

Mohamad Iskandar bin Basri v Public Prosecutor
[2006] SGHC 158

Case Number : MA 95/2006
Decision Date : 08 September 2006
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Ismail Hamid (Ismail Hamid & Co) for the appellant; April Phang (Deputy Public Prosecutor) for the Prosecution
Parties : Mohamad Iskandar bin Basri — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Principles – Accused firefighter responding to emergency call – Accused driving at high speed and failing to stop at cross junction while traffic lights red against his favour – Accused's fire-fighting vehicle colliding with taxi killing one and injuring three others – Accused pleading guilty to charge of causing death and grievous hurt and hurt by rash act – Accused sentenced to 15 months' imprisonment – Whether sentence imposed by trial judge manifestly excessive – Appropriate sentence – Sections 304A, 337, 339 Penal Code (Cap 224, 1985 Rev Ed)

8 September 2006

Tay Yong Kwang J:

The background facts

1 The 24-year-old appellant is a firefighter holding the rank of Sergeant in the Singapore Civil Defence Force ("SCDF"). At the material time, he was a section commander leading a team of firefighters. On 7 November 2005 at around 12.30pm, he was driving a SCDF Red Rhino, a firefighting vehicle, along Choa Chu Kang Way to respond to a fire that had broken out on the third storey of a building at Sungei Kadut Street 1. The Red Rhino had several firefighters on board. It was travelling on the second lane from the left of the four-lane dual carriageway.

2 At the signalised cross junction of Choa Chu Kang Way and the slip road leading to the Kranji Expressway ("KJE"), the appellant failed to stop the Red Rhino when the traffic lights were showing red against it. With the Red Rhino's siren and blinking lights turned on, the appellant assumed that other vehicles would give way to the Red Rhino and he therefore drove it across the junction. Unfortunately, a taxi with three passengers on board, which had the right of way, was travelling diagonally across the junction from the Red Rhino's right towards the KJE. The resulting collision caused the taxi's left front passenger door to be dented and its left rear passenger door to be ripped off, among other damage. At the time of accident, traffic flow was light, visibility was clear and the road surface was dry.

3 The taxi driver, Peh Peng Chew ("Peh"), aged 55, suffered some bruises, a laceration and some superficial abrasions. He was treated as an outpatient and was given three days' medical leave. The three passengers were Bedah binte Samat ("Bedah"), aged 53, seated at the left rear passenger seat, Zuraidah binte Mohd Salim ("Zuraidah"), aged 23, seated next to Bedah, and Nurul Syafiqah binte Razali ("Nurul"), aged two, who was being carried by Zuraidah. Bedah was the mother of Zuraidah, who, in turn, is the mother of Nurul. Sadly, Bedah sustained serious multiple injuries and did not survive the accident. Zuraidah, who was then 28 weeks pregnant, sustained injuries to her abdomen and her chest. Her left pubic bone and some of her ribs were fractured. Fortunately, the foetus inside her suffered no injuries. Zuraidah was warded in hospital for nine days and was given 40 days' medical leave thereafter. The young Nurul sustained multiple small superficial lacerations on her

face. She was warded in hospital for two days and then discharged.

The charges

4 As a result of the accident, the appellant was charged with, and pleaded guilty to, the following:

(a) One charge of doing a rash act not amounting to culpable homicide by failing to conform to the red traffic light signal and thereby causing the death of Bedah, an offence punishable under s 304A of the Penal Code (Cap 224, 1985 Rev Ed), which provides for a maximum of two years' imprisonment or a fine or both.

(b) One charge of causing grievous hurt to Zuraidah by doing an act so rashly as to endanger human life, an offence punishable under s 338 of the Penal Code, which provides for a maximum of two years' imprisonment or a fine of up to \$1,000 or both.

(c) One charge of causing hurt to Peh and to Nurul by doing an act so rashly as to endanger the personal safety of others, an offence punishable under s 337 of the Penal Code, with a maximum imprisonment term of six months or a fine of up to \$500 or both.

