

Sivakumar s/o Rajoo v Public Prosecutor
[2002] SGHC 28

Case Number : MA 327/2001
Decision Date : 20 February 2002
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : Rakesh Vasu (Gomez & Vasu) for the Appellant; Janet Wang (Deputy Public Prosecutor) for the Respondent
Parties : Sivakumar s/o Rajoo — Public Prosecutor

Road Traffic – Offences – Drink driving – Offender driving while under influence of drink in attempt to save lives of his friend and her children – Whether special reasons exist for court not to make minimum mandatory disqualification order – Factors to take into account – Whether discretion ought to be exercised in offender's favour – Circumstances to consider – s 67(2) Road Traffic Act (Cap 276, 1997 Ed)

Statutory Interpretation – Definitions – 'Special reasons' – s 67(2) Road Traffic Act (Cap 276, 1997 Ed)

Words and Phrases – "special reasons"

Judgment

GROUND OF DECISION

The appellant pleaded guilty in the district court to the following two charges:

First Charge

That you, Sivakumar s/o Rajoo NRIC No. S7525422I are charged that you, on or about the 8th day of July 2001, at about 1.55 am, along Ang Mo Kio Ave 5, Singapore, when driving motor car SBT 5831G, did have so much alcohol in your body that the proportion of it in your breath exceeded the prescribed limit and you have thereby committed an offence under section 67 (1) (b) of the Road Traffic Act, Cap 276.

Second Charge

That you, Sivakumar s/o Rajoo NRIC No. S7525422I are charged that you, on or about the 8th day of July 2001, at about 1.55 am, along Ang Mo Kio Ave 5 Singapore, did drive motor car SBT 5831G at a speed of 133 kmph, in excess of the authorised speed limit of 60 kmph of the road, and you have thereby committed an offence under section 63 (4) of the Road Traffic Act, Cap 276 and punishable under section 131 (1) (a) of the same Act.

2 As the appellant had no prior convictions of a similar nature, the first offence was punishable under the Road Traffic Act ("the Act") with a fine of not less than \$1,000 and not more than \$5,000, or to imprisonment for a term not exceeding six months, and in the absence of 'special reasons', to an order disqualifying the offender from holding or obtaining a driving licence for a period of not less than 12 months from the date of his conviction. The second offence is punishable under s 131(1A) of the Act with a fine not exceeding \$1,000 or with imprisonment for a term not exceeding three months. Further, under s 42 of the Act, the court has discretion to order a convicted person to be disqualified from holding or obtaining a driving licence for life or for such

period as the court may think fit.

3 On the first charge, the judge below imposed a \$2,000 fine, in default 20 days imprisonment, and ordered that the appellant be disqualified from holding or obtaining a driving licence for all classes of vehicles for 12 months. On the second charge, the judge imposed a \$800 fine, in default eight days imprisonment, and ordered that the appellant be disqualified from holding or obtaining a driving licence for all classes of vehicles for three months. The periods of disqualification were to run concurrently, making for a total fine of \$2,800 and 12 months' disqualification.

4 The defendant appealed against sentence, in particular, the order disqualifying him from holding or obtaining a driving licence for the 12 months' period from the date of his conviction. At the end of the hearing before me, I dismissed the appeal. I now give my reasons.

The facts

5 On the night of 7 July 2001, the appellant received a call from his brother-in-law informing him that his estranged wife was about to commence divorce proceedings against him. This news saddened him and the appellant consumed some beer.

6 Soon after, the appellant's close friend who was facing similar marital problems, Ms Rajee, telephoned the appellant and informed him that she had received several threatening phone calls from loan sharks. She told the appellant that she could no longer handle her problems and was thinking of taking the lives of her children and then ending her own life. The appellant pleaded with her not to do anything foolish but she hung up abruptly. Thereafter the appellant tried several times to contact Ms Rajee but the latter refused to answer the telephone. The appellant started to worry that Ms Rajee was serious about carrying out her threat and he became frantic. He got into his car and drove towards Ms Rajee's house. En-route, however, the appellant was stopped by the Traffic Police along Ang Mo Kio Ave 5 for speeding. Smelling alcohol in his breath, the appellant was made to undergo a breathalyser test by the police officer. He failed. Following a Breath Evidential Analyser ("BEA") at Traffic Police Headquarters, it was revealed that the proportion of alcohol in his breath was 64 micrograms per 100 millilitres of breath, exceeding the prescribed limit which is 35 micrograms per 100 millilitres of breath.

