D'Rozario Pancratius Joseph *v* Public Prosecutor
[2015] SGHC 46

Case Number : Magistrate's Appeal No 65 of 2014

Decision Date : 11 February 2015

Tribunal/Court : High Court

Coram : See Kee Oon JC

Counsel Name(s) : Tito Shane Isaac, Jonathan Wong and Tan Chao Yuan (Tito Isaac & Co LLP) for the appellant; Yang Ziliang (Attorney-General's Chambers) for the respondent.

Parties : D'Rozario Pancratius Joseph — Public Prosecutor

Criminal Law – Statutory offences – Road Traffic Act – Causing death by reckless or dangerous driving

Criminal Procedure and Sentencing – Sentencing

11 February 2015 Judgment reserved.

See Kee Oon JC:

1 This is an appeal against conviction and sentence in respect of two charges arising out of a single road accident involving the appellant. One charge was for causing death by dangerous driving, an offence under s 66(1) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA"), and the other was for causing hurt by a rash act endangering the personal safety of others, an offence under s 337(*a*) of the Penal Code (Cap 224, 2008 Rev Ed). The appellant had claimed trial to these two charges and pursuant to his conviction he was sentenced to 4 months' imprisonment and disqualified from driving all classes of vehicles for 5 years in relation to the s 66(1) RTA charge, and fined $5,000 for the charge under s 337(*a*) of the Penal Code.

2 The appeal turns on findings of fact. It has never been in doubt that on 9 May 2010 the appellant's vehicle collided with a motor lorry ("the lorry") at the controlled junction of Victoria Street and Ophir Road, which resulted in the tragic death of a passenger in the rear cabin of the lorry as well as injuries to the lorry's driver and other passengers. At the trial below, the appellant vigorously maintained that the traffic lights were green in his favour when he drove into this junction and collided with the lorry. But on appeal he no longer disputes that he had failed to conform with a red light signal at the junction. Instead, the crux of his appeal against conviction, and part of his appeal against sentence, is that the District Judge erred in finding that he had driven through the red light with the *mens rea* of rashness as opposed to negligence, the former being a more culpable state of mind than the latter.

The proceedings at trial

3 At the trial, two prosecution witnesses (PW2 and PW6) who were in a vehicle traveling along Victoria Street in the same direction as the appellant testified that they had been waiting at the said junction as the lights were red. There were about 5 to 10 other cars that had stopped alongside them. PW2, the driver of the vehicle, said that he had stopped for nearly a minute when he saw the appellant's vehicle proceeding across the junction, resulting in the accident with the lorry. The two prosecution witnesses immediately went to the aid of the persons in the lorry. PW2 noticed the

appellant, who appeared to be unhurt, come out from his car to sit on the curb. He also saw a young Chinese lady leave the appellant's car from the front passenger's side.

4 The appellant's defence at trial was essentially a denial that the lights were red against him at the said junction. He also asserted that his actions were not the proximate and efficient cause of the death and injuries of the persons travelling in the lorry. He was driving home towards Bedok from his office at High Street Centre and was familiar with the stretch of road. He had met the young Chinese lady that day at the casino and was giving her a lift to her home in Tampines. He did not know her name and actual address or contact details. He maintained that he had checked the traffic lights and was sure the lights were green in his favour. He proceeded to drive across the junction at a steady speed of about 40 to 45 km/h. He saw no cars in his lane in front of him and no pedestrians crossing or on his left or right. He claimed that as he crossed the junction, he suddenly noticed the lorry travelling very fast along Ophir Road from his left. He applied his brakes but could not avoid a collision with the lorry.

5 At the conclusion of the trial, the District Judge concluded that the two charges had been proved beyond reasonable doubt. In her grounds of decision in *Public Prosecutor v D'Rozario Pancratius Joseph* [2014] SGDC 287, she stated that she accepted the evidence of the prosecution witnesses PW2 and PW6 as they were independent witnesses who gave clear and consistent accounts. She found at [92] that the appellant was aware that the lights were red but had entered the junction with the consciousness that the mischievous and illegal consequences may follow but with the belief that he had taken sufficient precautions to prevent their happening. Thus she found that he had acted rashly and endangered the personal safety of others.

The appeal against conviction

6 The appeal came before me for hearing on 23 January 2015 and I reserved judgment in order to review the evidence and the submissions. I indicated that I wished to satisfy myself that the District Judge's finding of the appellant's rashness and consciousness that the lights were red against him could be supported on the totality of the evidence.

