Public Prosecutor v Wan Chin Hon
[2005] SGHC 121

Case Number : CC 10/2005

Decision Date : 06 July 2005

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Edwin San and Daphne Chang (Deputy Public Prosecutors) for the Prosecution; Raymond Ng (Tan Lay Keng and Co) for the accused

Parties : Public Prosecutor — Wan Chin Hon

Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Culpable homicide not amounting to murder – Taxi driver deliberately swerving vehicle into motorcyclist's lane, causing motorcyclist to be flung off motorcycle – Appropriate sentence for causing death of fellow motorist – Section 304(b) Penal Code (Cap 224, 1985 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Principles – Aggravating factors – Deliberate use of motor vehicle to drive a smaller vehicle off the road

Criminal Procedure and Sentencing – Sentencing – Principles – General deterrence – Facts of case unusual and proliferation of cases in which one motorist drives another off the road unlikely – Whether harsher sentence justified

6 July 2005

Choo Han Teck J:

1 On 7 February 2002, a 24-year-old motorcyclist, Leong Weng Keong ("Leong"), was flung off his motorcycle and killed. A taxi driver, 57-year-old Wan Chin Hon ("the accused") was charged for causing Leong's death. The charge was brought under s 304(*b*) of the Penal Code (Cap 224, 1985 Rev Ed). The Prosecution's case was that the accused swerved his motor taxi (bearing registration number SH 1709 R) into Leong's path, and that he had done so "with the knowledge that it was likely to cause death to [Leong]". The incident took place at 4.30pm along Lentor Avenue near lamppost 108. Leong was a Malaysian working in Singapore as a CISCO officer. At the material time, he was riding with his girlfriend, Hajar bte Hasan ("Hajar"), as pillion. The accused was driving his hired taxi with a passenger in the left rear passenger seat. The passenger was Neo Yi Yan, then a student in the Nanyang Polytechnic, and presently a regular in the Singapore Navy. At the material time, she was in the taxi on her way to her boyfriend's home. Initially, the defence, as put to the prosecution witnesses, was that the accused had nothing to do with Leong's death. He maintained that his taxi did not come into physical contact with Leong or his motorcycle, and that the motorcycle crashed solely because of Leong's own conduct, of which he was not aware. However, the accused decided to change his plea after the Prosecution had led its material evidence. The essential parts of that evidence are set out as follows.

2 Hajar was the first material witness for the Prosecution. She testified that she was riding as Leong's pillion along Yishun Avenue 1 before Leong turned right at the junction of Yishun Avenue 1 and Lentor Avenue. She was not aware of any incident of note until the motorcycle made a right turn into Lentor Avenue. She testified that Leong, who had been travelling in the centre lane of the three-lane road suddenly veered to the left. She noticed a taxi and thought that it was probably the taxi that caused Leong to veer suddenly. Leong then became angry and chased after the taxi. She knew, by her close association with Leong, that he was angry with the taxi driver and wanted to ride close so that he can show his displeasure by glaring at the driver until he was satisfied that the driver had

