

Fernandez Joseph Ferdinent v Public Prosecutor
[2007] SGHC 60

Case Number : MA 137/2006, Cr M 3/2007

Decision Date : 30 April 2007

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Ramesh Chandra (Tan Leroy & Chandra) for the appellant; Han Ming Kuang (Deputy Public Prosecutor) for the Prosecution

Parties : Fernandez Joseph Ferdinent — Public Prosecutor

Evidence – Principles – Functions of judge – Trial judge having benefit of hearing witnesses and observing demeanour – When appellate court may review trial judge's findings of fact – Whether trial judge's findings clearly wrong or wholly against weight of evidence

Road Traffic – Offences – Driver not stopping on own accord after causing accident – Driver stopped by another road user and brought back to accident scene – Whether driver failing to render assistance to accident victim – Section 84(3) Road Traffic Act (Cap 276, 2004 Rev Ed)

Road Traffic – Offences – Driver not stopping on own accord after causing accident – Driver stopped by another road user and brought back to accident scene – Whether driver failing to stop after an accident under s 84(1) – Section 84(1) Road Traffic Act (Cap 276, 2004 Rev Ed)

Road Traffic – Offences – Driver not stopping on own accord after causing accident – Driver stopped by another road user and brought back to accident scene – Whether driver may be considered as having removed his vehicle from the accident scene – Section 84(1) Road Traffic Act (Cap 276, 2004 Rev Ed)

Words and Phrases – "Serious injury" – Sections 47D, 84(8) Road Traffic Act (Cap 276, 2004 Rev Ed)

30 April 2007

Tay Yong Kwang J:

1 On 16 February 2007, I heard Magistrate's Appeal No. 137 of 2006 which was an appeal by the appellant against the conviction and sentence pronounced by a district court. As a result of a road accident, the appellant was charged and convicted on four charges under the Road Traffic Act (Cap 276) ("RTA"). The first charge was for driving without reasonable consideration for other road users by swerving from the centre to the left lane, thereby causing a collision between the appellant's car and a motorcycle travelling on the left lane, an offence punishable under s 65(b) of the RTA ("the driving without reasonable consideration charge"). The second charge was for failure to stop after an accident (an offence under s 84(1) and punishable under s 131(2) of the RTA) ("the failure to stop charge"). The third charge accused the appellant of failing to render reasonable assistance to the rider of the motorcycle who had suffered serious injuries (an offence under s 84(3) read with s 84(7) and punishable under s 84(8) of the RTA) ("the failure to render assistance charge"). The fourth charge alleged that the appellant removed his car without the authority of a police officer (an offence under s 84(4) read with s 84(7) and punishable under s 131(2) of the RTA) ("the removal of vehicle charge"). I dismissed the appeal against conviction and sentence save for the removal of vehicle charge. I set aside the conviction and sentence in respect of that charge as I was of the view that it was legally incompatible with the failure to stop charge in that a conviction could not be sustained concurrently on both these charges in the circumstances.

2 On 30_ March 2007, the Public Prosecutor applied by way of Criminal Motion No. 3 of 2007 for an order that the following questions of law of public interest which have arisen in Magistrate's Appeal No. 137 of 2006 be reserved for the decision of the Court of Appeal pursuant to s 60 of the Supreme Court of Judicature Act (Cap 322):

1 Whether the offences under sections 84(1) and 84(4) of the RTA are mutually exclusive offences.

2 If the answer to (1) is in the negative, whether in a serious accident as described in section 84(4) of the RTA, the offences under sections 84(1) and 84(4) of the RTA are both made out if the driver does stop his vehicle after the accident, but at some distance away, because he had been forced to do so by the realisation that someone had witnessed the accident.

I granted the order sought and reserved the said questions of law accordingly. For easy reference, the entire s 84 RTA is set out below:

84 (1) If in any case owing to the presence of a motor vehicle on a road an accident occurs whereby damage or injury is caused to any person, vehicle, structure or animal, the driver of the motor vehicle shall stop and, if required to do so by any person having reasonable grounds for so requiring, give his name and address and also the name and address of the owner and the identification marks of the motor vehicle.

(2) If in the case of any such accident as aforesaid the driver of the motor vehicle for any reason does not give his name and address to any such person as aforesaid, he shall report the accident at a police station or to a police officer as soon as reasonably practicable and, in any case, within 24 hours of the occurrence thereof.

(3) If in any case owing to the presence of a motor vehicle on a road an accident occurs whereby any person is killed or any damage or injury is caused to any person, vehicle, structure or animal, the driver of the motor vehicle shall render such assistance as may be reasonably required by any police officer or in the absence of any police officer such assistance as it may reasonably be in the power of the driver to render.