7 On appeal, the appellant conceded that the prosecution's evidence would support the District Judge's finding that the lights were red against him. It was also no longer disputed that the accident was the proximate cause of death. It was however submitted that the appellant had *not* acted rashly in causing the accident. He contended that he had been merely inattentive and negligent. Thus, he said, the court ought to amend the charges in this way: by substituting the conviction under s 66(1) of the RTA with a conviction under s 304A(*b*) of the Penal Code of causing death by a negligent act, and by substituting the conviction under s 337(*a*) of the Penal Code, for endangering the personal safety of others by a rash act, with a conviction under s 337(*b*) of the Penal Code for doing so by a negligent act.

8 Counsel for the appellant put forward two main arguments in support of the submission that he had not been rash. The first was the argument that no logical or reasonable person would have knowingly "cruised" through a traffic junction at about 40 km/h when the lights were red against him, since there was no evidence that the appellant had been speeding. While this contention seems intuitively attractive at first blush, I am in full agreement with the respondent's response to this: an offence of dangerous driving is committed precisely in such circumstances where a reasonable person would not have acted in the same way. An appeal to logic or rationality does not therefore advance the appellant's case very far.

9 The second argument was that the appellant must have made a mistake as he probably had

been looking at the traffic lights at the next traffic junction instead, where Victoria Street and Arab Street intersect. Thus, it was said, he had harboured the genuine but mistaken belief that the lights were green in his favour at the junction where the accident occurred. I will deal with this later.

10 I shall state my conclusion at the beginning: I agree with the District Judge that the charges were proved beyond reasonable doubt. In particular, I find no reason to disagree with her finding that the appellant had consciously chosen to drive through the junction in question when the traffic lights were showing red against him. I set out my main reasons below.

11 At the trial below, the appellant maintained that the lights were green in his favour. He claimed in his defence that he had seen no pedestrians crossing in front of him, no vehicles travelling across Ophir Road, and had proceeded to drive across the junction since the lights were green. The District Judge doubted his credibility, noting the "many inconsistencies and contradictions" in his testimony, including his concealment of the fact that he had a female passenger in his vehicle at the material time. This fact was not mentioned in his police report or subsequent statements to the police. Accordingly, she did not believe his testimony that the lights had been green in his favour.

12 Instead, the District Judge accepted the evidence of the independent witnesses PW2 and PW6 who said that the lights were red and had in fact been so for quite a while when the appellant chose to proceed across the junction. Everyone else had stopped their vehicles and had not moved. Curiously, the appellant was the only one who proceeded through the junction. His conduct may seem strange or even inexplicable to most reasonable drivers and could *prima facie* arguably be said to be more indicative of inattention or negligence rather than rashness. However, the totality of the evidence including his own line of defence militated against such a finding. He maintained all along that he was not inattentive or negligent and was conscious of the surrounding road conditions.

13 In my view, the evidence which the appellant gave at the trial below is thus a major obstacle to accepting his submission on appeal that he had not been rash and that he had merely been negligent. I should acknowledge at the outset that it is not necessarily fatal to an accused's defence if he also advanced an alternative and inconsistent defence. This much is apparent from the Court of Appeal decision *Public Prosecutor v Mas Swan bin Adnan and another appeal* [2012] 3 SLR 527 ("*Mas Swan*") which I shall now discuss.

14 In *Mas Swan*, two accused persons, one Mas Swan and one Roshamima, were charged with the capital offence of jointly trafficking in diamorphine. They had been arrested at Woodlands Checkpoint as they drove into Singapore from Malaysia because a search of their vehicle revealed three bundles containing diamorphine hidden in the front left door panel. At trial, Mas Swan and Roshamima advanced different defences. Mas Swan admitted that he knew the bundles contained controlled drugs but he said that he did not know that the bundles contained diamorphine. According to him, Roshamima had told him that the bundles contained ecstasy and this was what he had believed. Roshamima's defence, however, was a more fundamental denial of any knowledge that bundles of any nature lay concealed in the vehicle's front door panel. It was, in short, an "all or nothing" defence.

15 The trial judge accepted Mas Swan's defence and acquitted him. But he did not believe that Roshamima did not know about the existence of the bundles in the vehicle. This attracted the statutory presumption that Roshamima knew that the bundles contained diamorphine. The trial judge noted that since Roshamima's approach all along had been to disclaim knowledge of the presence of the bundles, she had not led any evidence to show that she was unaware of the nature of the drug contained in the bundles. Thus the trial judge held that Roshamima had not rebutted the statutory presumption and convicted her on the capital charge accordingly.