acknowledged the wrong done. What transpired after that was, from Hajar's evidence, as well as that of Neo Yin Yan's, that the accused disregarded Leong and began racing away from him. That made Leong more determined to catch up with him, and consequently, a high-speed race ensued between the two, during which the accused tried to prevent Leong from overtaking him. Eventually, Leong managed to manoeuvre between the taxi and the kerb. At this time, the taxi was in the rightmost lane. From Hajar's and Neo Yi Yan's testimonies, Leong pulled up next to the taxi and both vehicles were at high speed which, according to Neo Yi Yan when she last noted the taxi's speedometer, was about 90 to100km/h. Leong was revving his motorcycle and staring at the accused. Neo Yi Yan testified that shortly after that, she felt the taxi swerving sharply to the right and then to the left. When she turned to look, she saw that Leong had been flung off his motorcycle. She looked back at the accused and saw that he was observing the wing mirror, and was grinning. Mr Raymond Ng, counsel for the accused, cross-examined Neo Yi Yan on the accuracy and veracity in regard to her evidence about the grin. Evidence of this nature is opinion evidence, the admissibility of which is governed by the Evidence Act, (Cap 97, 1997 Rev Ed). I need not dwell on this point since it was not an issue at trial, save that it ought to be noted that I regard the reaction of a material witness (the accused) to an event to be relevant because it might corroborate or disprove other material evidence such as the state of mind of that person. Evidence of demeanour, such as a grin, needs to be interpreted and submissions made as to the appropriate inference to draw from it; whether it was a look of satisfaction of that person's vile conduct, or a wry grin drawn from a different sort of satisfaction – such as to say, "serves him right for speeding". Hajar testified that she saw the taxi veering sharply towards the motorcycle, and she was so frightened that she shut her eyes and screamed. The next thing she knew was that she was flung off the motorcycle. There was scant evidence as to whether the taxi actually collided or even touched the motorcycle, but the Prosecution's case did not depend on actual contact. On the evidence led, I am satisfied that at the material time, the motorcycle was travelling at high speed, close to the kerb, and the action of the accused caused Leong to lose control of his motorcycle. Neo Yi Yan further testified that immediately after the accused swerved his taxi into the motorcycle's path, she asked the accused how he could have done such a thing, but he remained impassive. She then asked if he was not going back to help the fallen motorcyclist, and again the accused did not respond to her but continued driving. He stopped some distance away to check his taxi for damage. When he got back into the taxi he told Neo Yi Yan that there was no damage to his taxi, and was about to drive away. At that point Neo Yi Yan realised that he was not going back to where the motorcyclist had fallen. She then got out of the taxi and, after noting the taxi's registration number, ran back to render assistance at the scene.

3 The accused was charged with culpable homicide not amounting to murder. Culpable homicide is defined in s 299 of the Penal Code in the following terms:

> Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or *with the knowledge that he is likely by such act to cause death*, commits the offence of culpable homicide. [emphasis added]

The Prosecution's case was presented on the basis of the limb emphasised above. The question whether the act is likely to cause death invites an objective inquiry, as opposed to a subjective one from the viewpoint of the actor alone. However, the separate, yet intertwined, question, as to whether the accused had knowledge that he was likely by such act to cause death, is a subjective one. It would be helpful to answer the question whether the act was likely to cause death first. From an objective point of view, I would hold that the manoeuvring of a motor car, so as to cause the smaller, more vulnerable, motorcycle to lose control at high speed, is an act that is likely to cause death. The word "likely" means that the act is one that would readily cause an apprehension that death would result, but it does not require the Prosecution to prove that death was imminent, or had

in fact been caused. The fact that Leong was killed but his pillion survived illustrated both aspects of this point. In the context, it was not at all remarkable that Leong was killed, but that Hajar survived.

4 The next question relates to whether the accused had the personal knowledge that his act was likely to cause such death. This is relevant because there is no imputed knowledge of this nature in the accused. Had the Defence been put to answer the Prosecution's case, it would be important to ascertain whether it was the sort of thing a person, in the circumstances of the case, would likely have contemplated or ought to have known so as to provide the contrast against which a subjective denial of such knowledge by the accused could be evaluated. In this case, the cross-examination of the witnesses as to the critical event was based on the defence that the accused had nothing to do with Leong losing control of his motorcycle. This defence would have precluded the accused from asserting that he had swerved his taxi into the path of the motorcycle without the knowledge that it would be likely to cause the death of the motorcyclist. The change of plea by the accused after all the evidence had been led and challenged as much as it could be by his counsel, served as an admission of the subjective element in the words "with the knowledge that he is likely by such act to cause death". Consequently, I accepted his plea and convicted him accordingly.