(4) When owing to the presence of a motor vehicle on a road an accident occurs in consequence of which any person is killed or seriously injured or serious damage is caused to any vehicle or structure, no person shall, except under the authority of a police officer, move or otherwise interfere with any vehicle involved in the accident or any part of such vehicle or do any other act so as to destroy or alter any evidence of the accident except that –

(a) a vehicle or any part thereof may be moved so far as may be necessary to extricate persons or animals involved, remove mails, prevent fire or prevent damage or obstruction to the public; and

(b) goods or passengers baggage may be removed from a vehicle under the supervision of a police officer.

(5) Subsection (4) shall not apply where it is urgently necessary to remove any seriously injured person to hospital and no suitable means of conveyance other than a vehicle involved in the accident is at hand.

(6) In this section, "animal" means any horse, cattle, ass, mule, sheep, pig, goat or dog.

(7) If any person fails to comply with any of the provisions of this section, he shall be guilty of an offence.

(8) Any person who is guilty of an offence under subsection (7) arising from his failure to comply with subsection (3) shall, if he had in driving or attempting to drive a motor vehicle at the time of the accident referred to in that subsection caused any serious injury or death to another person, be liable on conviction –

(a) to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 12 months; and

(b) in the case of a second or subsequent conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years.

(9) Where a person is convicted of an offence under subsection (7) arising from his failure to comply with subsection (3), the court convicting him shall –

(a) if satisfied that he had in driving or attempting to drive a motor vehicle at the time of the accident referred to in subsection (3) caused any serious injury or death to another person; and

(b) unless the court for special reasons thinks fit to order otherwise,

make an order disqualifying him from holding or obtaining a driving licence –

(i) for a period of not less than 12 months from the date of his conviction or, where is sentenced to imprisonment, from the date of his release from prison; or

(ii) for such longer period as the court thinks fit.

(10) Where at one trial the driver of a motor vehicle is convicted and sentenced to imprisonment for –

(a) an offence involving the use of the motor vehicle by him whereby any serious injury or death is caused to another person; and

(b) an offence under subsection (7) arising from his failure to comply with subsection (3).

the court before which he is convicted shall order that the sentences for those offences shall run consecutively.

(11) Any police officer may arrest without warrant any person who is reasonably suspected of having failed to comply with subsection (3).

The facts

3 On 21 May 2005, at about 11.05pm, the motorcyclist in question was riding his motorcycle along the innermost lane of the three-lane Pan Island Expressway ("PIE") in the direction towards Tuas. The weather was clear and traffic flow was light. The appellant was driving his white BMW along the centre lane while the prosecution's main witness, Lee Chee Kin ("Lee"), was driving his car, with his

wife and child in the rear seats, along the extreme right lane. When both cars were negotiating the bend along the Bukit Batok flyover, Lee saw the white BMW suddenly swerve to its left, hitting the motorcycle from the rear, causing the motorcycle to "wheel up". The motorcycle was then dragged for a few seconds. The impact flung the rider off the motorcycle while the motorcycle continued moving for a short distance before hitting the metal railing at the side of the road and falling over.

4 Lee filtered to the centre lane and when the appellant continued to drive on, he decided to chase the white BMW. When Lee caught up and was alongside the BMW, he sounded his horn several times and gestured to the appellant to stop. The appellant slowed down and Lee overtook him. Both cars then stopped along the road shoulder after the Jurong West Avenue 1 exit. Lee estimated that they were about two to three km away from the scene of the accident. Lee alighted and walked towards the appellant's car. When Lee knocked on the window pane, the appellant wound it down a little. Lee asked the appellant if he knew that he had hit someone. The appellant claimed that he did not. Lee then asked him whether he was drunk. The appellant replied that he was not. Lee asked the appellant to alight and return with him to the scene of the accident. It took them ten to fifteen minutes to walk back. There, they saw the rider being attended to by several people.

5 Another driver, Vincent Lim, was driving along the slip road leading to the PIE when he saw the motorcycle, without its rider, passing in front of his car from right to left before crashing into the metal railing at the side of the road and falling over. Vincent Lim stopped his car and, seeing a body lying on the road to his right, alighted to render assistance. About five minutes after that, he saw Lee and the appellant walking towards him from further up the PIE.

6 The victim was on his way home after work on that fateful day. All that he could recall was that he was riding his motorcycle along the innermost lane of the PIE when a vehicle hit his motorcycle from the rear. He was flung off his motorcycle and fainted after that. He regained consciousness momentarily when he arrived at the hospital.

