Public Prosecutor v Fernandez Joseph Ferdinent
[2007] SGCA 34

Case Number : Cr Ref 1/2007

Decision Date : 17 July 2007

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Han Ming Kuang (Attorney-General's Chambers) for the applicant; Ramesh Chandra (Tan Leroy & Chandra) for the respondent

Parties : Public Prosecutor — Fernandez Joseph Ferdinent

Courts and Jurisdiction – Criminal references – Questions of law of public interest – Preconditions to reference of questions to Court of Appeal – Section 60 Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

Road Traffic – Offences – Whether offences distinct or mutually exclusive – Sections 84(1), 84(4) Road Traffic Act (Cap 276, 2004 Rev Ed)

Statutory Interpretation – Construction of statute – Purposive approach – Section 84(4) Road Traffic Act (Cap 276, 2004 Rev Ed)

17 July 2007 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 The matter before us is a criminal reference that had been taken out by the Public Prosecutor ("the applicant") pursuant to s 60 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA"). The genesis for this application is the decision of the High Court judge ("the appellate judge") in a Magistrate's Appeal (namely, Magistrate's Appeal No 137 of 2006), wherein he set aside the conviction of one Mr Joseph Ferdinent Fernandez ("the respondent") under s 84(4) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("the Act") ("the s 84(4) charge") for removing a car, which was involved in a traffic accident that resulted in a serious injury, from the scene of such accident without the authority of a police officer (see *Fernandez Joseph Ferdinent v PP* [2007] SGHC 60) ("the GD").

2 Before proceeding to consider the two questions reserved for our decision in the present application pursuant to s 60 of the SCJA, it would be appropriate – indeed, necessary – to first set out briefly the specific background of this case.

The background

3 The facts are relatively straightforward. On 21 May 2005, at about 11.05pm, the respondent was driving his motor vehicle along the Pan Island Expressway in the direction of Jurong, close to the exit to Jurong West Avenue 1. According to Mr Lee Chee Kin ("the witness"), who had been driving on the same road at the time, the respondent's car suddenly swerved to the left as it was negotiating a bend at the Bukit Batok Flyover, causing it to hit the rear of a motorcycle that had been travelling along that same stretch of road. Upon impact, the motorcyclist was flung off his vehicle. The respondent did not stop and, instead, continued with his journey. The witness gave chase in his

vehicle and eventually caught up with the respondent about half a kilometre from the scene of the accident and eventually managed to get the respondent to stop his vehicle. The witness then got the respondent to come out of his car and to return to the scene of the accident, where they waited for the authorities to arrive. The motorcyclist was later found to have sustained multiple fractures that required him to be hospitalised for seven weeks.

4 As a result of the events recounted briefly in the preceding paragraph, the respondent was charged and convicted in the District Court on four charges under the Act. It would be useful to set out, at this preliminary juncture, the import of the charges preferred against the respondent at first instance. Apart from the charge that had already been referred to earlier (at [1] above), the Prosecution preferred three other charges against the respondent: first, for an offence under s 65(*b*) of the Act for driving without reasonable consideration for other road users; second, for an offence under s 84(1) of the Act (read with s 84(7) of the same) for his failure to stop after the accident; and, third, for an offence under s 84(3) of the Act (read with s 84(7) of the same) for failing to render assistance to the motorcyclist after the accident.

5 Put simply, the respondent's defence before the District Court was that of a bare denial: He argued that he never made contact with the motorcycle and, for that reason, had not been aware of any accident and/or the need to stop. Given the wholly implausible nature of his defence, and its patent inconsistencies when contrasted with the witness's rendition of events, the respondent was found guilty and was convicted of all four charges. In essence, the trial judge's decision was based upon a two-fold factual finding: first, that a collision did, in fact, take place between the respondent's vehicle and the motorcycle resulting in the injuries sustained by the motorcyclist and, second, that the respondent knew at the time that he had caused an accident, but notwithstanding such knowledge, had decided to make a run for it. Though he did eventually stop half a kilometre from the scene of the accident, in the trial judge's view, this was only because the respondent realised that he would not be able to escape responsibility for his actions. On the back of such factual findings, the trial judge sentenced the respondent to a total of six weeks' imprisonment, a $2,000 fine and 18 months' disqualification from driving. Being dissatisfied with the decision of the District Court, the respondent appealed against both his conviction and sentence on the basis that the trial judge had erred in arriving at his findings of fact.