5 The punishment for culpable homicide not amounting to murder under s 304(*b*) is a range of imprisonment that may extend to ten years, or a fine, or both imprisonment and fine. The sentencing of an offender requires a steadfast devotion to two broad principles – the principle that like cases must be treated alike, and that each case must be assessed on its own merits. These principles are more easily stated than applied. In the case of the act of causing death, the law discriminates a number of categories of culpability, and the range of sentences prescribed varies accordingly. The sentence in each case must be assessed according to such considerations as are right, proper, and fair. It is with these considerations in mind that I feel justified in taking into consideration the maximum punishment of two years' imprisonment for the offence (under s 304A of the Penal Code) of causing death by a rash or negligent act, and comparing that to a case such as the present in which death was caused with the knowledge that the act was likely to result in death. Further, I think that such comparisons are proper only if one is also mindful that the base (minimum sentence) is one day's jail in each of the two cases, and not that the punishment for a s 304(*b*) offence begins where that in s 304A leaves off, namely, a term of imprisonment of more than two years. It is also important to explain what differentiates the two offences. A person is rash or negligent if he does an act not caring if harm might ensue. For example, a person would be rash if he drove against the flow of traffic even though at the time there was little or no traffic. In short, there was no specific target against which his act was directed. That target or person killed is one that might not, but ought to be, in the contemplation of the accused at the material time. In the present case, the person killed was directly within the contemplation of the accused and he had directed his mind to him. I would think that the present case merits a sentence of more than two years' imprisonment. I would consider that a sentence of three years would be the appropriate one if there were no other considerations that might require a higher or lower sentence. In this case, I am of the opinion that there were other factors. I shall first consider the defence factors.

6 In mitigation, counsel stated that his client is remorseful. A genuine and sincerely felt feeling of remorse, of course, returns a measure of good to the perpetrator, the victim's family and friends, and also to society. But is the accused more penitent today than he was Monday last week, which was about a year and a half after the offence was committed? It is impossible to test the sincerity of his feelings in present circumstances, but I can accept his expression of regret (which is not nearly the same thing as remorse), and have regard to it, late as it is, together with the other factors that his counsel urged me to take into account, namely his age, his physical frailty and poor health and consider them in the overall circumstances of the case.

7 The learned Deputy Public Prosecutor urged me to impose a sentence that is harsh enough to discourage others from committing this offence. Before proceeding further, I should add that the facts of this case are unusual, and so we may not likely see a proliferation of cases in which a motorist drives another off the road in similar situations. But, the underlying issue in this case is plainly bad behaviour on the road. That is more general, more widespread, and more readily correctible. In so far as bad behaviour is the common ill, that can be taken into account. Otherwise it would be wrong to take unrelated cases into account in the sentencing of the present one, or conversely, to apply a sentence in the present case in order to make a point in another. Culpable homicide cases of intentional violence, such as the knifing cases between persons known to each other, may not provide appropriate comparisons because the circumstances and the cause of death are totally different. However, the two cases cited by the Deputy Public Prosecutor under s 66(1) of the Road Traffic Act (Cap 276, 1997 Rev Ed) namely, *PP v Kwan Yew Hoong Adrian* [1999] SGDC 3 and *PP v Lim Chin Heng Bernard* [2002] SGDC 143 are useful indicators for the present case. They were also road traffic cases, which resulted in death. In each case, the offender was sentenced to 30 months' imprisonment. However, in both cases, the persons killed were friends of the respective accused persons, and death was caused in circumstances that were closer to rash and reckless conduct, and there was an absence of malice. In the present case, whatever else might have been in his mind or, conversely, not in his mind at the material time, the accused swerved his car into the path of the motorcycle knowing that he was likely, by that act, to cause death.

8 I am of the opinion that in spite of the strong submission by Mr Raymond Ng for the accused, there were insufficient grounds to merit a light sentence. The sentence ought to reflect the gravity of this case where a motorist deliberately used his vehicle to endanger the lives of other road users, especially when the latter were in a more vulnerable position. Mr Ng also submitted that it was the motorcyclist's conduct that precipitated the fatal skirmish at high speed. The evidence did not show that the motorcyclist was the initiator or creator of the bad-tempered situation. On the contrary, the evidence indicated that it was the accused that was the party initially at fault. However provocative the accused found the subsequent revving of the motorcycle engine and the staring by the motorcyclist to be, he was not entitled to respond so dangerously in using the bigger vehicle to drive the smaller one off the road – this is the point that needs emphasis.

9 I am mindful that the type and nature of cases to which s 304(*b*) of the Penal Code applies are extremely varied. Some cases may be less heinous than the present, but it is likely that there are others that are more so. In the circumstances, and even having regard to his age, poor health and physical condition, I sentence the accused to four years' imprisonment, and further order that he be disqualified from driving all classes of motor vehicles for life. His term of imprisonment shall take effect from 9 July 2004.