7 A traffic police officer who arrived at the scene of the accident testified that there were a few leaves with bloodstains at the front left headlamp of the appellant's BMW, which was broken. There was also a dent at the front left portion of the car. A part of the car's front bumper had fallen off. Although the appellant passed the breath alcohol analyser test, he had a flushed face and bloodshot eyes. However, his gait was steady and there was no smell of alcohol. The motorcycle was badly damaged all over, with its pillion seat tilted upwards. The appellant's car was parked some 500 m ahead, with Lee's car at its front.

8 The appellant, aged 56, testified that he was travelling along the centre lane of the PIE that night at a speed below 90 km per hour. At one point along the expressway, he felt "slight jarring towards the front of my car and very soon, within one second, I felt travelling problems", which he explained as a dragging sound. He was very anxious to see what was causing the sound. He quickly signalled left and filtered towards the road shoulder. However, as the slip road and the PIE merged at that area, he continued driving forward slowly for less than 500 m until it was safe to stop at the road shoulder. He then stopped and alighted from his car. As he was at the front of his car, another car approached and stopped in front of his. The driver of the other car went up to the appellant and asked him if he knew that he had hit someone. The appellant was stunned. He then realized that a safety helmet was under his car. He asked the other driver to show him where the victim was and walked hurriedly back with him to the accident scene. They reached the spot where the motorcycle lay about five minutes later.

9 The appellant could not believe that he had hit the motorcycle. As the victim was being attended to by others, he did not want to interfere. He wanted to call for an ambulance but was informed by

someone that that had already been done. The ambulance arrived soon thereafter and brought the victim away. He then waited for the police to arrive at the scene. When the police arrived, he told the officers that he could not recall hitting the motorcycle.

10 The appellant also testified that the area of the PIE where the collision allegedly took place was a little dark but it was practically a straight stretch of road. He had not travelled often along that stretch of the PIE. He was not sleepy at the material time. The car radio was turned on. He agreed that the weather was good, the road was dry and the traffic volume was moderate. He did not notice any vehicle to his left before he felt the jarring at the front of his car. That night, he was intending to join the Kranji Expressway, then the Bukit Timah Expressway to go to his place of work at the Changi International Airport. It was not explained at the trial why he appeared to be taking a more circuitous route to Changi when he should have been travelling on the other side of the PIE leading from Jurong to Changi.

11 The appellant denied colliding into the motorcycle. He claimed that he had never had an accident involving personal injuries in the 30 years that he had been driving. He asked rhetorically why he would suddenly want to "rear end a motorcycle". He surmised that the rider of the motorcycle had somehow impacted the front lower portion of his car, which was below his line of vision sitting in the driver's seat. He also referred to the evidence given by the traffic police that there were some blood-stained leaves at the front left headlamp of his car and said (at page 77 of the notes of evidence):

"My view is that the victim went through the railings. Carried these blooded (sic) leaves with him and hit that portion of my car."

The district judge's decision

12 The district judge dealt with the inconsistencies in Lee's evidence, in particular, the discrepancies between his testimony in court and in an affidavit that he had affirmed in the victim's civil action arising from the accident. He was of the view that the inconsistencies did not materially detract from the general thrust and veracity of Lee's testimony and that where they pertained to timing and distances, were caused by Lee's inability to estimate such correctly. He accepted Lee's evidence that the appellant's car had swerved across the lanes. Even if Lee's evidence on the collision were rejected, the district judge found that a consideration of the physical evidence and the testimony of the other witnesses would still lead to the conclusion that a collision did take place between the BMW and the motorcycle.

13 On the issue of the blood-stained leaves, the district judge said that the leaves were not sent for analysis and it was only a presumption made that the stains were indeed blood. In any case, he did not consider the presence of the leaves enough to cast any doubt on the other physical evidence. The scenario postulated by the appellant was rejected by him as it failed to explain the damage to the motorcycle, which had obviously been hit at its rear and the only vehicle that could have done that was the BMW on the facts of the case. Accordingly, he found the appellant guilty of the charge of driving without reasonable consideration for other road users.

14 On the failure to stop charge, the district judge noted that 500 m was the length of five football pitches or one and a quarter laps around a standard running track. It was also the distance of ten lamp-posts after the merger between the PIE and the side road mentioned earlier. He therefore rejected the appellant's testimony that he could not stop safely until the road shoulder was broad enough for him to do so. He accepted Lee's evidence over the appellant's. He further opined that since the requirement to stop after an accident was a positive duty, stopping under coercion could not amount to a proper discharge thereof.

