# J Ravinthiran v Public Prosecutor
# [2004] SGHC 173

**Case Number** : CM 13/2004, MA 233/2003

**Decision Date** : 11 August 2004

**Tribunal/Court** : High Court

**Coram** : Yong Pung How CJ

**Counsel Name(s)** : Anthony Lim (Anthony and Wee Jin) and Vinit Chhabra (C H Chan and Chhabra) for appellant; Glenn Seah Kim Ming (Deputy Public Prosecutor) for respondent

**Parties** : J Ravinthiran — Public Prosecutor

*Criminal Law – Offences – Voluntarily causing grievous hurt by using a motor vehicle – s 326 Penal Code (Cap 224, 1985 Rev Ed)*

*Criminal Procedure and Sentencing – Appeal – Adducing fresh evidence – Conditions to be fulfilled to justify acceptance of additional evidence – Whether conditions satisfied – Whether additional evidence should be admitted in interests of justice if conditions not satisfied*

*Criminal Procedure and Sentencing – Sentencing – Principles – Factors to be taken into account in sentencing for an offence under s 326 Penal Code (Cap 224, 1985 Rev Ed)*

11 August 2004

**Yong Pung How CJ:**

1 The appellant, J Ravinthiran, was convicted in the District Court on a charge of causing grievous hurt under s 326 of the Penal Code (Cap 224, 1985 Rev Ed) ("the PC"). He was sentenced to four years' imprisonment and six strokes of the cane: see *PP v J Ravinthiran* [2004] SGDC 72. He appealed against both conviction and sentence. For the purpose of the appeal against conviction, the appellant filed a criminal motion seeking to adduce additional evidence. I dismissed the criminal motion and both appeals. I now give my reasons.

**Facts**

2 In the District Court, the amended charge against the appellant read as follows:

> You, J Ravinthiran, male 35 years old NRIC No: S1831449E are charged that you, on or about the 6th day of July 2003 at about 4.25 am, along Serangoon Road near the junction of Desker Road, Singapore, did voluntarily cause grievous hurt to one Mohamed Alias Bin Mohamed Hanifah, male 32 years old, by means of an instrument, which, used as a weapon of offence, is likely to cause death, to wit, by using motor vehicle bearing registration number SCH 2839 G to knock down the said Mohamed Alias Bin Mohamed Hanifah and thereby causing a fracture of the left skull, and have thereby committed an offence punishable under section 326 of the Penal Code, Chapter 224.

The appellant was originally charged together with six other persons under s 326 read with s 34 of the PC. On the first day of trial, these six persons were all granted a discharge not amounting to an acquittal ("DNAQ"), and so the trial against the appellant proceeded on the charge set out above.

***The case for the Prosecution***

3 The Prosecution alleged that at about 4.25am on 6 July 2003, the appellant deliberately

struck the victim with a vehicle, a red Toyota Corolla with registration no SCH 2839 G ("the car"), thereby causing the victim to suffer a fractured skull, among other injuries. It was not disputed that the appellant was the registered owner of the car at the material time.

4 The Prosecution's case rested primarily on the evidence of PW1, Lim Hee Mong, and PW2, Peck Cher Guan, two taxi drivers who witnessed the incident giving rise to the charge.

5 PW1 testified that at about 4.00am on the day in question, he had picked up a passenger from Geylang who wished to go to Desker Road. PW1 stopped his taxi on the left-hand side of Desker Road, near the junction with Serangoon Road. PW1 noticed a group of Indian men quarrelling on Serangoon Road. Some of them were armed with weapons. Then, a red car pulled up to his right. He identified the red car as the appellant's car.

6 PW1 turned to look at the group of people in the car through the window of this taxi, which was wound down. There were four men and one woman in the car. They included the driver, a man in a red T-shirt. PW1 heard the men in the car shouting in Tamil to the group on Serangoon Road. He saw two persons from the group on Serangoon Road pull a man on to the second lane of Serangoon Road. They left him there, and returned to the pavement. The man being pulled was unsteady and appeared to have taken some alcohol. Then, the car swiftly moved across the road, hitting the man. PW1 saw the car's brake lights glowing just as it was about to hit the man. The car struck the man on the lower left side of his back. Two men came out of the car. They pulled the injured man to the first lane of Serangoon Road. The car reversed a little, then turned off toward Syed Alwi Road. PW1 took down the car's licence plate registration number. He then reported the incident at Rochor Neighbourhood Police Post.

