Kuan Cheng Poh v Public Prosecutor
[2004] SGHC 48

Case Number : MA 131/2003

Decision Date : 04 March 2004

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Appellant in person; Glenn Seah (Deputy Public Prosecutor) for respondent

Parties : Kuan Cheng Poh — Public Prosecutor

Road Traffic – Offences – Driving otherwise than in an orderly manner and without due regard for the safety of others – Road Traffic Rules (Cap 276, R 20, 1999 Rev Ed) r 29

4 March 2004

Yong Pung How CJ:

1 The appellant, Kuan Cheng Poh, was convicted in the district court on a charge of driving otherwise than in an orderly manner and without due regard for the safety of others, an offence under r 29 of the Road Traffic Rules (Cap 276, R 20, 1999 Rev Ed). He was sentenced to pay a fine of $1,000, and was disqualified from driving all classes of vehicles for six months. He appealed against both conviction and sentence. I dismissed both appeals, and now give my reasons.

Facts

The Prosecution's case

2 The Prosecution relied primarily on the evidence of two witnesses. The first witness was one Mohamed Yusop bin Haron ("PW1"), a Traffic Police Staff Sergeant who was on highway patrol duty at the material time. The second witness was one Ahmad bin Pee ("PW2"), a Singapore Civil Defence Force ("SCDF") Sergeant who was part of an SCDF team dispatched to the scene following the alleged offence.

3 At about 4.30pm on 13 February 2002, PW1 was alone on patrol duty in his police patrol car ("the patrol car") when he received a call requesting that he attend to an accident at the slip road leading from the Seletar Expressway ("SLE") to the Bukit Timah Expressway ("BKE"). PW1 arrived at the slip road at about 4.40pm. He saw an overturned car in the right-hand portion of the slip road. I will term this "the right lane" for convenience, as that is how it was referred to in the evidence and submissions, although there appeared to be no lane markings in the photograph exhibits.

4 PW1 parked the patrol car behind the overturned car, and got out. He switched on the patrol car's flashing lights and police blinker lights. He also placed a few orange warning cones behind the patrol car. The accident had caused no injuries or damage, other than to the overturned car. It was subsequently towed away.

5 PW1 then checked the road conditions. He noted an oil spill about one car-length in front of the patrol car. He also noted that the road was wet due to rain, but that the rain had already stopped. He checked the road as far as two lamp-post lengths behind the patrol car, against the direction of oncoming traffic from the SLE. He found no further oil spills. PW1 stood in front of his patrol car. He made a call to SCDF, requesting that they send a team to have the oil spill washed off the road.

6 At this point, PW1 saw the appellant's motor lorry GT 828 R ("the lorry") coming on to the slip road from the direction of the SLE. In his evidence, PW1 was clear that the lorry was travelling "fast," although he refused to estimate its speed when asked to do so by the district judge. The lorry skidded toward the left-hand side of the slip road (hereinafter "the left lane" for convenience), then to the right lane, where it hit the metal side railing, one of the orange warning cones behind the patrol car, and finally, the rear of the patrol car itself. Neither PW1 nor the appellant was injured. The appellant told PW1 that he had lost control of the lorry, and that the road was probably slippery.

7 PW1 testified that there was a scooter travelling on the slip road that had to manoeuvre to avoid the skidding lorry. In doing so, the rider of this scooter fell onto the road, but was not injured. PW1 said that he got back on his scooter and left before PW1 could take down his particulars. Finally, PW1 stated that the speed limit on the slip road was 50km/h.

8 At about 5.50pm, PW2 arrived at the slip road with his SCDF team. His evidence was that there was "a large quantity of oil spill" in front of the patrol car, but not behind it. PW2 checked the entire length of the slip road, from the point at which it began to turn off from the SLE into the BKE, but found no other spillage.

The Defence

9 The appellant appeared in person. His defence was that he had lost control of the lorry due to an oil spill on the slip road, which caused the lorry to skid, and subsequently collide into the patrol car. According to the appellant, it was still drizzling at the material time. He stated that he had been driving at a speed of approximately 40km/h. He also said that he could not have been driving at more than 50km/h. He slowed down as he was negotiating the bend and saw the patrol car. He was then travelling at between 30 to 40km/h. There was no scooter as PW1 had claimed.

10 The appellant had one other witness, one Zainuddin M Saleh ("DW2"), the investigating officer, who was offered to the Defence by the Prosecution. DW2 was not at the slip road at the material time. However, he confirmed in cross-examination that PW1 and PW2 had both told him that the oil spill was located in front of the patrol car, rather than behind it.

The decision below

11 The district judge was satisfied that the Prosecution had proved its case against the appellant beyond a reasonable doubt. He made a finding of fact that there was only one spill. This was the oil spill left by the overturned car in front of the patrol car. The appellant had obviously lost control of the lorry, but this had not been because of the oil spill. As the road was wet due to rain, a careful driver would have taken extra precaution in driving, especially if he had sight of the stationary patrol car in his path.

12 As to sentence, the district judge considered that the appellant's antecedents for speeding and for using a mobile telephone while driving showed that he had a "callous attitude on the roads and failed to accept that being allowed to drive on the roads was a responsibility which called for the highest regard for the safety of all other road users". In his view, the degree of carelessness demonstrated on the present facts was "of a high order". The appellant's previous record, as well as the fact that considerable damage to government property had been caused, warranted a period of disqualification in addition to the fine of $1,000. The district judge considered that a disqualification period of six months was appropriate in the circumstances.

