

Lim Eng Guan Derek v Public Prosecutor
[2003] SGHC 303

Case Number : MA 67/2003
Decision Date : 03 December 2003
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Irving Choh Thian Chee and Adrian Ng (Rajah and Tann) for appellant; Eddy Tham (Deputy Public Prosecutor) for respondent
Parties : Lim Eng Guan Derek — Public Prosecutor

*Road Traffic – Offences – Failure to provide breath specimen without reasonable excuse
– Appellant claiming to have tried his best -- Whether reasonable excuse – Sections 65 and 70(4)
Road Traffic Act (Cap 276, 1997 Rev Ed)*

1 This was an appeal against conviction and sentence. The appellant, Lim Eng Guan Derek ("Derek"), was convicted by District Judge Mark Tay after a full trial on two charges: one under s 70(4) of the Road Traffic Act (Cap 276, 1997 Rev Ed) ("RTA") for failing to provide a specimen of his breath for analysis without reasonable excuse, and another under s 65 of the RTA for driving without due care and attention.

2 Derek was fined \$3,000 and disqualified from holding or obtaining all classes of driving licences for a period of 24 months on the first charge. He was fined \$600 on the second charge.

The prosecution's version of facts

3 On 23 June 2001, at about 3.00am, James Tan Chong Jin ("James") was riding on a motorcycle along Orchard Road. His pillion rider was his girlfriend, Loke Siew Fong ("Siew Fong"). They were on their way to Newton Circus hawker centre when they stopped at a traffic light at the junction of Orchard Road and Buyong Road.

4 While waiting for the traffic light to change, their motorcycle was hit from behind by a car driven by Derek. The impact caused James to jump off the motorcycle, and Siew Fong to fall onto the road. The motorcycle fell onto the road on its side.

5 Derek attempted to drive away from the scene of the accident, but was prevented from doing so when James stood in front of his car. James asked Derek if he wanted to settle the matter personally, as the motorcycle's rear utility box was cracked as a result of the collision, and the motorcycle itself had sustained some scratches. Derek got out of the car and began to shout vulgarities at James.

6 James observed that Derek's speech was slurred and his movements were unsteady. He decided to call the police. While James was calling the police, three of his friends who had been waiting for him at Newton Circus hawker centre arrived at the scene. Siew Fong had spoken to them on a handphone and had informed them that she and James had been in an accident. One of the friends stopped Derek from advancing towards James by physically restraining him.

7 Two police officers, Corporal Arthur Chua Chiow Leng ("CPL Chua") and Staff Sergeant Muhamad Rafi Bin Abdul Bakar ("SSGT Muhamad"), arrived at the scene of the accident a short while later. CPL Chua observed that the motorcycle was lying on its side, and that there was minor damage on the rear portion near the utility box. When he asked Derek whether his car had bumped into the

rear of the motorcycle, Derek refused to answer. Both police officers observed that Derek was moving unsteadily, and that his breath smelled of alcohol.

8 SSGT Muhamad informed Derek that he was going to administer a mobile breathalyser test. Derek was uncooperative and aggressive. He repeatedly asked "do you know who I am" to the police officers. He insisted on calling his lawyer before taking the test. He also mentioned the names of certain senior police officers, stating that he knew them, while the breathalyser test was being administered.

9 Derek took three attempts before he managed to give an adequate breath specimen. The mobile breathalyser gave a 'red' result, which meant that Derek had failed the test. He was arrested for suspected drunken driving and brought to Traffic Police Headquarters for a Breath Evidential Analysis ("BEA") test.

10 By the time Derek was brought to Traffic Police Headquarters, he had soiled his pants. Staff Sergeant Suliah bte Kadiman ("SSGT Suliah"), a trained breathalyser operator, was tasked to carry out Derek's BEA test. She realised that he stank of faeces, and allowed him to go to the toilet to wash up before administering the test.

11 SSGT Suliah explained the procedures for the BEA test to Derek, and the consequences of failing to provide a breath specimen without reasonable excuse. She ascertained that he had no health problems and was capable of providing the breath specimen. Derek took the test three times. Each time, he gave short quick blows into the BEA machine mouthpiece, instead of following SSGT Suliah's instructions to take a deep breath and to give a sustained blow. After the third attempt, SSGT Suliah informed Derek that he had failed to provide a sufficient specimen and that he would be referred for bail to be offered. Derek became angry and said that he knew the Deputy Commissioner of Police, Goh Liang Kwang.

12 During the trial below, the workshop superintendent of CET Technology Pte Ltd, one Victor Khaw ("Victor"), gave evidence on the operation of the BEA machine and the handheld mobile breathalyser. CET Technology had maintained and repaired such equipment for the Singapore Police Force for at least five years. Victor's evidence was that it is actually more difficult to provide a sufficient breath specimen for the mobile breathalyser, as opposed to the BEA machine. He opined that a person who managed to provide a breath specimen on the mobile breathalyser should have no problem doing so for the BEA machine. He also confirmed that the BEA machine operated by SSGT Suliah was serviceable, being operational and in good working condition.