6 On appeal, the appellate judge found himself to be in full agreement with the trial judge's findings of fact and, consequently, refused to disturb any of the factual conclusions arrived at by the trial judge. Given that the respondent's entire appeal had been predicated upon the allegation of erroneous findings of fact made by the trial judge (save for a single allusion that the sentence imposed by the trial judge had been manifestly excessive, a proposition that had not been seriously advanced in the appeal), this would have meant that the appeal would have been dismissed *in toto*. Nonetheless, despite the fact that neither party had canvassed the matter before him, as referred to earlier, the appellate judge proceeded to set aside the conviction under s 84(4) of the Act. Notwithstanding its considerable length, given its central importance to the matters that were before us, it would be useful to reproduce, in its entirety, the appellate judge's reasoning as to why the conviction on the s 84(4) charge could not stand. This was dealt with at [25] of the GD, where the appellate judge reasoned as follows:

> 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 <u>at hand</u>*" (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 [respondent] 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. [emphasis in original]

7 As a result of the appellate judge's decision to set aside the respondent's conviction under s 84(4) of the Act, on 30 March 2007, the applicant filed, pursuant to s 60 of the SCJA, an application requesting that the appellate judge reserve for the decision of this court the following two questions of law of public interest:

> 1 Whether the offences under sections 84(1) and 84(4) of the [Act] 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 [Act], the offences under sections 84(1) and 84(4) of the [Act] 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.

8 The appellate judge granted the application. For ease of reference, we shall refer in this judgment to the questions that have been posed to us, and as reproduced in the preceding paragraph, as "the first question" and "the second question" respectively.

Two preliminary matters

9 Before proceeding to consider the arguments that were canvassed before us, however, two preliminary matters ought to be briefly mentioned. First, at the commencement of the hearing, counsel for the respondent, Mr Ram Chandra Ramesh, stated that the respondent had no intention of proffering any arguments and was leaving the determination of the questions concerned (and, obviously, their attendant impact on him) squarely to the court. In the result, only the applicant's arguments were available before us.

10 Secondly, at the commencement of the hearing, Mr Ram also informed us that the respondent was not able to be personally present in court as he was working in India. Mr Ram thus sought oral leave to dispense with the respondent's attendance for the purposes of the hearing before us. As no objections were raised by the applicant, we granted leave to dispense with his attendance on this particular occasion.

11 We turn now to consider, in turn, each of the two questions that have been reserved for our decision.

The first question

12 In order to place the ensuing analysis in its appropriate context, it would be appropriate for

us to set out, for easy reference, the salient parts of s 84 of the Act. They read as follows:

> (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.
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> (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 —
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> (*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.
>
> …

13 To recapitulate, the first question is as follows:

> Whether the offences under sections 84(1) and 84(4) of the [Act] are *mutually exclusive* offences. [emphasis added]

The phrase "mutually exclusive" is clearly the key phrase upon which the answer to the first question turns. On a literal interpretation, the use of such nomenclature suggests that the question which the applicant would like this court to decide is whether the *commission* of one offence would necessarily preclude the commission of the other; if it would result in such preclusion, then the offences would indeed be mutually exclusive – and *vice versa*. Indeed, this was confirmed by the applicant's *written* submissions. Further, during *oral* argument, counsel for the applicant, Mr Han Ming Kuang, agreed, in response to questions by this court, that the phrase "mutually exclusive" meant that if an accused was charged under s 84(1) of the Act, he or she could not be charged under s 84(4) of the same –

and *vice versa*. It will be immediately apparent that a question phrased in such terms has a primarily *factual* focus. Looked at in this light, it is clear that the first question must be answered in the *negative*. In particular, it is important to emphasise that s 84(1) of the Act *does not* entail only one obligation – namely, the failure to stop after an accident. Even on a superficial reading of s 84(1) of the Act, it is clear that that particular provision lays down two separate obligations on the part of a driver after an accident has taken place, namely, to stop, *and* to provide particulars *where required*. As has been observed of equivalent legislation in the UK, which is for all intents and purposes *in pari materia* with s 84(1) of the Act (and therefore highly persuasive as to its import), a driver would only be considered to have discharged his obligations under the provision if he fulfils "*both the duty of stopping and giving his name* and address to anyone who reasonably required it" [emphasis added], and if he "fails to stop but later gives particulars, or if he stops but fails to give particulars, an offence is committed": see *Wilkinson's Road Traffic Offences* (Peter Wallis gen ed) (Sweet & Maxwell, 20th Ed, 2001) vol I at p 576, para 7.14 and p 584, para 7.34–40, respectively.