The district judge's decision

5 For the s 304A charge, the appellant was sentenced to nine months' imprisonment and was disqualified from obtaining or holding a driving licence for all classes of motor vehicles for eight years (pursuant to s 42 of the Road Traffic Act (Cap 276, 2004 Rev Ed). For the s 338 charge, he was sentenced to undergo six months' imprisonment. For the last charge under s 337, he was sentenced to undergo three months' imprisonment. The nine-month and the six-month terms were ordered to run consecutively while the three-month term was to run concurrently with them, resulting in a total of 15 months' imprisonment. The appellant appealed against sentence but began serving his sentence immediately.

6 The district judge held that the appellant's plea of guilt did not automatically entitle him to a discount in sentence as it had to be counterbalanced by public interest. Further, such a plea carried less weight in the face of overwhelming evidence. For these two propositions, he cited the decisions in *Sim Gek Yong v PP* [1995] 1 SLR 537 and *Wong Kai Chuen Philip v PP* [1990] SLR 1011. He also took into account the fact that one person died, three others were injured as a result of the rash act and that Zuraidah's then unborn baby was put in danger. He also relied on the High Court decision in *PP v Gan Lim Soon* [1993] 3 SLR 261 ("*Gan Lim Soon*"), which I shall discuss later.

7 Noting that the offences in issue were essentially those concerning public safety, particularly in respect of road usage, the district judge was of the view that the emergency vehicle was a "potentially lethal device" and that drivers of such vehicles responding to emergencies "must accept the responsibility of having to exercise due care and attention to other road users despite switching on the Red Rhino's siren warning other road users that the firemen were attending to an emergency" (*Mohamad Iskandar bin Basri v PP* [2006] SGDC 124 at [22]). He found the appellant's rash act "not particularly odious" but was of the view that the sentence imposed should serve as a general deterrence to other motorists. He also held that any financial hardship suffered by the appellant and his family carried little weight, and no weight at all when the term of imprisonment was short. In the result, he saw no reason to depart from the usual tariff for such offences and sentenced the appellant in the way described earlier.

The submissions at the appeal

8 The appellant lodged an appeal against the above sentences. Counsel for the appellant indicated that he was appealing only against the imprisonment terms. He argued that there was "not a scintilla of evidence that the Appellant was speeding on approaching the junction". The appellant actually saw that a lorry on his right had stopped at the junction but assumed that other vehicles would likewise stop and give way to the Red Rhino. The appellant was given eight minutes to arrive at the scene of fire. He took the precaution of switching on the siren and the Red Rhino's blinking lights when he was approaching the junction in question. After the accident, he came down and rendered assistance to the victims of the accident. He co-operated with the police in investigations. To show his remorse, he visited the victims in hospital, sought their forgiveness and attended the funeral for Bedah. Zuraidah not only forgave him, she signed a note on 2 June 2006 addressed to the district judge stating as follows:

I am one of the victims in the above accident. The deceased person, Madam Bedah Binte Samat is my mother.

I have been informed that the driver of the other motor vehicle, an SCDF Red Rhino is presently facing criminal charges for the accident. I understand that he was responding to an emergency at the material time.

He had also assisted the victims after the accident.

I hope that your Honour will impose a lenient sentence on him on all the charges he is facing.

9 The appellant was a first offender and was truly contrite. The SCDF, in a letter dated 16 May 2006 from the Commander of the 4th Civil Defence Division, stated that the appellant was a reliable and responsible firefighter. It also commented that despite the accident, he continued in his duties and led a team to successfully extinguish a dangerous fire in a chemical factory on 2 February 2006.

10 The appellant was the main source of income for his family which comprised his unemployed father, his mother (a teacher in a child care centre) and three younger siblings. His rash driving was in the course of rushing to save property and possibly lives on the day in issue. It was submitted therefore that a fine or a short custodial sentence would be adequate punishment in the circumstances.