The defence's version of facts

13 Derek's defence was that the accident never took place. He had stopped his car behind James's motorcycle at the traffic junction, and had flashed his headlights because the motorcycle did not ride off when the light changed to 'green'. This caused James and Siew Fong to get off from the motorcycle and to confront him in his car. James kicked the front of the car and banged his fist against the side window. Derek tried to pacify James by apologising for flashing his headlights at him, and explained that he did so only to indicate that the traffic light had changed.

14 James continued to be aggressive and shouted vulgarities at Derek. He tried to make Derek pay for fictitious damage done to the motorcycle, while Siew Fong threatened to accuse him of molest if he did not pay. Being a principled person, Derek refused to pay. When James' three friends arrived at the scene, Derek was physically assaulted by one of them. He was grabbed by the throat and pinned against his car.

15 When the police officers arrived, Derek complained to them that he had been assaulted. However, the officers were only concerned with the alleged accident and the possibility that he was intoxicated. Derek admitted that he had been drinking prior to the incident. However, he had only had one glass of wine and was not intoxicated. He was agitated by the police officers' lack of assistance and concern. His agitation, combined with fear for his personal safety, caused him to soil his pants.

16 Derek claimed that he had had a reasonable excuse for not providing a sufficient breath specimen during the BEA test. He was suffering from Acute Stress Disorder. This was caused by the trauma of the incident, as well as his discomfort from having soiled his pants. He had tried his best to perform the BEA test, but was simply unable to do so. Each time he tried to provide a breath specimen, he ran out of breath.

17 A consultant psychiatrist, one Dr Lionel Lim Chee Chiong ("Dr Lim"), testified that Derek was suffering from Acute Stress Disorder at the material time. Dr Lim examined Derek some 19 months after the accident. He opined that Derek's Acute Stress Disorder had impaired his ability to complete the BEA test successfully. Dr Lim's opinion was not challenged by the prosecution.

The decision below

18 The district judge rejected Derek's contention that there was no accident, and rejected his defence of reasonable excuse. He convicted Derek, fined him a total of \$3,600 and disqualified him from driving all classes of vehicles for two years.

The issues on appeal

18 Derek brought up several arguments on appeal. I found these arguments unmeritorious and dismissed the appeal accordingly.

The factual question of whether there had been an accident

19 Derek challenged the finding of fact below that there had been an accident between his car and the motorcycle. He claimed that the motorcycle could not have fallen to the ground in the manner described by the prosecution, because scratches were only found on the motorcycle's rear utility box and not on the motorcycle itself. I found this argument to be without merit. It disregarded the fact that the rear utility box of a motorcycle is quite large, as it is often the only viable means of carrying items on a motorcycle. As such, it was entirely possible that it was the utility box which hit the ground the hardest when the motorcycle fell onto its side, and was consequently the portion which sustained the most visible damage.

20 Moreover, the judge gave an exhaustive account of the evidence which supported his finding of fact that an accident had taken place. The testimonies of the two police officers largely corroborated the evidence of James and Siew Fong. The judge also found that the police officers were independent witnesses who had no incentive to lie. Photographs had been taken of the damage done to the motorcycle and submitted to the traffic police within a day of the accident. Furthermore, Derek had steadfastly refused to answer the police officers' questions about the accident, and instead continued to complain that he had been physically assaulted.

21 In his grounds of decision, the judge held that Derek's claims of extortion and threatened molest were spurious and malicious allegations not borne out by the evidence. He also found no merit in Derek's complaint that the police officers had ignored his allegations of assault. In fact, there was no attempt by the police to brush aside the alleged assault, as the matter was subsequently referred

to the Attorney-General's Chambers and a stern warning was administered to the assailant.

22 Given these circumstances, I saw no reason to disturb the judge's finding that there had been an accident, and that Derek had therefore committed an offence under s 65 of the RTA. This was a finding of fact which hinged on the judge's assessment of the credibility of the witnesses. It is trite law that an appellate court will be slow to interfere with such a finding: *Yap Giau Beng Terence v PP* [1998] 3 SLR 656.

The issue of 'reasonable excuse'

23 On the issue of Derek's failure to provide a breath specimen for BEA analysis, the judge accepted that a medical condition such as Acute Stress Disorder could in certain situations constitute a reasonable excuse under s 70 of the RTA. He followed the approach taken by this Court in *Madiaalakan s/o Muthusamy v Public Prosecutor* [2001] 4 SLR 618. However, he held that even if Derek was suffering from a stress disorder at the material time, it did not render him incapable of providing an adequate breath specimen. As such, he had no 'reasonable excuse' within the meaning of s 70 of the RTA.