14 Taking into account the correct interpretation that ought to be taken of s 84(1) of the Act as set out in the preceding paragraph, it is clear that both ss 84(1) and 84(4) of the Act *must* unambiguously be simultaneously engaged in at least *one conceivable* situation, *ie*, where a driver *stops initially*, refuses to give his particulars to those who may reasonably require it, and then proceeds to drive off. It is readily apparent that, in such a situation, the driver concerned would have committed offences under both ss 84(1) and 84(4) and would therefore be liable to prosecution under *both* these provisions, notwithstanding the fact that he or she had initially stopped at the scene of the accident since this would not be sufficient to exonerate the driver from an offence under s 84(1). Put simply, the driver would have committed two offences: first, for the non-provision of details (under s 84(1)) and, second, for the moving of his vehicle from the scene of the accident (under s 84(4)). Accordingly, if we accord the words "mutually exclusive" the meaning that the applicant appears to be canvassing, the first question must *clearly* be answered in the *negative*.

15 However, it appeared to us that that was not why the first question had been referred to us for our decision. Indeed, when we sought clarification from Mr Han as to why the first question had been reserved for our decision, it became apparent to us that the applicant had reserved this question not because it was seeking a view as to the *factual* compatibility (or otherwise) of ss 84(1) and 84(4) of the Act. Instead, the underlying reason was a *legal or conceptual* one which centred on the attempt to clarify whether or not, *conceptually*, the two offences in the aforementioned provisions could exist side by side, thus facilitating the filing of separate charges as a result of the same accident.

16 Viewed in isolation, the practical consequences of such a query are not immediately apparent. Indeed, given the conventional wisdom that concurrent sentencing should generally be the norm (see for example, the Singapore High Court decision of *Hyder v Rex* [1949] MLJ 15), if two offences arise out of the same facts, one would have thought that the resolution of the question, even if it relates to the *conceptual possibility* of the two charges being able to subsist side by side, really had insignificant practical value or effect. This is especially so given the fact that both offences are punishable under the same provision (*viz*, s 131(2) of the Act), and therefore warrant imposition of the same band of sentences.

17 Nonetheless, we were able to get to the heart of the applicant's concern once we were apprised of the practice of the applicant in hit-and-run cases. As Mr Han clarified during the course of his oral submissions, in situations akin to the one that is before us, the common practice on the part of the applicant would be to proceed on three separate charges – one under s 84(1) of the Act for failing to stop, one under s 84(3) of the Act for failing to render assistance and, finally, one under s 84(4) of the Act for moving or interfering with a vehicle without the authority of a police officer.

Indeed, it is significant to note that the Singapore parliament has been especially concerned about the rising number of hit-and-run accidents. To this end, penalties for such accidents were enhanced in 1996 (see the Road Traffic (Amendment) Act 1996 (Act 11 of 1996) as well as *Singapore Parliamentary Debates, Official Report* (27 February 1996) vol 65 at cols 718–719) and, again, in 2002 (which introduced, *inter alia*, mandatory disqualification: see the Road Traffic (Amendment) Act 2002 (Act 21 of 2002) as well as *Singapore Parliamentary Debates, Official Report* (23 July 2002) vol 75 at cols 714–715). Indeed, during the Second Reading of the former amendment Act, the Minister for Home Affairs, Mr Wong Kan Seng, observed thus (see *Singapore Parliamentary Debates, Official Report* (27 February 1996) vol 65 at col 718, with very similar views being expressed by the same Minister some six years later in *Singapore Parliamentary Debates, Official Report* (23 July 2002) vol 75 at col 714):

> We take a serious view of such accidents *because fleeing from the scene after knocking down a person is an irresponsible act. The driver has a moral obligation to stop after an accident and assist the victim. It can make a difference between life and death.* [emphasis added]