7 PW2 testified that he had been plying Serangoon Road for passengers at the material time. He saw a group of five to six Indian persons along the left side of Serangoon Road. They were waving and gesticulating so he stopped his taxi, thinking that they were hailing it. No one responded. He moved his taxi forward, stopping it just beyond Roberts Lane, about five to six car-lengths away. When he looked back over his left shoulder, he noticed some people struggling. There was screaming and shouting.

8 Suddenly, someone was pushed to the ground on all fours. Then PW2 saw a red Toyota, which he identified as the appellant's car, coming across the road. PW2 noted that the car came out of Desker Road, cut across all four lanes of Serangoon Road, and struck the person who had been pushed to the ground. The front portion of the car, where the license plate was, struck the crown of the person's head. A man alighted from the front passenger side, looked at the victim, and left with the others in the car. PW2 took down the car's licence plate number and reported the incident to the police.

9 PW3 was the victim himself, but he was unable to recall much of what happened. He testified that he was still suffering from fits, giddiness and amnesia as a result of his head injury. However, he stated that he did not know the appellant. PW4 was one Dr Pang Boon Chuan, the doctor who prepared the victim's medical report. He testified that the victim's blood alcohol level at the material time was 196mg per 100ml. He also stated that the victim's injuries were consistent with the skull being hit with a forceful blow from a blunt object, such as a bat or hammer, or with being hit by a car in the manner described by PW2.

10 PW5, Sgt Mohamed Ameer bin Mohamed Hanifah, and PW6, Sgt Hirlie Haslee bin Ramli, were police officers from Rochor Neighbourhood Police Post. PW5 responded to a call at about 4.30am, and eventually found the car in a parking lot along Syed Alwi Road. He noted cracks on the front

windshield and water on the front of the car. He followed the trail of water droplets up a staircase to the appellant's office. The appellant answered the door. PW5 took the appellant back to the police station.

11 PW6 was on counter duty when a taxi driver informed him of the incident at about 4.30am. The taxi driver gave him the licence plate number of the car. PW6 rushed to the scene of the crime. The victim was lying on Serangoon Road, near the double yellow line. PW6 tried to establish eyewitness particulars without much success. He was also unable to recover any weapons or exhibits. However, DNA analysis later confirmed that a trace amount of human blood found at the front bumper and number plate region of the appellant's car matched that of the victim.

***The Defence***

12 The appellant's defence was that he simply did not cause the victim's injuries. He did not know the victim. Instead, the injuries were caused by a crowbar swung by one Mark Sivaraj ("Sivaraj"), one of the six persons granted a DNAQ on the first day of trial. The Defence called just two witnesses. The first witness was the appellant himself. The second witness was Balakrishnan s/o Vasudevan ("Bala"), one of the appellant's employees. Sivaraj was not called to testify.

13 The appellant did not deny that he was present at the scene at the material time. He testified that he had been driving back to his office from a coffee shop called Raja's BBQ. His fiancée, one Alexander Margaret ("Margaret"), was in the front passenger seat. Three of his employees, including Bala, were in the back. As the appellant reached the junction of Desker Road and Serangoon Road, he saw some friends on the opposite side of Serangoon Road. One of these friends was Sivaraj. There were two other persons with them who were not known to the appellant. One was walking along the road, carrying a crowbar over his left shoulder. According to the appellant, this person was the victim.

14 The appellant drove diagonally across Serangoon Road, and jammed on his brakes when he reached the second lane. He claimed that he had cut across Serangoon Road to "say hi" to Sivaraj. During cross-examination, however, the appellant admitted that he had in fact already seen Sivaraj twice that evening: once at a pub called BMW Music Lounge, and once at Raja's BBQ.

15 The appellant told Bala to stop the victim from hurting anyone, presumably with the crowbar. By the time Bala alighted, the victim was already swinging it at Sivaraj. Sivaraj ducked, grabbed the crowbar, swung it and hit the victim above his left ear.

16 As the victim fell, the appellant reversed as he "didn't want him to fall on [his] car." Someone tapped on his bonnet because he did not manage to clear the victim. Bala told him that the victim was losing a lot of blood. The appellant advised Bala to call an ambulance. The appellant's explanation for the DNA evidence on his car was that the victim had fallen very near to his car, and had blood pouring from him. Therefore, it was possible that some of it might have spilled on to his car. The appellant then drove back to his office.