13 I should add that the appellant had originally been scheduled to appear in court on

14 October 2002. As he had failed to appear on that date, he was required to show cause under s 133(6) of the Road Traffic Act (Cap 276, 1997 Rev Ed). The district judge was of the view that the appellant's explanation that he had "mixed up" the dates was inadequate. The district judge found that the appellant had not shown cause, and imposed a fine of $500. This order was not appealed against.

The appeal against conviction

14 The appellant appeared in person before me. The 11 "points of clarification" put forward in his petition of appeal essentially disputed the district judge's finding that the oil spill was in front of the patrol car, and not behind it. In particular, the appellant sought to attack the credibility of PW1, and concomitant with that, PW1's evidence as to the location of the oil spill. At the hearing, the appellant took great pains to emphasise that the oil spill was behind the patrol car, and that this was what had caused the lorry to skid.

15 Before I turn to the appellant's point, it is worth briefly revisiting the principle that an appellate court will be slow to disturb a lower court's findings of fact unless they are either plainly wrong or against the weight of the evidence. The basis of this principle is simply that the appellate court does not have the advantage of hearing the witnesses and observing their demeanour. The appellate court will therefore generally defer to the lower court in that regard: *Yap Giau Beng Terence v PP* [1998] 3 SLR 656. The appellate court must be convinced that the decision of the lower court was wrong. Mere doubt is not enough: *PP v Azman bin Abdullah* [1998] 2 SLR 704.

16 Bearing these principles in mind, I considered whether the finding of fact that the appellant sought to impugn met the necessary threshold. I was of the opinion that it did not, and that the appeal on conviction accordingly had to be dismissed, for two reasons.

17 First, the district judge's finding rested significantly on the credibility of PW1, since it was he who gave evidence as to the events immediately before and during the alleged offence. It was PW1 who gave evidence that the only oil spillage on that slip road was in front of, and not behind, the patrol car. The district judge plainly accepted PW1 as a credible witness when he formed the opinion that PW1 was clear in his evidence, and that he remained unshaken in cross-examination by the appellant.

18 Second, PW1's evidence as to the location of the oil spill was independently corroborated by PW2 when the latter gave evidence that there was "a large quantity of oil spill" not behind, but in front of, the patrol car. I noted from the record of proceedings that the appellant claimed that after the alleged offence, a "friend" of his arrived in a taxi to inspect the scene. However, I further noted that the appellant did not produce this "friend" in the district court. This was unfortunate, as it seemed to me that there was a chance that this "friend" might have provided some corroborating testimony of the appellant's version of events. What weight would have been accorded to this person's evidence was, of course, a matter of pure conjecture by the time this appeal came before me. Simply put, the unassailable truth was that the only evidence on record that the oil spill was behind the patrol car came from the appellant himself.

19 In my judgment, this sufficed to dispose of the appeal on conviction. However, there was another reason why the appeal was completely without merit. Even if I accepted the district judge's finding on the oil spill as plainly wrong or against the weight of the evidence, I was of the view that it was unlikely at best, and ridiculous at worst, that the lorry would have careened in such a manner as to cause such significant damage to the metal side railing and the rear of the patrol car if the appellant had indeed been driving in an orderly and careful manner, and with due regard for the safety

of others.

20 It was evident from the photograph exhibits before me that damage of this degree would have required the lorry to collide with the railing and the patrol car with considerable force. This would have been nothing short of impossible had the appellant been driving at less than 40km/h as he claimed. On the contrary, I agreed with the Prosecution that this only lent credence to PW1's evidence that the appellant was travelling "fast" along that slip road. Therefore, it followed that the location of the oil spill could not assist the appellant unless he was also able to show that he was travelling at a conservative speed. This he could not.

21 For those reasons, I dismissed the appeal against conviction. I now turn to the appeal against sentence.

The appeal against sentence

22 While the appellant did not specifically address the issue of sentence either in his Petition of Appeal or at the hearing before me, I nevertheless went on to consider whether the sentence imposed by the district judge was manifestly excessive.

23 The offence under r 29 is punishable under s 131(1A) of the Road Traffic Act, which provides:

> Any person who, by virtue of this section or any other provision of the Act or the rules, is guilty of an offence shall be liable on conviction, where no special penalty is provided in the case of a first offence, to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 3 months and, in the case of a second or subsequent offence, to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 6 months.

Section 42(1) of the Road Traffic Act also empowers the court to impose a disqualification "for such period as it thinks fit". The district judge imposed a fine of $1,000, and a disqualification period of six months.

24 I was of the opinion that in comparison with the sentences imposed in other cases under r 29 of the Road Traffic Rules, the sentence meted out to the appellant in this case was not manifestly excessive. The Prosecution drew my attention to three such cases, the facts of which I do not think it necessary to reproduce in full here, save to observe that comparable sentences were imposed in cases where little or no damage had been caused. In this case, the appellant had caused considerable damage to government property. He had two previous antecedents, also for road traffic offences, which the district judge rightly took into account. In the circumstances, the appellant's failure to slow the lorry down while negotiating a bend on a wet road surface, and the fact that he had not done this despite having sight of the stationary patrol car, with its flashing lights and warning cones, fully warranted the fine and the six-month disqualification period.

25 I therefore declined to disturb the sentence, and dismissed both appeals accordingly.

Appeals against conviction and sentence dismissed.