The fact that *three* (as opposed to any smaller number) charges are usually preferred is to be viewed in the light of the above legislative policy in the context of hit-and-run accidents and is, in fact, of especial importance given the fact that under s 18 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC"), a person convicted of three *distinct* offences has to be sentenced to *at least two consecutive sentences*. For ease of reference, s 18 of the CPC reads as follows:

> **Consecutive sentences in certain cases.**
>
> **18.** Where at one trial a person is convicted and sentenced to imprisonment for at least 3 *distinct offences*, the court before which he is convicted shall order that the sentences for at least two of those offences shall run consecutively.
>
> [emphasis added]

18 The applicant's first question related, therefore, in substance and effect, to the applicability of s 18 for the purposes of hit-and-run offences. In particular, if this court finds that ss 84(1) and 84(4) of the Act do not evince *distinct* offences, s 18 of the CPC does not apply; correspondingly, however, if this court is of the view that they are *distinct* offences, s 18 will apply. When viewed in this context, and utilising the phraseology of s 18 of the CPC, the question that this court must attempt to resolve would not be the apparently irrelevant matter of whether the offences under ss 84(1) and 84(4) of the Act are *mutually exclusive* (which, as we mentioned earlier, they are clearly not), but whether the said offences *are distinct*. As such, for the purposes of clarifying the intended import of the first question, there would be significant virtue in rephrasing the first question as follows:

> Whether the offences under sections 84(1) and 84(4) of the [Act] are *distinct* offences. [emphasis added]

19 We should stress that such a refashioning of a question being posed by an applicant to this court in a criminal reference is neither novel nor inappropriate. The overriding task of this court in any criminal reference is to clarify questions of law of public interest. It should not be forgotten that the primary objective of such a process is to allow this court an opportunity to provide an authoritative articulation of the applicable principles for future cases. This purpose would undoubtedly be frustrated if this court is compelled to decide on questions that may be of insignificant utility as a result of the use of inappropriate nomenclature by an applicant. For that reason, where a question is couched in a

manner which would inadvertently mask its true import (which is the situation here), the court retains a discretion to pose the question in a manner which will be more appropriate and which will ensure that the substance of the question is rendered clear, save that the refashioned question has to remain within the four corners of s 60 of the SCJA: see the Singapore Court of Appeal decision of *PP v Bridges Christopher* [1998] 1 SLR 162 at [28].

20 Returning to the question (as rephrased at [18] above), we should highlight that in resolving it, there would be no need to consider whether the appellate judge had been correct in ascribing the meaning to the word "move" that he did. On the contrary, the task of the court in resolving the first question is placed within a much narrower compass, namely whether the said offences were, strictly speaking, *distinct* as a matter of law. We turn now to answer that question (*as rephrased*).

21 What should be the meaning accorded to the term "distinct"? It should be apparent that the term "distinct offence" envisages an additional requirement over and above just being offences under law itself, for if so, the word "distinct" would be rendered but mere surplusage. In our view, the appropriate starting point would be F A Chua J's astute observation in the Singapore High Court decision of *Tham Wing Fai Peter v PP* [1988] SLR 424 at 436, [63], where he observed as follows:

> 'Distinct' means 'not identical'. Two offences would be distinct if they are not in any way inter-related but *if there is some interrelation it would depend on the circumstances of the case in which the offences were committed whether there is only one transaction and only one offence was committed.* [emphasis added]

22 In considering whether the circumstances warrant the view that distinct offences had been committed, it would be important to ascertain how one offence can be distinguished from another. In doing so, a leading local commentator posits the following approach (see Bashir A Mallal, *Mallal's Criminal Procedure* (Malayan Law Journal Sdn Bhd, 6th Ed, 2001) at para 6051):

> The categories of distinct offences are … many. A distinct offence may be distinguished from another offence by one or more of the following characteristics:
>
> (i) difference in time ie, commission on different occasions;
>
> (ii) place;
>
> (iii) persons aggrieved or injured;
>
> (iv) nature of acts constituting offences under different sections.