17 Bala gave largely the same version of events. He added that he walked to a nearby 7-Eleven store to call an ambulance. He chose not to use his mobile telephone to do so because he "didn't want to be questioned by many people." He told the 995 operator that "there was a guy knocked down along Serangoon Road", and gave his name as "Chris". Bala was also one of the six granted a DNAQ at the beginning of the trial.

18 Both the appellant and Bala gave evidence in court that materially contradicted their

statements to the police. The contradiction pertained to whether Bala had alighted from the car before or after the incident took place. In their statements, both the appellant and Bala maintained that it was after the incident. Yet in court both claimed that he had done so *before* the incident. As for the police statements, both claimed to have been either confused, or to be "simplifying" the facts for the recorder.

19 The day after closing submissions were made, Defence counsel tendered further written submissions. Counsel argued that the district judge should draw an adverse inference against the Prosecution under illustration (g) of s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) for failing to call Sivaraj.

**The decision below**

20 The district judge found PW1 and PW2 to be credible witnesses. They were both independent witnesses, unknown to any of the parties involved. PW2's evidence was corroborated by the objective DNA findings. The district judge accepted that PW1 may have simply been mistaken about the point of impact between the victim and the car. There was also no reason to reject the evidence of the remaining Prosecution witnesses, which the Defence did not challenge.

21 In contrast, the district judge found the appellant to be an unreliable witness. Having observed his demeanour in court, and the manner in which he conducted his defence, the district judge was satisfied that he "would resort to any means to exonerate himself". He found the appellant's explanation for his presence at the scene of the crime to be "simply unbelievable". As for Bala, he was an interested witness because he was the appellant's employee. The district judge did not accept the appellant's explanation for the inconsistency between his oral evidence and his police statements, and noted that Bala had been similarly unable to explain it away.

22 The district judge refused to draw an adverse inference against the Prosecution for failing to call Sivaraj. The deputy public prosecutor ("DPP") had indicated that Sivaraj had not been summoned because the Prosecution did not require him. There had been nothing to stop the appellant from calling Sivaraj to testify, especially since he had been available on the first day of the trial.

23 As to the question of sentence, the district judge took a serious view of the appellant's offence. There were several aggravating features. The victim had sustained serious injuries. The appellant had used a car as a weapon, and was completely unremorseful. He also had two prior convictions for disorderly behaviour and a third for causing grievous hurt. In the circumstances, the district judge sentenced the appellant to four years' imprisonment and six strokes of the cane.

**The criminal motion**

24 Before I turn to the appeals against conviction and sentence, I shall deal briefly with the criminal motion by which the appellant sought to have additional evidence admitted for the purpose of the appeal against conviction. I dismissed the criminal motion for the following reasons.

2 5 The evidence that the appellant sought to admit consisted of six affidavits ("the new evidence") affirmed by the appellant, Bala, Margaret, an acquaintance of the appellant's and two apparently-independent eyewitnesses. From a perusal of the new evidence, it appeared that the appellant sought to have it admitted to show that:

(a) Sivaraj struck the victim with a crowbar, while the appellant's car never hit the victim; and

(b) Sivaraj admitted after the incident that he had hit the victim with a crowbar.

26 The principles governing the admission of fresh evidence on appeal are well-settled. Three cumulative conditions must be satisfied to have the evidence admitted: *Juma'at bin Samad v PP* [1993] 3 SLR 338 at 343, [13]–[14]. First, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial ("non-availability"). Second, the evidence must be such that, if given at the trial, it would probably have an important influence on the result of the case, although it need not be decisive ("relevance"). Third, the evidence must be apparently credible, although it need not be incontrovertible ("reliability").

27 I should first address a point raised by the Prosecution in its written submissions. It was said that the claims made in the new evidence that Sivaraj admitted hitting the victim with the crowbar are hearsay evidence, and therefore irrelevant and inadmissible. I was unable to agree with the Prosecution's contention. Although the evidence was technically hearsay, it was nonetheless admissible by virtue of s 32(c) of the Evidence Act, which provides that such statements are relevant facts

> when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

This was precisely the situation in the appeal before me. As such, I was of the view that the new evidence satisfied the second condition, that of relevance.

