Tan Yan Yee *v* Public Prosecutor
[2014] SGHC 98

Case Number : Magistrate's Appeal No 10 of 2014

Decision Date : 16 May 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Ramasamy K Chettiar (Acies Law Corporation) for the appellant; Ng Cheng Thiam and Stephanie Koh (Attorney-General's Chambers) for the respondent.

Parties : Tan Yan Yee — Public Prosecutor

Criminal Law – Offences – Causing death by rash or negligent act

16 May 2014 Judgment reserved.

Choo Han Teck J:

1 The appellant drove his car into a pedestrian on the rainy evening of 13 November 2011. The pedestrian died as a result of the collision. The driver of the car was charged with the offence of causing death by a negligent act, under s 304A(*b*) of the Penal Code (Cap 224, 2008 Rev Ed). A person convicted of an offence under s 304A(*b*) shall be punished with imprisonment for a term which may extend to two years, or with a fine, or with both. After a trial in December 2013, the appellant was convicted and punished with a $6,000 fine and a disqualification order for all classes of vehicles for a period of three years. The appellant originally appealed against both conviction and sentence, but withdrew his appeal against sentence before me on 25 April 2014. The only question before me was whether the conviction was sound.

2 As the appeal before me concerned the facts pertaining to the collision, I will first refer to the facts as to how the collision occurred before I consider the district judge's findings, and the submissions made by counsel before me.

3 The collision occurred on 13 November 2011 at about 8.14pm, along Yio Chu Kang road, towards Yio Chu Kang Link, near bus stop B32. There were two lanes on either side of the road. It was a rainy evening. The appellant was returning from Kuala Lumpur in his BMW 525i, and his wife was a passenger in his car. He was traveling on the first lane. The fifth prosecution witness ("PW5") was traveling on the second lane. His car was slightly behind the appellant's at the time of collision. Aside from these two cars, the road was generally empty. Empty, of course, save as to the pedestrian dressed in black. He was carrying a black umbrella and a white plastic bag. He began crossing the road from bus stop B32, passed the second lane on which PW5's car was travelling (heading towards the pedestrian) and was crossing the first lane when the collision occurred. He died soon after, as a result of the collision.

4 The district judge, having heard evidence from the eye witnesses and the expert witness, Dr Marc Green, found that the appellant was negligent for failing to keep a proper look out. He duly convicted the appellant. However, he took notice of the mitigating factors raised by the appellant, namely that the appellant had cooperated in investigations and that the pedestrian did not cross at a designated pedestrian crossing. In doing so, the district judge found that a custodial sentence was not warranted, and issued a fine and disqualification instead. The appellant was unsatisfied, and

appealed.

5 Mr Ramasamy, counsel for the appellant, seemed to advance two main propositions in his case. First, that the appellant could not have seen the deceased as he was crossing the road. For this proposition, he relied – as he did at trial – on expert evidence from Dr Marc Green, who holds a Doctor of Philosophy in experimental psychology and has 41 years of experience in basic and applied research in perception, attention, reaction time, and driver behaviour. Second, and presumably in the alternative, that even if the appellant was negligent in failing to have kept a lookout, his negligence was not the cause of the death of the pedestrian.

6 In his first proposition, Mr Ramasamy made a strenuous argument that the trial judge failed to give adequate consideration to the expert evidence. However, I think the trial judge was correct in dealing with the expert evidence as he did. Expert evidence is rarely helpful in road collisions. Where the case turns solely on factual issues such as "how the collision occurred" and "whose fault it was", the case lies strictly within the trial judge's domain – not the expert's. Further, as in this case, by the time the expert had visited the scene of the collision, the conditions of the crucial areas had changed.