23 Applying the principles just stated to the facts before us, in our view, ss 84(1) and 84(4) of the Act clearly constitute *distinct* offences. This was, after all, not a situation in which one offence was merely a more limited version of the other. Instead, it should be readily apparent that each, in law, comprises separate elements and entails separate considerations: s 84(1) of the Act is premised upon a failure to stop and furnish particulars (where necessary) whilst s 84(4) of the Act is premised upon the moving of a vehicle without authority (in an accident that has resulted in a serious injury) so as to result in the destruction or alteration of the evidence of the accident. On the assumption that the facts of the particular case warrant it, we see no conceptual difficulties in the Prosecution preferring a charge under s 84(1) as well as a charge under s 84(4) since they each constitute separate provisions capturing separate acts that entail separate (though equivalent) sanctions. In short, conceptually, ss 84(1) and 84(4) of the Act can each form the basis of separate charges in the appropriate circumstances given that they are *distinct* offences.

24 For the reasons given above, we are of the view that the first question, *as rephrased*, must necessarily be answered in the *positive*. We should observe, however, that the answers given, respectively, to the first question as originally formulated and to that as rephrased are not in fact inconsistent with each other – although, as we have noted above, the first relates to the *factual* compatibility of ss 84(1) and 84(4) of the Act whereas the second relates to the *legal* compatibility of the same provisions. In the light of the answer that has been given in relation to the first question (as rephrased), it would be appropriate to proceed to consider the *second* question which relates to whether or not, *in the specific factual circumstances posited therein*, the offences under ss 84(1) and 84(4) of the Act are both made out.

The second question

25 The salient part of the second question reads as follows:

> [W]hether in a serious accident as described in section 84(4) of the [Act], the offences under sections 84(1) and 84(4) of the [Act] 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.

26 This query would, in our view, be best resolved *via* the resolution of two other discrete (though interlinked) subsidiary questions that are inherent in the question posed – first, whether s 84(4) of the Act would capture a factual matrix such as the one that is currently before us, and second, whether an offence under s 84(1) of the Act had similarly been made out. We will consider each of these subsidiary questions in turn.

Whether an offence under section 84(4) of the Act is made out

27 Turning first to the question of whether the facts evidence the commission of an offence under s 84(4) of the Act, as already referred to earlier (at [6] above), the appellate judge was of the view that the word "move" as found in s 84(4) entails an implicit requirement of the said vehicle being initially stationary at the scene of the accident. In his view, this was supported by the fact that the exceptions and provisos to s 84(4) all operated on the premise of the *moving* of an initially stationary vehicle. Accordingly, as the respondent never stopped at the scene of the accident, the appellate judge was of the view that an offence under s 84(4) of the Act could not be made out on the facts of this case.

28 It should be plainly evident that the crucial issue here is one of construction: What is the meaning that should be accorded to the word "move" as found in s 84(4) of the Act? Before us, the applicant suggested that, given its clear and unambiguous import, there was no reason for the appellate judge *not* to ascribe the word "move" (as found in s 84(4) of the Act) its literal meaning, which did not entail any requirement for the vehicle to have been stationary at the accident site. In a related vein, it was suggested that the appellate judge had been mistaken in his construction of the ambit of s 84(4) of the Act in so far as the provisos to ss 84(4) and 84(5) of the Act ought not to have been used by the appellate judge to limit the scope of the main provision. There was also another (no less important, albeit broader) plank to the applicant's argument: Given the fact that the removal of a moving vehicle impedes the efficacy of investigations as much as the moving of a vehicle that had been initially stationary, to create a bifurcation between the two would only serve to frustrate the very *raison d'être* of the provision and pay lip service to its avowed purpose of the preservation of evidence.