11 The Prosecution submitted that the privilege of the right of way for emergency vehicles under r 12(1) of the Road Traffic Rules (Cap 276, R 20, 1999 Rev Ed) was circumscribed by the proviso to r 12(4) which states that drivers of such vehicles were not relieved from the provisions of any law relating to dangerous, rash or negligent driving. Due to its sheer size, the Red Rhino was "a more dangerous 'lethal weapon'" as demonstrated by the fact that the taxi involved in the accident was "totally pulverized on collision" while the Red Rhino sustained minimal damage and the people on board suffered no injuries.

12 It was also argued that the junction in issue was a major intersection and the appellant should therefore have approached it carefully and ensured that he had a clear view before driving through it against the light signals. There was no evidence that other vehicles with the right of way had stopped to give way to the Red Rhino. The lorry that was stationary to the right of the Red Rhino had stopped in conformity with the red light and was blocking the appellant's view of part of the junction. Even if the appellant had not been speeding across the junction, it did not mean that he was neither rash nor negligent. Although it could not be stated conclusively what speed the Red Rhino

was travelling at, the indisputable fact was that the consequences of the accident were devastating.

13 The Prosecution urged me to dismiss the appeal as the facts did not show any reason to depart from the usual practice of imposing a custodial sentence for rash drivers who caused death. It was submitted that a message should be sent out to drivers of emergency services vehicles that they owed a duty of care to other road users even when attending to emergency calls.

My decision

14 It is extremely sad that a life was lost and three persons were injured as a result of this accident. The comforting news, as I have been told by the deputy public prosecutor, is that the three injured persons have recovered uneventfully and Zuraidah, Nurul and the baby are doing well. Despite the loss of her mother and the injuries sustained by her, her daughter and the danger posed to her then unborn second child, Zuraidah took the trouble to sign the letter pleading for leniency for the appellant. For this heart-warming, forgiving attitude, I commend her very highly.

15 The appellant must have been travelling at a high speed on the day in question. All the circumstances, such as the damage to the taxi and the fact that the Red Rhino had only eight minutes to respond to the emergency call, point to this inference. The appellant was rash in his driving. He did take the precaution of turning on the vehicle's siren and blinking lights but he sped across the rather wide junction despite having a blind spot to his right (caused by the lorry which had stopped). The result was one death and three persons injured, one rather seriously.

16 Section 304A of the Penal Code is worded rather simply. It states:

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both.

17 *Gan Lim Soon* ([6] *supra*) involved a bus driver charged under s 304A of the Penal Code with causing the death of a schoolgirl pedestrian by doing a negligent act not amounting to culpable homicide in failing to give way to the said pedestrian while the bus was making a left turn, thereby colliding into the pedestrian who was crossing at a controlled crossing while the lights were in her favour. The bus driver elected to remain silent and offered no witnesses when he was called upon in the District Court to enter upon his defence. He was acquitted and the Prosecution appealed. Yong Pung How CJ set aside the acquittal and said (at 264, [10]):

Under s 304A the act can be due to either rashness or negligence. 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. In this case the charge is for causing death by a negligent act, and in my view the appropriate punishment would be a fine. Accordingly, I allow the appeal, set aside the order of acquittal, and impose a fine of \$6,000 with a sentence of three months' imprisonment in default of payment. The respondent is also disqualified from driving all classes of vehicles for five years.

This case has since been regarded as setting the benchmark for sentencing under the two limbs (rash and negligent) of s 304A of the Penal Code.

18 Some ten years later, Yong Pung How CJ had occasion to revisit *Gan Lim Soon*. In *PP v Poh Teck Huat* [2003] 2 SLR 299 ("*Poh Teck Huat*"), the driver of a car failed to stop at a stop line at a

junction but merely slowed down. He was not familiar with the area he was driving in. He saw no traffic and continued across the junction. In the middle of the intersection, he suddenly saw a motorcycle coming from his left and collided with it when he could not stop his car in time. The driver immediately stopped his car and called for an ambulance before proceeding to help the motorcyclist. Unfortunately, the motorcyclist passed away two days later from his multiple injuries. The driver was charged with doing a rash act under s 304A of the Penal Code. He pleaded guilty and was sentenced by the Subordinate Court to a fine of \$8,000 and disqualified from driving all classes of vehicles for five years. The Prosecution appealed.