16 Roshamima appealed. Before the Court of Appeal she maintained her "all or nothing" defence as her only defence. The Court of Appeal, like the trial judge, rejected this defence, but it went on to consider the possibility that Roshamima did not know the nature of the drug contained in the bundles. It held that the trial judge had erred in law in failing to address "the possibility that Roshamima might also have believed that the three bundles contained ecstasy since this was what she had told Mas Swan". The Court of Appeal considered that Roshamima's adoption of her "all or nothing" defence "should not have deprived her of any other available defence that could reasonably be made out on the evidence". More generally the court held that a trial judge "should not shut his mind to any alternative defence that is reasonably available on the evidence even though it may be inconsistent with the accused's primary defence" (at [68]). The Court of Appeal concluded that the trial judge's error of law in this regard rendered Roshamima's conviction unsafe and so ordered that this conviction on a capital charge be set aside and substituted with a conviction on a non-capital charge.

17 Thus *Mas Swan* stands for the proposition that an accused could possibly succeed on a defence even though, at trial, he gave evidence which supported an alternative and inconsistent defence. But this is provided that there exists some other evidence supporting the defence. In *Mas Swan*, even though Roshamima did not say that she did not think the bundles contained diamorphine, there was Mas Swan's evidence that she told him the bundles contained ecstasy. That evidence supported Roshamima's defence – one that was alternative to and inconsistent with her primary "all or nothing" defence – that she had not known what the bundles contained.

18 The situation is quite different in the present case. I cannot see any evidence in support of a defence that the appellant had been negligent or inattentive. Turning to the appellant's first argument, he relies on the inherent irrationality of an act of knowingly and intentionally beating a red light to argue that this was not something he could possibly have done. But as I have explained above, I do not think this argument takes the appellant very far. There must be at least *some* evidence that he was merely negligent. However, there is none, and hence I reject his first argument.

19 There remains the appellant's other submission on appeal pointing to the likelihood that he had made an "understandable and excusable mistake" in seeing the wrong set of traffic lights located further down Victoria Street, at the intersection with Arab Street. This mistake, he says, could have generated an honest and reasonable belief that the lights were green at the junction where the accident occurred. Contrary to this submission, however, it was never the appellant's defence that he had mistakenly seen the green light further down at the next junction. In fact, when the possibility of such a mistake was raised in cross-examination, he firmly denied that he had made a mistake. Hence the evidence put forward in support of the appellant's primary defence undercuts this submission, which he now raises as an alternative (or partial) defence.

20 I fail to see how the appellant can now *mount an argument on hindsight that he must have m*istaken the traffic lights at the next junction between Arab Street and Victoria Street for the traffic lights at his junction, because his evidence was that he was very familiar with the junction in question as he visits his office at High Street Centre about four times a week and had taken that same route home on previous occasions. During the trial, the court was asked to find that either he had made no mistake (*ie*, that the lights were green in his favour) or he had chosen to beat the red light if the lights were indeed red. The respondent had advanced the latter submission at trial and this was accepted by the District Judge. Since the appellant's case was that he had made no mistake, there was little room left for an alternative submission, let alone a finding by the District Judge that he may have been negligent or inattentive, given the nature of his own evidence. Moreover there was *no other evidence at all* which would point towards a finding that the appellant had been mistaken. This distinguishes the present case from *Mas Swan*.

21 I wholly agree with the respondent that this crucial element of the appellant's submission on appeal was inherently contradictory and unsatisfactory and I reject the submission accordingly. With respect, there is patently no merit in his belated claim that he had been momentarily inattentive and thus only negligent. This was plainly not his defence as presented during the trial. I would add that if his primary defence (that the lights were green in his favour) is rejected, it does not ineluctably follow that he was merely negligent or inattentive. On my assessment of the totality of the evidence, the District Judge was entitled to conclude that this was a conscious and rash act on his part.

22 For completeness I would say that, even if the appellant had been inattentive and failed to check the lights as he was passing through the junction, this could amount to rashness on the authority of the recent Court of Appeal decision of *Jali bin Mohd Yunos v Public Prosecutor* [2014] 4 SLR 1059. The applicant in that case caused a collision which resulted in another person's death by driving into a signalised junction when the lights were red against him. He said that he had not checked to see if the lights were green in his favour but had merely followed the vehicle in front of him. This, he said, meant that he did not have any subjective consciousness of the risks involved in beating a red light, and that, he contended, meant that he had not been rash when he drove into the junction.