15 The district judge noted that s 47D of the RTA defined "serious injury" for the purposes of ss 47B and 47C and that s 67A(3) incorporated that meaning by reference for the purposes of s 67A(1). S 47D states that "serious injury" means any injury which causes a person to be during a period of 7 days in severe bodily pain or unable to follow his ordinary pursuits. The district judge opined (at [43] and [44] of his grounds of decision [2006] SGDC 263):

43 ...Curiously, there is no section referring either back to section 67A(3) or section 47D in section 84, but I see no reason why the same definitions should not apply to section 84. In this case, the victim suffered various fractures and had to be hospitalised for seven weeks, so I had no hesitation in determining that the injuries were serious enough to fulfill that particular element of the offence.

44 Ultimately, I did not believe the accused's version of events and found that by driving on after the accident, he had failed to stop, failed to render assistance and removed his vehicle without the authority of a police officer. I therefore found that the remaining three charges under Section 84 had also been proven beyond a reasonable doubt and convicted the accused on all four charges accordingly.

16 In sentencing the appellant on the driving without reasonable consideration charge, the district judge noted that there was no evidence to show that he was driving dangerously and so felt that a custodial sentence was not warranted and that the maximum fine would be sufficient punishment. However, he felt that the offences under s 84 called for different treatment, in particular, the failure to render assistance charge. In 1996, when Parliament increased the maximum penalty for hit and run cases where death or serious injury was caused, the Minister for Home Affairs had explained that a serious view was taken of such incidents because the culprit had a moral obligation to stop after the accident to assist the victim, which could make a difference between life and death in some cases. Further, it was difficult to trace such culprits and the number of deaths in such cases had been on the rise.

17 The district judge agreed with the general sentencing trend to impose a custodial sentence in such cases. Balancing the appellant's virtually unblemished record (save for minor parking offences) during his thirty years of driving with the public interest element in such offences, he felt that there were no aggravating or mitigating factors compelling enough for him to depart from the usual tariff of six weeks' imprisonment in cases involving serious injury where the failure to render assistance charge was concerned. He was of the opinion that the failure to stop charge warranted a custodial sentence as well although it ought to be a shorter one. As for the removal of vehicle charge, he felt that a fine would suffice.

18 The punishments meted out were as follows:

- (a) driving without reasonable consideration charge - \$1,000 fine or 5 days' imprisonment in default and disqualified from driving all classes of vehicles for six months
- (b) failure to stop charge - three weeks' imprisonment and disqualified from driving all classes of vehicles for 18 months from the date of release
- (c) failure to render assistance charge - six weeks' imprisonment and disqualified from driving all classes of vehicles for 18 months from date of release
- (d) removal of vehicle charge - \$1,000 fine or 5 days' imprisonment in default.

The imprisonment terms as well as the disqualification orders respectively were ordered to run concurrently, making a total of \$2,000 fine, six weeks' imprisonment and 18 months' disqualification.

The appeal

19 The appellant appealed against conviction and sentence in respect of all four charges. The appellant sought to impugn the district judge's decision essentially in respect of his treatment of the evidence given by Lee.

20 The law is clear on the approach that an appellate court should adopt when dealing with the credibility of witnesses. As held in *Moganaruban s/o Subramaniam v PP* [2005] 4 SLR 121, where the trial court has had the benefit of hearing the evidence of the witnesses and observing their demeanour, an appellate court must defer to the findings of fact based on the assessment of the witnesses unless such findings are clearly wrong or wholly against the weight of the evidence. Should the appellate court wish to reverse the trial judge's decision, it must not merely entertain doubts as to whether the decision is right but must be convinced that it is wrong.

21 As summarized above, the district judge had meticulously considered all aspects of the alleged inconsistencies and I could not say that his findings of fact were clearly wrong or wholly unsupported by the evidence adduced at trial. Indeed, I found myself in agreement with his entire decision on conviction and sentence save for the conviction on the removal of vehicle charge, the propriety of which was not canvassed before him.