7 Much of Dr Green's evidence pertained to theory of "visual science". Counsel urged me to accept the expert's opinion that the driver (the appellant) could, and should, effectively keep his eyes focused directly ahead of him, especially in the circumstances at the time. He quoted the expert as stating, while on the stand during trial, that:

> [a] driver's main task is not to hit another object that is ahead. It's not that he does not see anything else on the road, but that's where his attention is primarily focused. When it's raining and there is some factor that's making visibility lower, then [he concentrates his] attention even more than [he does] under other circumstances…
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> People drive, hundreds, thousands of miles of roads in their lifetime and it's pretty much a boring event … People walking in front of your car is not the norm… So in foresight rather than hindsight, events like this are extremely, extremely unexpected… Instead, drivers are more concerned with the heart of the task, which is looking down the road, keeping their car in the lane, planning further any steering that they might have to do…

8 I have no quarrel with the broad propositions stated by the expert, but I find that they were couched in such general terms as to be of limited utility in this case. For instance, while pedestrians are not generally expected to walk into the path of a car, the fact that there was a bus stop in the vicinity would require a higher sense of alertness on the part of the driver. Rule 82 of the Highway Code (Cap 276, R 11, 1990 Rev Ed), obliges drivers to "[b]e very careful near schools and bus stops". Rule 82 is contained in the sub-category titled "Safety of Pedestrians". Aside from the generality of the expert evidence, I find that it does not suggest (contrary to Mr Ramasamy's oral submissions before me) that the peripheral vision of the appellant was limited and that the appellant should not be faulted for not having noticed the deceased earlier.

9 Anyone who drives a car will know that the driver's vision is much wider than what Mr Ramasamy was trying to suggest. Nor would a driver's area of focus be as narrow as Mr Ramasamy was trying to make it out to be – just straight ahead and within the confines of the driver's lane. Mr Ramasamy's interpretation of Mr Green's evidence is wholly unrealistic. It is as good as asking the driver to put blinkers over his eyes so that he has an artificially created "tunnel vision". In reality, the driver's vision is much broader. Even if the appellant was driving between 40 and 60 kilometres an hour, there would have been sufficient time for him to have seen persons crossing the road. This was

not a case of a person leaping out of the bushes directly in front of the appellant's car. The deceased had already crossed the entire second lane, which meant that if the appellant was indeed driving between 40 and 60 kilometres an hour – or even at 70 – he ought to have seen the deceased crossing the road. I cannot fault the trial judge for dealing, as he did, with the expert evidence to the contrary – notably Dr Green's table showing the various permutations about speed, distance and time, through which he concluded that even at 40 kilometres an hour, the collision would have been inevitable.

10 Although speed did not seem to be an issue at trial, it does not mean that it has no significance. Driving carefully requires both careful observation and keeping a proper speed. The faster one goes, the less time there is for him to react. If the appellant, who had just driven straight from Kuala Lumpur, was just driving at 40 to 60 kilometres an hour, he clearly was not keeping a proper lookout for the pedestrian.

11 The appellant's second, and alternative, proposition was that he did not cause the death of the deceased. Mr Ramasamy pointed to four factors, namely that:

a. the deceased wore black clothes and used a black umbrella which was tilted to cover his head and body;

b. the deceased did not cross at a pedestrian crossing;

c. visibility was not good and the black umbrella made the deceased "more conspicuous"; and

d. the deceased crossed the road without yielding to the oncoming car, which he was obliged to under r 13(1) of the Road Traffic (Pedestrian Crossings) Rules (Cap 276, R 24, 1990 Rev Ed).

12 I understand that by "more conspicuous" (in [11(c)]), used by Mr Ramasamy in his written submissions, he meant "less noticeable". In essence, his argument on causation was that it was the deceased's fault – for dressing the way he did, and crossing the road without yielding to traffic. If this were the case of a person jumping out into traffic from behind a bush, perhaps Mr Ramasamy's arguments would be more relevant. However, this was the case of an elderly man crossing from a bus stop in the rain – the very same rain that the appellant had frequently emphasised – to the other side of the road. Should he be faulted for having used an umbrella and crossing in the manner that he did? Or more specifically, should his actions absolve a driver who collides into him of all culpability under s 304A(*b*)? I think not. Furthermore, in addressing Mr Ramasamy's fourth point, the Deputy Public Prosecutor cited r 82 of the Highway Code (above at [8]) to emphasise the obligation on drivers to be careful near bus stops. I find that neither regulation provides a definitive answer to this case. However, even if it were the case that the deceased was partly negligent in crossing when it was not safe, that would not mean that it would be a defence to the appellant. They are relevant as mitigating factors, which the trial judge had taken into account.

13 For the reasons above, I dismiss this appeal.