23 The Court of Appeal rejected the applicant's contentions. It held (at [32]) that rashness could be made out in "situations in which the risk is so obvious that the accused ought, as a reasonable person, to have known of it inasmuch as had he paused to consider it, it would have been artificial to have ignored such a risk". In such situations it is not a requirement that the accused must in fact have subjectively appreciated the risk. Applying this proposition of law to the context of driving into signalised junctions, the Court of Appeal (at [22] and [27]) said:

> 22 … [*I*]*t is clear and axiomatic that when a driver drives into a signalised traffic junction, he must ensure that the traffic lights are in his favour in order to avoid the dire (or even tragic) consequences that might ensue if they are not, in fact, in his favour. If he chooses to drive into such a junction and does not bother to check the state of the traffic lights, he is not merely negligent; he has committed a rash or reckless act.*
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> 27 … [I]t is not only appropriate but also principled and commonsensical to place an *objective* obligation on *all* drivers (or motorcyclists, as the case may be) *to check the state of the traffic lights when travelling across a signalised traffic junction* … . A driver or motorcyclist who *chooses (for whatever reason) not to do so and drives into such a junction when the traffic lights are not in his favour drives*, in our view, in a manner that is *rash or reckless*.
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> [emphasis in original]

2 4 *Thus, even if the appellant in this case had not checked the traffic lights in driving into the junction, he would have been rash in doing so.* Having said that, the Court of Appeal (at [29]) added that it had flexibility *not* to find rashness or recklessness in "*exceptional fact situations* in which there is a plausible reason for the accused concerned to act in the way he did (for example, in not checking the state of the traffic lights at a signalised traffic junction)". One such reason could be where the accused acted under some understandable and excusable mistake. But this exception does not avail the appellant in the present case because, as I have explained, I am wholly satisfied that he did *not* mistake the traffic lights at the junction further ahead for those at the junction where the accident happened.

25 It was suggested to the appellant during cross-examination that he had chosen to beat the red light because he was impatient. There are of course various reasons why some drivers may knowingly choose to beat the red light at a major traffic junction. Extreme impatience, aggressive bravado or sheer overconfidence are possible reasons. None of these can serve to excuse such conduct, most certainly not when a fatal accident occurs as a result. But whatever reason the appellant may have had for choosing to proceed across the junction when the lights were red is irrelevant to the finding of guilt. The only reason he had given for doing so was that he had seen that the lights were green at the said junction. He now accepts the prosecution's evidence demonstrating that the lights were clearly red.

26 The weight of the evidence supports the District Judge's reasoning and findings and I see no basis to interfere with her decision. I am not persuaded that the charges ought to be amended to reflect that the appellant's actions would only amount to negligence. As such the appeal against conviction on both charges is dismissed.

The appeal against sentence

27 The offence of dangerous driving is an aggravated offence and there is generally a need for both specific and general deterrence. A substantial custodial term in addition to lengthy disqualification from driving would thus generally be appropriate. In the present case, the appellant had elected to claim trial and was convicted after trial. Had there been additional aggravating features (*eg*, evidence of speeding, intoxication or aggressive driving), the appropriate starting point for the imprisonment term might justifiably be far higher (*ie*, in excess of 9 months) for the s 66 RTA charge. In this regard, the District Judge had considered his mitigating circumstances and exercised her discretion to impose a sentence at the lowest end of the 4 to 9-month range mentioned by the prosecution.

28 I agree with the District Judge that this is not such an exceptional case where judicial mercy should apply to justify imposing a nominal term of imprisonment. Nevertheless, given the appellant's advanced age and numerous chronic medical complications, any imprisonment term of some length is likely to cause him considerable hardship. His health continues to deteriorate. He was 76 at the time of his conviction after trial. He will soon turn 77. It is highly unlikely that he will reoffend. I am of the view that his circumstances warrant a reduction of the 4-month imprisonment term imposed in respect of the s 66 RTA offence.

29 The appeal against sentence in relation to the s 66 RTA offence is therefore allowed. The appellant is sentenced to an imprisonment term of 9 weeks and the order for 5 years' disqualification is to remain. The fine of $5,000 imposed for the s 337(*a*) Penal Code offence is clearly not manifestly excessive and the appeal against this sentence is dismissed.