19 In substituting a sentence of four weeks' imprisonment for the fine, Yong CJ said:

14 I would take this opportunity to clarify that *Gan Lim Soon* does not mean that a custodial sentence is mandated every time a human life is lost as a result of a rash act. A simple examination of the language of s 304A shows that Parliament had clearly accorded the sentencing court a discretion to impose a fine or sentence of imprisonment regardless of whether death is the result of a rash or negligent act.

15 Instead, what *Gan Lim Soon* stands for is the proposition that, in most cases where death is caused by a rash act, the sentence imposed should be that of a term of imprisonment. This is especially true where the rash act involved is rash driving. ... It seems to me that the only way to bring home the message with regards to this type of rash driving is to remind our drivers that if they continue to take such risks, they face serious punishment which, except in a most unusual case, must take the form of a custodial sentence.

16 Thus, while it must always be necessary to look closely into the individual facts of each case before deciding on the proper sentence to be imposed, there would be no need for aggravating factors to be present before a term of imprisonment is imposed.

...

20 In examining the moral culpability of an offender, the scale would start with mere negligence and end with gross recklessness. However negligence does not end nicely where rashness begins and there is a certain measure of overlap. As such, it is possible for the moral culpability of an offender who has committed a rash act to be akin to that of a negligent act.

20 Yong CJ held that there were strong mitigating circumstances in Poh's favour. He had been driving at a low speed as evidenced by the minor damage caused to both vehicles. He rendered immediate assistance to the victim and "[m]ore importantly, he had pleaded guilty at the earliest opportunity, even though the Prosecution had declined to accede to representations to proceed under a lower charge, which reflected well on his remorsefulness and willingness to take responsibility for his acts" ([18] *supra* at [30]). Poh also had no antecedents and had a clean driving record.

21 Two unreported decisions were also discussed in *Poh Teck Huat*. The first was *Sim Chong Eng v PP* (Magistrate's Appeal No 119 of 1993) involving a bus driver who had failed to stop at a T-junction while he was making a left turn out of the bus interchange, thereby encroaching onto the path of an oncoming bus and resulting in a collision which caused the death of the driver of the oncoming bus. The appellant there claimed trial to a charge under the negligent limb of s 304A of the Penal Code. He was convicted and sentenced to pay a fine of \$6,000 and disqualified from all classes of vehicles for five years.

22 The second case considered was *Tay Kok Soon v PP* (Magistrate's Appeal No 245 of 1997).

There, the appellant's car shot out of a minor road onto a major road at an uncontrolled junction and collided with another car, causing it to flip over and killing the driver of that other car. The appellant claimed trial to a charge under the rash limb of s 304A of the Penal Code. He was convicted and sentenced to nine months' imprisonment and disqualified from all classes of vehicles for 15 years. On appeal, the sentence was varied to six months' imprisonment and ten years' disqualification.

23 The distinction between rashness and negligence was applied by Yong CJ to cases under s 336 of the Penal Code for sentencing purposes (see *Ngian Chin Boon v PP* [1999] 1 SLR 119). As the only material difference between s 336 on the one hand and s 337 and s 338 of the Penal Code on the other is that hurt and grievous hurt are involved in the latter two sections, the same distinction must also apply to these latter two sections. The district judge here correctly noted this.

24 In the same way that *Gan Lim Soon* does not mean that a custodial sentence is mandated every time a human life is lost as a result of a rash act, it would be logical to say that the converse is also true for death caused by a negligent act, ie, that imprisonment could be imposed for a negligent act if the facts warrant it. This must be what was contemplated by the sentence, "If death has been caused instead by a negligent act, it would be sufficient *in most cases* to inflict a fine on the accused." [emphasis added] (see [17] above). Thus, using the language in *Poh Teck Huat* ([18] *supra* at [15]), "in a most unusual case", imprisonment might well be imposed for a negligent act.

