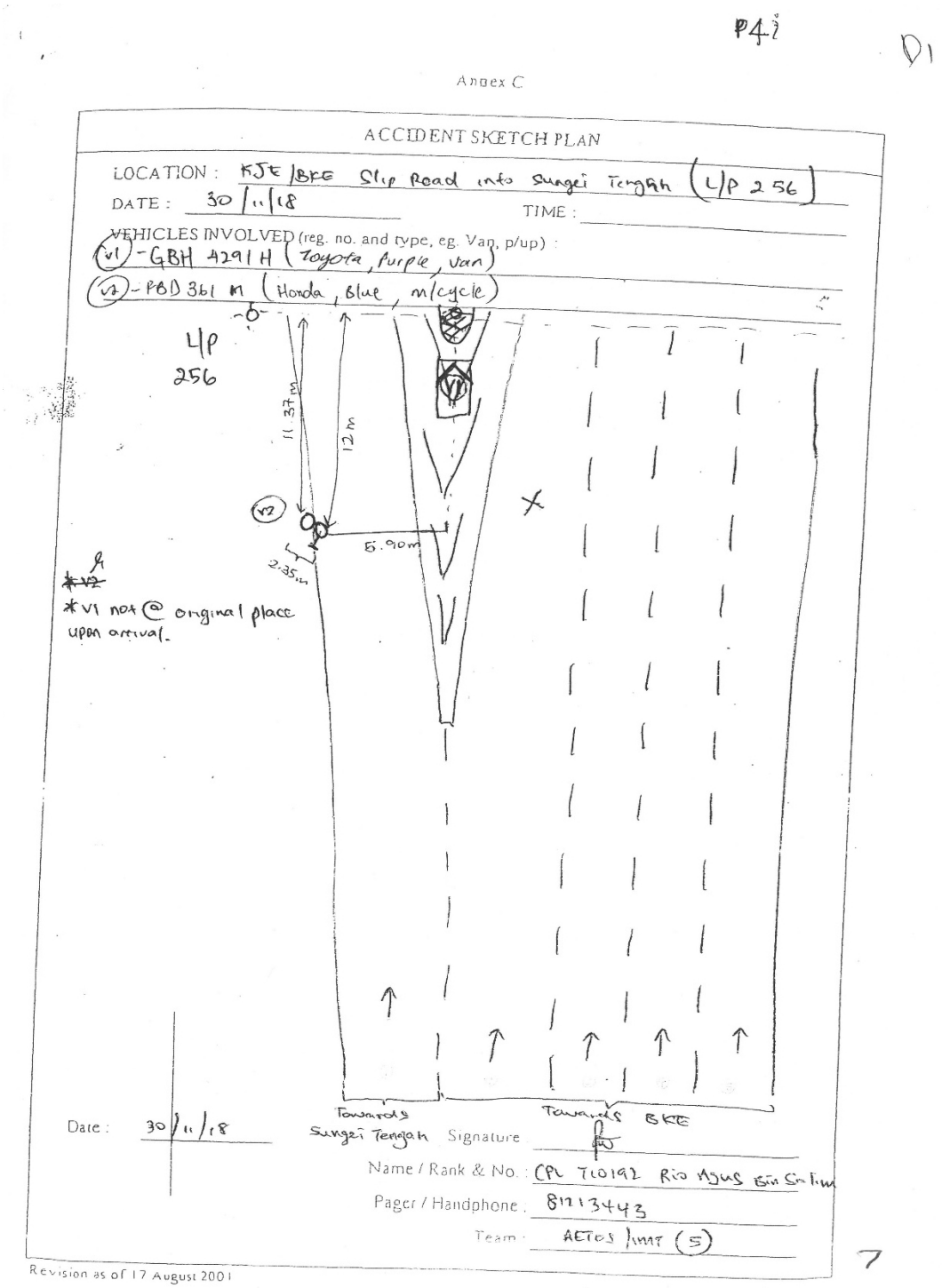
See Kee Oon
Judge of the High Court

Appellant in person;
Loo Yu Hao, Adrian and Chong Yong
(Attorney-General's Chambers) for the respondent

Annex A



Annex B



P41

D1

Annex C

ACCIDENT SKETCH PLAN

LOCATION : KJE/BKE Slip Road into Sungei Tengah (L/P 256)

DATE : 30/11/18 TIME :

VEHICLES INVOLVED (reg. no. and type, eg. Van, p/up) :

(V1) - GBH 4291 H (Toyota, purple, van)

(V2) - PBD 361 M (Honda, Blue, m/cycle)

L/P 256

11.37m

12m

5.90m

2.35m

*V1 not @ original place upon arrival.

Towards Sungei Tengah

Towards BKE

Date : 30/11/18

Signature

Name / Rank & No. : CPL 710192 Rio Agus Bin Sa'lim

Pager / Handphone : 81213443

Team : AETOS Unit (5)

Revision as of 17 August 2001

7