29 As an appropriate starting point, the court, when deducing the import of particular words and

phrases, is to interpret them according to the ordinary and most understood sense of the words or phrases concerned: see in this regard Lawton LJ's famous *dictum* in the English Court of Appeal decision of *McCormick v Horsepower Ltd* [1981] 1 WLR 993 at 999 as well as the comments of Yong Pung How CJ in the Singapore High Court decision of *Fay v PP* [1994] 2 SLR 154 at 157–158, [13]. Such a canon of interpretation is of especial relevance where the words being construed are clear and unambiguous. As a matter of construction, it cannot reasonably be said that there appeared to be inherent ambiguity in s 84(4) of the Act. The word "move" is conventionally defined as "change one's position or posture"; "put or keep in motion"; or "go or pass from place to place": see *The Concise Oxford Dictionary of Current English* (Clarendon Press, 8th Ed, 1990). Conspicuously, all of the conventional and more commonly-understood definitions of "move" encompass a considerably wide ambit and none of them predicate their applicability on an initial state of non-movement. We also note that although the actual charge (under s 84(4) of the Act) against the respondent in the present case contained the word "remove", Mr Han pointed out that this was a typographical oversight. Indeed, the actual word utilised in s 84(4) of the Act itself is "move". There is, in our view, a real difference in meaning between the words "move" and "remove" (the word "remove" being defined in *The Concise Oxford Dictionary of Current English* as "take off or away *from the place or position occupied*" or "*move* or take *to another place*" [emphasis added]). If, indeed, s 84(4) had utilised the word "remove" instead, there might have been a stronger case for the interpretation adopted by the learned appellate judge. However, this is not the case; to reiterate, the word utilised in this provision is "move" and is, in our view, to be accorded the meaning which we have set out above.

30 We also agree with the applicant that it would not be appropriate, in the circumstances, to define the ambit of the main provision by reference to the ambit of its provisos. It is an established principle of law that provisos are, in general, inappropriate aids to the construction of a statute where there is no ambiguity within the said provision: see John Bell & Sir George Engle, *Cross on Statutory Interpretation* (Butterworths, 3rd Ed, 1995) at p 122. As we have already noted, the word "move", as found in s 84(4) of the Act, evidences no such ambiguity. Indeed, we are of the view that the mere absence of any exceptions that relate to a continually moving vehicle is, in and of itself, neither here nor there, for it could be argued, quite persuasively at that, that such absence is merely reflective of the legislative intention for no such exception to exist.

31 Following from the above reasoning, there is considerable force in the applicant's argument that s 84(4) of the Act must clearly apply to the present factual matrix. Indeed that s 84(4) of the Act must be read in a manner which would capture the respondent's conduct in the present case is further fortified by adopting a *purposive approach* to the said provision. As we mentioned earlier, the underlying basis of s 84(4) of the Act is the preservation of evidence. This is not only self-evident from the very terms of the provision itself but is also buttressed by its historical antecedents (see, in particular, the original marginal note to s 84(4) of the Act when it was first introduced via s 33(4) of the Straits Settlements Road Traffic (Amendment) Ordinance 1941 (Ord No 17 of 1941), which read, "*Preservation of evidence* of *serious* accidents" [emphasis added]; and on the utility of marginal notes generally, see the recent decision of this court in *Tee Soon Kay v AG* [2007] SGCA 27 at [37]–[41]). The reason underlying the preservation of evidence is to assist the police in shedding light as to the events that transpired for the purposes of ascribing liability in attendant criminal investigations. The importance of s 84(4) of the Act as central to this overarching purpose cannot be overemphasised: Whilst the number of hit-and-run cases has increased considerably over the years, the proportion of cases that are actually solved remains low. Part of the problem that police officers face is the difficulty in reconstructing the scene of the accident, a task that is undoubtedly rendered impossible where parties tamper with the evidence by fleeing the scene in their vehicles. Section 84(4) of the Act therefore serves as a legislative attempt to reduce the likelihood of such attempts to tamper with evidence that might hinder the success of any attendant investigations. We are therefore of the

view that s 84(4) of the Act should be construed in a manner that would ensure that parties who fail to stop are rendered equally liable as those who initially do stop, but who decide later to abscond with the vehicle.

32 Although we agree with the applicant with respect to the interpretation to be accorded to the word "move" in s 84(4) of the Act, there might be a more straightforward legal route that ensures, with equal efficacy, that the integrity and purpose of that provision is fulfilled. In particular, given the fact that s 84(4) of the Act captures situations in which such persons "move or otherwise interfere … or do any other act so as to destroy or alter any evidence of the accident", we see no reason why fidelity to the *raison d'être* of the provision cannot be achieved by taking the more logical approach of capturing factual scenarios such as the one before us under the ambit of the words "do[ing] any other act". In our view, the adoption of such an approach would not only ensure that the underlying purpose of s 84(4) of the Act is fulfilled, but would also have the added advantage of avoiding the various interpretive difficulties associated with the meaning of the word "move" which we have in fact considered above.