28 However, it was an entirely different matter when the first and third conditions came to be considered. Before me, counsel for the appellant readily conceded that the first condition, that of non-availability, was clearly not satisfied. It was also doubtful whether the evidence was reliable. All six accounts given in the affidavits were certainly consistent with each other. However, they contradicted the evidence given at the trial by the two taxi drivers who witnessed the incident, and who were found to be credible by the district judge. They also contradicted objective DNA evidence that matched traces of blood on the appellant's car with that of the victim. Therefore, I was of the opinion that the new evidence was not even apparently credible on its face.

29 Notwithstanding all this, counsel for the appellant sought to argue that the evidence should nevertheless be admitted "in the interests of justice": *Chia Kah Boon v PP* [1999] 4 SLR 72. However, counsel gave no compelling reason why this was a case in which "the interests of justice" could only be served by admitting the new evidence, and seemed content to allow his bare assertion to speak for itself. I must emphasise that the exception in *Chia Kah Boon*, as stated at [9] of the decision, citing *Chan Chun Yee v PP* [1998] 3 SLR 638 at [10], is

> a *narrow* exception and is warranted only by the *most extenuating circumstances*, which may include the fact that the offence is a serious one attracting grave consequences and the fact that the additional evidence sought to be adduced is *highly cogent and pertinent* and the strength of which renders the conviction unsafe. [emphasis added]

As such, in the absence of any supporting reasons to show how the appellant's case came within this narrow exception, I could not admit the new evidence "in the interests of justice". I therefore dismissed the criminal motion accordingly.

**The appeal against conviction**

30 The appellant raised a plethora of arguments in support of his appeal against conviction. The gist of these arguments may be summarised thus:

(a) the district judge erred in law by refusing to draw adverse inferences against the Prosecution for failing to call Sivaraj and one SI Gafoor as witnesses; and

(b) the district judge erred in fact by preferring the Prosecution's version of events over that given by the Defence.

***Whether the district judge erred in law by refusing to draw adverse inferences against the Prosecution***

31 The appellant argued that the Prosecution ought to have called Sivaraj as well as one SI Gafoor, a police officer attached to Central Division who was apparently present at the scene of the crime taking down eyewitness particulars.

*Applicable Principles*

32 The principles governing the drawing of adverse inferences are not controversial. Section 116 of the Evidence Act reads:

> The court *may* presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. [emphasis added]

Illustration (g) to that provision provides that a court may presume "that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it". In *Chua Keem Long v PP* [1996] 1 SLR 510 at 523, [73], I held that

> [s]uch arguments are commonly made. Commonly too, such arguments are without merit. The court must hesitate to draw any such presumption unless the witness not produced is *essential* to the prosecution's case. Any criminal transaction may be observed by a number of witnesses. It is not necessary for the prosecution to produce every single one of those witnesses. *All the prosecution need do is to produce witnesses whose evidence can be believed so as to establish the case beyond a reasonable doubt.* Out of a number of witnesses, it may then only be necessary to bring in one or two; as long as those witnesses actually produced are able to give evidence of the transaction, there is no reason why all of the rest should be called, nor why any presumption should be drawn that the evidence of those witnesses not produced would have been against the prosecution. [emphasis added]

33 In *Khua Kian Keong v PP* [2003] 4 SLR 526 at [34], a case relied on by the Prosecution as well as the district judge, I summarised the principles governing the exercise of the court's discretion under illustration (g) of s 116 as follows:

> Clearly this is a discretionary and not a mandatory inference: *Chua Keem Long v PP* [1996] 1 SLR 510, *Chia Sze Chang v PP* [2002] 4 SLR 523 and *Satli bin Masot* [*v PP* [1999] 2 SLR 637]. The appellate court has to evaluate if the trial judge had exercised his discretion correctly. Strict criteria have been stipulated before this adverse inference can be drawn against the Prosecution, namely that:
>
> (a) the witness not offered was a material one: *Chua Keem Long*, *Lau Song Seng v PP*

[1998] 1 SLR 663 followed by *Satli bin Masot*;

(b) the Prosecution was withholding evidence which it possessed and which was available: *Ang Jwee Herng v PP* [[2004] 2 SLR 474] and *Amir Hamzah bin Berang Kuty v PP* [2003] 1 SLR 617; and

(c) this was done with an ulterior motive to hinder or hamper the Defence: *Ang Jwee Herng*, *Wong Leong Chin v PP* [2001] 1 SLR 146 and *Chia Sze Chang*.