24 In my opinion, the evidence fully supported the judge's finding on this point. It was not disputed that Derek was under considerable stress at the time the BEA test was administered. He had been involved in a traffic accident and had been arrested by the police. Moreover, he had soiled his pants and had to endure the stench of his own faeces until he was told to wash up by SSGT Suliah.

25 Nevertheless, I found no merit in Derek's contention that he was mentally incapable of providing an adequate breath specimen. He claimed that he was traumatised at the material time. However, the evidence showed that he displayed considerable mental clarity. He was alert, aggressive and uncooperative. He repeatedly said "do you know who am I" and brought up the names of senior police officers in an attempt to influence the relatively junior officers whom he was dealing with. He even had the presence of mind to call his lawyer before agreeing to undergo the mobile breathalyser test.

26 Similarly, I found no merit to Derek's contention that he was physically incapable of providing an adequate breath specimen. After all, he was able to produce a sufficient breath specimen for the mobile breathalyser test administered at the scene of the accident by SSGT Muhamad. It was not disputed that, when compared with the BEA breathalyser, the mobile breathalyser actually required Derek to provide a much larger volume of air in order to obtain a reading.

The defence of an accused who has tried his best

27 Derek argued that he had tried his best to provide an adequate breath specimen, but had failed to do so because of his stress disorder. He relied on the case of *Cotgrove v Cooney* [1987] RTR 124 to show that his having tried his best would amount to a reasonable excuse under s 70 of the RTA.

28 In my opinion, *Cotgrove v Cooney* was of no assistance to Derek as it was very different from the present appeal. In that case, the police officer administering the breathalyser test testified that the accused had tried his utmost to provide an adequate breath specimen. By contrast, SSGT Suliah did not give any such testimony in Derek's favour. In fact, she expressly stated in her oral evidence that Derek did not perform the BEA test properly.

29 An accused is not entitled to circumvent s 70 of the RTA by simply saying: "I tried my best,

but I just couldn't do it". The question of whether an accused has tried his best is to be determined by the court: *Madiaalakan s/o Muthusamy v Public Prosecutor*. It must be based on a strict and meticulous examination of the facts. In the present case, the only evidence that Derek had tried his best was his own assertion that he had done so. Such a bare assertion could not establish a reasonable excuse under s 70 of the RTA.

Dr Lim's expert evidence

30 One question that arose in this case was whether Dr Lim's expert evidence was supported by basic facts. The judge below held that the court would accept unchallenged expert evidence if it was based on solid grounds and supported by basic facts: *Saeng-Un Udom v PP* [2001] 3 SLR 1. However, he found that Dr Lim's expert evidence could not establish a reasonable excuse as it was based on flawed facts provided by Derek himself. He put little weight on Dr Lim's report, and found that Derek was not suffering from Acute Stress Disorder to the extent that it impaired his ability to perform the BEA test.

31 On appeal, Derek argued that the judge dismissed Dr Lim's report too casually. He claimed that the facts could not have been flawed as they were the same facts which he testified to during the trial below. There was absolutely no merit to this argument. The fact that Derek furnished the same version of events during the trial did not make his evidence unimpeachable.

32 The judge was thus fully entitled to put little weight on Dr Lim's expert evidence as it was based on flawed facts. In the first place, Dr Lim's assessment was hardly contemporaneous. It was made some 19 months after the accident. Moreover, it was based exclusively on the version of events provided by Derek, such as his alleged feeling of helplessness caused when the police officers refused to address his complaint that he had been assaulted. After hearing all of the witnesses, the judge found that Derek's version of events was unreliable. He was therefore entitled to reject Dr Lim's opinion as it was based on facts which were not consistent with the facts which he had found to be accurate during the trial: see *Sek Kim Wah v Public Prosecutor* [1988] 1 MLJ 348.

The sentence was not manifestly excessive

33 I found that the sentences imposed on Derek were not manifestly excessive. The usual tariff for an offender who pleaded guilty to an offence under s 70(4)(a) of the RTA is about \$2,500, and a disqualification from driving all vehicles for 18 to 24 months. Derek was convicted after a full trial, and thus his fine of \$3,000 and disqualification for 24 months was hardly excessive. The usual tariff for an offence under s 65 of the RTA is a fine between \$500 and \$1000, with discretionary disqualification. As such, Derek's fine of \$600 was clearly not excessive.

Conclusion

34 Ordinarily, this would have been a fairly straightforward traffic case. What made this case unusual was Derek's insistence on trumpeting his purported importance and influence to the various police officers whom he was dealing with. Perhaps he was proud of his status as a senior vice-president and head of the consumer loans department at a major local bank. Nevertheless, it did him no good to trumpet the names of senior police officers and to repeatedly ask the police officers dealing with him if they knew who he was. In my opinion, a person in Derek's position really should have known better.

Appeal dismissed.

Copyright © Government of Singapore.