22 I agree that the duty to stop in s 84(1) was not fulfilled in the circumstances of this case. The duty to stop is an immediate one upon the realization that an accident had taken place. To stop is come to a halt. The stopping must not have been coerced by others or by circumstances. As found by the district judge, the appellant must have been aware of the collision but drove on for another few hundred metres. The appellant did not stop on his own accord – he was effectively forced to do so because someone happened to have witnessed the accident and gave chase. Stopping after having been ordered to do so by law enforcement officers or having been directed to do so by public-spirited road-users such as Lee does not satisfy the duty mandated by the RTA. Otherwise, a hit-and-run driver who was chased by the police for five kilometres and finally apprehended would be able to make the absurd claim that he did finally stop. Similarly, if the appellant had stopped some distance away from the scene of accident because his car stalled after encountering some mechanical problem or because he drove it into a ditch, it could not sensibly be said that he did stop as required by law. Of course, if a driver could prove that he was not able to stop his vehicle after an accident because the brakes failed or due to some other factor over which he had no control, then he would not be guilty of the offence of failing to stop.

23 In the same vein, the offence of failing to render assistance was complete the moment the appellant drove on from the scene of accident. Having been brought back to the scene involuntarily, he said he wanted to call for an ambulance but someone informed him that he had already done so. That does not extinguish the offence which, as I have indicated, was already complete when he failed to stop because he could not then alight to see what help he could offer to the injured rider. However, any such belated gestures may go somewhat towards mitigating the offence.

24 I also agree with the district judge's views on the meaning of "serious injury" in s 84(8) of the RTA, in that it should have the same meaning as in s 47D, i.e. "any injury which causes a person to be during a period of 7 days in severe bodily pain or unable to follow his ordinary pursuits". It would appear that s 84 has inadvertently omitted to incorporate by reference the meaning given to this term. Inasmuch as terms used in subsidiary legislation ought to bear the same meaning that those

terms have in the principal legislation, it is rational and entirely in keeping with a purposive approach to interpretation that the same term used in various sections of the same Act should bear the same meaning unless otherwise provided for. In my view therefore, "serious injury" in s 84 must accord with the definition given to it in s 47D. The only difficulty that I see in this is that "seriously injured" in s 84(4) and (5) would then logically bear the same meaning. It will then be a conundrum how anyone at a scene of accident is going to determine whether "serious injury" has been occasioned in order for these two provisions of law to apply when one does not know at that stage whether the injured will be in severe bodily pain for seven days. It would therefore be better if the word "seriously" is removed from these two subsections. If I am wrong in incorporating the definition in s 47D, then the term ought to bear its ordinary meaning and that would necessitate a qualitative assessment of "serious". Nevertheless, commonsensically, I doubt very much if anyone would not consider multiple fractures requiring seven weeks' hospitalisation to be "serious injury" when the written law deems seven days of incapacitation to suffice.

25 I now discuss the conviction on the removal of vehicle charge, the setting aside of which is the subject of the reference to the Court of Appeal. The charge alleged that the appellant "did remove your vehicle without the authority of a Police Officer and you have thereby committed an offence under Section 84(4) read with Section 84(7) and punishable under Section 131(2) of the Road Traffic Act". The actual words used in s 84(4) are "no person shall, except under the authority of a police officer, move or otherwise interfere with any vehicle involved in the accident or any part of such vehicle or do any other act so as to destroy or alter any evidence of the accident". Implicit in the offence is the fact that the vehicle involved is stationary at the location of the accident. This is buttressed by the two exceptions in s 84(4) and by the exception provided in s 84(5), which states that s 84(4) "shall not apply where it is urgently necessary to remove any seriously injured person to hospital and no suitable means of conveyance *other than a vehicle involved in the accident is at hand*" (emphasis added). Put simply, in order to remove an object from point A, it must be at point A. The BMW in question was never stationary at the scene of accident, hence the failure to stop charge. It was there only in the sense that it was passing through without so much as a momentary halt. If the appellant did stop voluntarily for a few seconds but then decided to move on, he would have been guilty of an offence under s 84(3) and (4) but not s 84(1). Since he did not stop at all until he was forced to some distance away, it seems to me highly artificial to accuse him of having "removed" his vehicle concurrently with his failure to stop. For this reason, I was of the view that the removal of vehicle charge was legally incompatible with the failure to stop charge and so set aside the conviction relating to the former.

26 Assuming the appellant, having been forced to stop and having walked back to the scene of accident with Lee, subsequently took it upon himself to leave the scene again by walking back to his stationary car and driving it away. In this situation, a conviction under s 84(4) would not be inconceivable. However, as I have clarified during the appeal, the appellant did no such act.

27 For these reasons, I dismissed the appeal against conviction and sentence in respect of the driving without reasonable consideration charge, the failure to stop charge and the failure to render assistance charge but set aside the conviction and sentence where the removal of vehicle charge was concerned. The \$1,000 paid by the appellant as the fine for the removal of vehicle charge was ordered to be returned to him.