*SI Gafoor*

34 I deal with SI Gafoor first, since this point may be easily disposed of. SI Gafoor is referred to in the evidence of PW5, the police sergeant who found the car in the parking lot on Syed Alwi Road and subsequently brought the appellant back to the police station. According to PW5, it was SI Gafoor who told him that certain eyewitnesses had stated that the appellant was the driver of the car who hit the victim.

35 While the admissibility of these statements in evidence was questionable since they were, strictly speaking, hearsay, it was clear that no adverse inference could be drawn against the Prosecution for failing to call SI Gafoor. First, given that the Prosecution were able to produce the two taxi drivers to give direct eyewitness accounts of the incident, as well as objective DNA evidence establishing that the victim had come into contact with the appellant's car, SI Gafoor was by no means a material witness.

36 Second, even if I were minded to hold that he was a material witness, the Defence did not raise the issue of SI Gafoor's absence at any time during the trial below, nor during closing submissions. The Prosecution contended that no adverse inference can be drawn in such circumstances, relying on the Malaysian case of *Yong Moi Sin v Kerajaan Malaysia* [2000] 1 MLJ 35. This was a case from the Johor Bahru High Court in which the Malaysian equivalent of our illustration (g) of s 116 was considered. Drawing from Indian authorities, the Johor Bahru High Court held at 54 that "no inference should be drawn against a party for not producing a material witness where the question of the absence of such witness was not raised at the trial at all." In my judgment, there is no reason why this principle should not similarly apply here. If the Defence was of the opinion that SI Gafoor was not material in the court below, as one may fairly surmise by their silence on the issue, it was difficult to see why he should suddenly become a material witness on appeal.

*Sivaraj*

37 In relation to Sivaraj, the appellant contended that, given the Defence witnesses' testimony that a crowbar was used to inflict the victim's injuries, it was then "incumbent" on the Prosecution to produce Sivaraj as a "key rebuttal witness" to substantiate their version of events, in which no crowbar was used.

38 I found no merit in this argument. Sivaraj was not a material Prosecution witness. In fact, the district judge noted in his grounds of decision at [29] that the DPP had indicated that the Prosecution would not be calling Sivaraj because they simply "did not require him." The Prosecution had sufficient evidence in support of its positive case: that the victim had been pushed on to Serangoon Road by two other men, and that the appellant had then driven his car across Serangoon Road, hitting the victim's head with the front portion of his car. I noted further that Sivaraj's non-appearance was only raised by the Defence in written submissions tendered *after* the close of the trial, and *after* closing submissions had been delivered in court. I therefore found that the district judge was correct to have

refused to draw an adverse inference against the Prosecution for its failure to call Sivaraj at the trial.

39 I did not, however, agree with the Prosecution that an adverse inference should instead be drawn against the Defence for its own failure to call Sivaraj. It is certainly not in dispute that an adverse inference may be drawn against the Defence in certain circumstances. The Prosecution relied on *Mohamed Abdullah s/o Abdul Razak v PP* [2000] 2 SLR 789 and *PP v Nurashikin bte Ahmad Borhan* [2003] 1 SLR 52 in support of its argument.

40 In *Nurashikin*, the accused was charged with shoplifting while she was with her friend, one Natasha. Her defence was that the items shoplifted could have dropped into her bag accidentally, or that someone else could have put them there. Since the only other person who could have put them in her bag was Natasha, I found that an adverse inference ought to have been drawn against the accused for her failure to call Natasha to give evidence at the trial.

41 However, in *Loo See Mei v PP* [2004] 2 SLR 27 at [54], I also cautioned that

> it is not in every case that an accused person's failure to call on a witness results in an adverse inference being drawn against him or her. Much depends on the facts and circumstances [of] each case. There are various factors to take into account, some of which include the availability of the witness, the purpose for which the witness is to be called and the materiality of calling that witness. These factors are, of course, non-exhaustive.