33 Accordingly, although we agree with the applicant on the interpretation to be accorded to the word "move" in s 84(4) of the Act and the fact that it technically covers situations such as the one that is before us, we should stress that, in future, should a party be charged with an offence under s 84(4) of the Act under a similar factual matrix, it would be preferable for the applicant to consider proceeding against such a party on the basis of his commission of "any other act" so as to alter or destroy evidence, as opposed to the "moving" the vehicle for the same purpose.

Whether an offence under section 84(1) of the Act is made out

34 The next question that necessitates resolution would be whether the offence under s 84(1) of the Act is made out, in particular, whether the stopping of a vehicle a distance away as a result of realising that there had been eyewitnesses would amount to stopping for the purposes of the Act. In this regard, the trial judge found as follows ([2006] SGDC 263 at [42]):

> One might argue that, regardless, the [respondent] *did* stop. However, as noted above, the requirement to stop after an accident is a positive duty that the [respondent] must discharge. *To stop because one is coerced into having to do so is, to my mind, not a proper discharge of that duty.* The offences under Section 84 were completed once the [respondent] became aware of the accident – which, reasonably, he had to be almost immediately upon impact – and made the decision to drive on. [emphasis added]

35 It should be added that the learned appellate judge agreed with such an approach, with his Honour reasoning, as follows (see the GD at [22]):

> The duty to stop [under s 84(1)] 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 [respondent] must have been aware of the collision but drove on for another few hundred metres. The [respondent] 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 … does not satisfy the duty mandated by the [Act]. 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 [respondent] 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.

36 We are in full agreement with the observations of both the trial judge and the appellate judge. While there is admittedly no apparent subjective requirement under the Act that there has to be *an intention* on the part of the driver to stop *willingly*, one should not forget that any interpretation of the provision should not be made *in vacuo* and should be done by ensuring that any interpretation adopted does not give leaden feet to the *raison d'être* of a provision: see *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201 at 210–211, [49]. Section 84(1) of the Act imposes a duty on the parties to not only stop – but, rather, to stop in order to provide particulars, no doubt to ensure proper accountability. In our view, therefore, s 84(1) of the Act must be read in such a manner as to promote such a purpose. For that reason, it cannot be seriously argued that if a party stops at a traffic junction a couple of metres away from the accident site with no intention to provide his particulars, he would be deemed to have "stopped" for the purposes of the Act, notwithstanding the actual physical act of coming to a standstill.

37 Such a commonsensical and practical approach would, presumably, also apply in relation to the question of the appropriate distance away from the scene of the accident at which one should stop. The starting point of course must be that one should stop as close to the scene of the accident as possible. In many instances, this would be the exact site itself. Nonetheless, it should be readily apparent that such an argument is not without its attendant exceptions: If, for example, a party stopped his vehicle a hundred metres away from the scene of the accident as that represents the most convenient and safest location at which to stop, it can hardly be said that he did not "stop" for the purposes of the Act or that s 84(1) would be contravened on the technicality of the failure to immediately stop. As a matter of principle, it must be the case that as long as the driver stops at the nearest safe and convenient location near the accident site and stops to furnish the necessary particulars (where necessary), the duty to "stop" under s 84(1) must surely be considered to have been discharged.

38 Nonetheless, we should highlight that the question of whether stopping half a kilometre away would contravene s 84(1) of the Act is, in itself, a red herring in the circumstances of the present case, for the question posed to us clearly posits that the respondent had no intention to stop at the earliest possible safe and convenient juncture and only did so when it became obvious that he would not have been able to escape fault for his inadvertent misdeed. Even the most sanguine of observers must surely accept that the duty of a driver under s 84(1) of the Act cannot be discharged merely by the act of stopping in such circumstances.

39 Accordingly, we are of the opinion that the second question has to be resolved in the positive, *ie*, that both offences had been made out.

Conclusion

40 Drawing the various threads of analyses together, we are of the view that the questions posed (as rephrased) should be answered (for the reasons set out above) as follows:

(a) Whether the offences under ss 84(1) and 84(4) of the Act are distinct offences.

Answer: Yes.

(b) Whether in a serious accident as described in s 84(4) of the Act, the offences under ss 84(1) and 84(4) of the Act 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.

Answer: Yes.