25 Returning now to the facts of the present appeal, as I have indicated, the appellant's act of driving at a high speed across the junction in spite of the red lights was clearly a very reckless act. The fact that the lorry on his right had already stopped must mean that the red lights had come on for some time already. This naturally meant that vehicles from other directions which had the right of way would have already started going into the junction and it would be incumbent for the appellant to at least slow down and scan the junction before charging into it. What made it worse was the fact that a rather large vehicle (the lorry) was partially blocking his right view. If he could not see what was blocked by the lorry, surely vehicles on the other side of the lorry would not be able to see and to know where the Red Rhino was coming from even if they could hear its siren. The blinking lights, at around noontime on a clear day, would not have been very effective in announcing its presence. Driving in the manner that he did that day at a major intersection must qualify as one of the most reckless acts because he was not merely trying to beat the lights before they changed – they were already against him and he disregarded them anyway.

26 However, putting things in their proper perspective, this was a case of a conscientious firefighter leading his troops into battle with the forces of nature. This was not a young man driving fast and furious for the sheer thrill of it. Surely firefighters, ambulances, police officers and doctors rushing to save lives and/or property in emergency situations ought to be viewed with greater charity when they make mistakes of judgment, however egregious they appear to be in retrospect. Accidents, by definition, are never intended occurrences. The appellant wrongly assumed that all other vehicles at the junction had noticed the Red Rhino and would give way to him. It is true that he was being paid to do the public duty and was not doing voluntary firefighting but one would have to be extremely cynical if one were to compare him to a salesman rushing to meet a prospective client. This does not mean that emergencies justify rashness. They do not. This case is a good reminder for all drivers of emergency services vehicles that a duty of care is still owed to other road users whatever the emergency may be.

27 It is difficult to measure remorse. It has been said that true remorse is about being sorry for the act, not for being caught. In this instance, I do not see a man cornered into surrendering (see the example given in *Wong Kai Chuen Philip v PP* ([6] *supra*). The appellant, badly shaken as he must have been after the accident, nevertheless had the presence of mind to take care of the victims of

his recklessness. He visited them and attended the funeral for Bedah. He sought their forgiveness. Obviously, Zuraidah did not think that the appellant was putting on an act of contrition in order to save himself. She forgave him and pleaded for leniency on his behalf, acknowledging that he was responding to the call of duty. The plea of guilt was a natural manifestation of his remorse. He had at least spared the victims of that harrowing experience from having to recount their ordeal in open court. He did not seek to push the blame to the taxi driver or others. He blamed the accident on his erroneous assumption that others would give way to him. On top of these, he also had a clean record.

28 While the appellant's rash act in these circumstances was not such an unusual case (see *Poh Teck Huat* at [15], quoted at [24] *supra*) justifying a non-custodial sentence, I was of the view that the terms imposed by the district judge were much too harsh for him. The sentences imposed might have been appropriate for a reckless driver speeding across a junction contrary to the light signals for no particular reason other than out of habit or for the sheer thrill of it or because he has had a little too much of intoxicating drinks. They were manifestly excessive for a firefighter rushing to attend to an emergency. The period of disqualification was not in issue at this appeal but eight years would not be out of line with the decided cases discussed earlier.

29 Further, although there was, sadly, one fatality and three injured persons, they all stemmed from one act of rashness and not a series of such acts. The "one-transaction" principle would therefore be applicable here. Although at least two of the imprisonment terms must run consecutively, as mandated by s 18 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), there was no good reason why the two longer terms ought to be chosen to result in a longer imprisonment term than if the longest and the shortest of the three terms were chosen instead.

30 I therefore allowed the appeal and varied the imprisonment sentences in the following manner:

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|-----|-----------------------------|---|---|
| (a) | for the charge under s 304A | - | six months instead of nine, with the disqualification of eight years to stand |
| (b) | for the charge under s 338 | - | two months instead of six |
| (c) | for the charge under s 337 | - | one month instead of three. |

The sentences for (a) and (c) above are to run consecutively while that for (b) will run concurrently with them, making a total of seven months' imprisonment and eight years' disqualification for all classes of driving licence.