I then clarified the applicability of *Nurashikin* as follows:

> In *Nurashikin*'s case, the materiality of calling Natasha was obvious: by a deduction of logic, if what the respondent there said was true, it would go towards exculpating the respondent. The same cannot be said of the appellant's failure to call on the other immigration offenders in the present appeal. Without casting aspersions on her previous counsel's conduct of her defence, perhaps more could have been done in contacting these immigration offenders which were offered to her. Be that as it may, one cannot logically deduce that the immigration offenders would have come forward to corroborate her story. *Calling on the other immigration offenders was, in short, not the* only *way to rebut the Prosecution's case.* … Bearing these in mind, I found that the trial judge was correct in stopping short of drawing an adverse inference against the appellant by finding that it merely created a serious gap in her defence. [emphasis added]

42 These considerations applied squarely in the present appeal. First, it was not at all clear that Sivaraj would have corroborated the appellant's version of what happened on Serangoon Road that morning. Indeed, had he done so, he would have laid himself open to prosecution since he had only been granted a DNAQ rather than a full acquittal. Second, it was perfectly open to the appellant to meet the Prosecution's case by proffering his own version of events, as supported by his own evidence and that of Bala. Whether or not the evidence given by him and Bala was cogent and persuasive is, of course, a wholly separate matter. The point is that calling Sivaraj was not the only way to rebut the Prosecution's case. As such, *Nurashikin* is distinguishable and no adverse inference should be drawn against the Defence. At best, the omission merely created a serious gap in the case for the Defence.

***Whether the district judge erred in fact by preferring the Prosecution's version of events over that given by the Defence***

43 Before I turn to consider the appellant's specific arguments, it would be useful to briefly revisit the principles governing the appellate court's power to interfere with findings of fact made by

the trial judge. In *Ramis a/l Muniandy v PP* [2001] 3 SLR 534, the Court of Appeal held at [31]:

> The principles governing the role of an appellate court in reviewing a trial judge's findings of fact are settled. It is clear that an appellate court will not easily disturb findings of fact unless they are *clearly reached against the weight of evidence* (see *eg Lim Ah Poh v PP* [1992] 1 SLR 713 and *Sundara Moorthy Lankatharan v PP* [1997] 3 SLR 464). The appellate court will be *particularly slow* to overturn the trial judge's findings of fact where they hinge on the trial judge's *assessment of the credibility and veracity of witnesses*, unless they can be shown to be plainly wrong or against the weight of the evidence (see *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 and *Tan Hung Yeoh v PP* [1999] 3 SLR 93). [emphasis added]

In the light of this established rule, I noted at the outset that the district judge's grounds of decision in this case clearly demonstrated that the credibility and veracity of the witnesses before him were crucial to the findings of fact now sought to be overturned. Bearing these considerations in mind, I now turn to the arguments raised before me.

44 As mentioned earlier, the appellant put forth a multitude of contentions to dispute the district judge's preference for the Prosecution's version of events over that given by the Defence. In essence, the appellant argued that the district judge erred in failing to consider that:

(a) he ought not to have believed PW1 and PW2;

(b) no other evidence was adduced to support their accounts of the incident;

(c) the appellant had no motive to commit the offence;

(d) the victim's evidence made little sense; and

(e) there was sufficient evidence to show that a crowbar was used to inflict the victim's injuries.

45 I shall deal with points (a) and (b) together since they both pertain to the cogency of the evidence given by PW1 and PW2, the two taxi drivers who witnessed the incident. In my view, there was no merit whatsoever in the appellant's arguments. The district judge was decidedly of the view that these two witnesses were honest and truthful and had no reason at all to lie to the court, since they were wholly independent witnesses unrelated to any of the parties involved.

46 I took special notice of the fact that the district judge was also mindful of PW1's statement that the victim was hit on his back, when the injury was in fact to his head. The district judge accepted this as an honest mistake, which he was perfectly entitled to do: *Ang Jwee Herng v PP* [2001] 2 SLR 474. The taxi drivers' accounts were corroborated by the DNA evidence, which incontrovertibly showed the presence of the victim's blood on the front centre portion of the appellant's car. It was difficult to see what other corroboration the appellant required, and the sort of evidence that the appellant said should have been adduced was entirely speculative in nature. For example, it was the appellant's position that if the victim had really been hit by his car, then he would have been flung forward after impact. As the DPP pointed out, this was simply pure conjecture.

47 Next, I turn to point (c). The DPP rightly pointed out that there is no burden on the Prosecution to show motive. The Prosecution merely has to prove the *actus reus* and *mens rea* of the offence beyond a reasonable doubt, and *mens rea* does not by any means equate to motive. While the presence of a motive may militate in favour of a finding of *mens rea*, the absence of motive

does not necessarily equate to an absence of *mens rea*: *PP v Oh Laye Koh* [1994] 2 SLR 385 at 394, [26]. The appellant then went on to make the rather startling assertion that it made no sense for him to have knocked the victim down with his car, considering that the appellant's car was next to PW1's taxi. It would have been obvious to the appellant, so the argument goes, that the taxi driver would witness the entire incident. I failed to see how this assisted the appellant at all. It was not my task to deduce why he acted in a certain manner, or why he acted in such a way given that he was in full sight of eyewitnesses.

48 Point (d) also afforded very little assistance to the appellant in the light of the independent eyewitness testimony and the objective DNA evidence. The victim was able to say that he was at the scene of the crime at the material time, and there was certainly no doubt that he suffered the injuries for which the appellant was charged. Indeed, the after-effects of those very injuries were still manifest in court when he came to testify, which is precisely the reason he was unable to recall the incident in detail.

49 As for point (e), the appellant appeared to be relying on the medical evidence given by PW4, Dr Pang, and that of the Defence witnesses – himself and his employee, Bala. PW4's evidence did not assist the appellant either way. What PW4 said was that the victim's injuries were consistent *either* with being hit by a car in the manner described by the two taxi drivers, *or* with being hit by a blunt object. As for the evidence given by the appellant and Bala, it need not be emphasised again that the district judge found that neither witness was to be believed. Their accounts were also inherently incredible, and inconsistent with their statements to the police and with the DNA evidence. In short, the appellant would have me believe that:

(a) he drove diagonally across three lanes of Serangoon Road from neighbouring Desker Road in order to "say hi" to Sivaraj, whom he had already seen twice that same evening; and

(b) the victim's blood found on his car came to be there because he happened to position his car precisely where the victim fell as a result of a blow inflicted by a crowbar wielded by Sivaraj.

This was surely absurd. Needless to say, I saw absolutely no basis for me to interfere with the district judge's findings of fact in this regard.

**The appeal against sentence**

50 Before me, the appellant raised no specific grounds in support of his appeal against sentence. However, for the sake of completeness, I shall deal with the question very briefly.

51 It is well-established that an appellate court may only interfere with the sentence meted out by the trial judge if it is satisfied that:

(a) the trial judge made the wrong decision as to the proper factual basis for sentence;

(b) the trial judge erred in appreciating the material before him;

(c) the sentence was wrong in principle; or

(d) the sentence imposed was manifestly excessive, or manifestly inadequate, as the case may be.

This is trite law, as set out in *Tan Koon Swan v PP* [1986] SLR 126 and recently reiterated in *Ong Ah Tiong v PP* [2004] 1 SLR 587 at [10].

52 The offence under s 326 of the PC is punishable with imprisonment for life, or a maximum of ten years' imprisonment with fine or caning. In this case, the district judge sentenced the appellant to four years' imprisonment with six strokes of the cane.

53 The DPP brought a number of sentencing precedents to my attention in his written submissions. Without going through each case in detail, what may be gleaned from those precedents is that the sentencing norm for offences under s 326 averages two and a half to four years' imprisonment, with nine to 12 strokes of the cane. The weapons used in those cases included a knife, a mug of boiling water and a chopper. Not all the injuries were inflicted on vital areas such as the chest or head. Also, not all of the offenders had antecedents. Some had pleaded guilty.

54 In the light of those precedents, I was firmly of the view that it could not possibly be said that the sentence imposed in this case was manifestly excessive. The appellant had two prior convictions for disorderly behaviour under s 20 of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed), and one for causing grievous hurt by a rash act under s 338 of the PC. In my judgment, the use of a motor vehicle was also a critical aggravating factor. The appellant deliberately used his vehicle to endanger the life of another person, and it was perhaps fortunate that the incident occurred in the early hours of the morning while few other members of the public were also on the road. It therefore did not surprise me that the district judge agreed to impose a deterrent sentence on the appellant.

**Conclusion**

55 For these reasons, I dismissed both the appeals against conviction and sentence. I affirmed the sentence of four years' imprisonment and six strokes of the cane imposed on the appellant by the district judge.

*Criminal motion and appeals against conviction and sentence dismissed.*