7 At the court below, the appellant pleaded guilty to the above-stated charges.

The decision below

8 In his written judgment, the trial judge found that there was no real threat to Ms Rajee from the loan sharks. He noted from *Wilkinson's Road Traffic Offences* (18th ed, volume 1 at page 1119 paragraph 21.49) that before the English High Court would recognise that an emergency is capable of amounting to a 'special reason', the defendant must first show that there was no other alternative but for him to drive, and that he had explored every reasonable alternative before driving. The judge held that there were no extenuating or pressing circumstances in this case. He also held that the appellant had not considered other forms of transport, nor did he attempt to resolve the emergency by other means such as by contacting the police or emergency services. As such, he concluded that there were no 'special reasons' that should excuse the appellant from an order of disqualification.

9 Even though it was unnecessary for him to go on, the judge noted the words of Lord Widgery CJ in *Taylor v Rajan* [1974] RTR 304:

... the discretion where special reasons are found should only be exercised in clear and compelling circumstances, that in deciding whether to exercise their discretion, the justices should have regard to the way in which the car was driven, and that they should have regard to the defendant's level of alcohol.

10 As such, he held that, even if 'special reasons' existed, he would not have been minded to exercise his discretion not to disqualify the appellant for 12 months.

Appeal against sentence

11 In his petition of appeal, the appellant contended that the judge erred in holding that his driving whilst under the influence of drink in the attempt to save Ms Rajee and her children did not amount to extenuating or pressing circumstances which constituted 'special reasons' for the purposes of s 67 (2) of the Act. Also, the appellant contended that the judge erred in holding that, even if there were 'special reasons', he would not have exercised his discretion not to disqualify him. The appellant argued that the judge ought to have exercised discretion in his favour in view of the extenuating or pressing circumstances. He appealed to set aside the disqualification order.

Special reasons

12 The first question arising in the appeal was whether the facts surrounding the commission of the s 67(1)(b) offence were extenuating or pressing circumstances that amounted to 'special reasons'. It was thus necessary to examine the provisions of s 67(2) of the Act, which states:

A person convicted of an offence under this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified from holding or obtaining a driving licence for a period of not less than 12 months from the date of his conviction or, where he is sentenced to imprisonment, from the date of his release from prison.

13 It is therefore clear that s 67 (2) of the Act requires the existence of 'special reasons' before the court has power not to make the minimum mandatory disqualification order of a period of 12 months as provided under the Act.

14 In *R v Crossen* [1939] 1 NI 106, it was held that a 'special reason' may comprise:

... a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence and one which the court ought properly to take into consideration when imposing punishment ...

15 This passage was quoted and approved by Lord Goddard in *Whittall v Kirby* [1946] 2 All ER 552 and subsequently followed in local decisions including *PP v Balasubramaniam* [1992] 1 SLR 822 and *Joseph Roland v PP* (1996) 1 SLR 179. It is clear that whether the facts of the case amount to 'special reasons' is a question of law and should be decided in view of the circumstances surrounding the offender's commission of the offence.

16 In the instant case, the prosecution never disputed the facts alleged by the appellant. As such, I was prepared to accept the appellant's version of events, in particular, his reason for driving whilst under the influence of drink. He had no reason to doubt Ms Rajee's determination to carry out her threat to take the lives of her children and herself. With the magnitude of risk, that is, the three lives at stake and the fact that he was the only person who was aware of Ms Rajee's threats and resolve, the appellant must have felt compelled to take drastic action, including driving in his inebriated state.

17 While the factual matrix of this case would certainly weigh heavily on a trial judge's mind in support of a finding of 'special reasons', unfortunately for the appellant, this did not dispose of the matter. Before an emergency is capable of amounting to a special reason under law, a crucial prerequisite is for the offender to show that there was no alternative but for him to drive, and that he had explored every reasonable alternative before driving (See e.g. *Evans v Bray* [1977] RTR 24, *R v Baines* [1970] Crim LR 590).

18 At the time of the commission of the offence, the appellant was clearly depressed and upset over his marital problems. In the circumstances, he had probably overreacted when he could not contact Ms Rajee after she hung up abruptly. As the judge noted, he did not attempt to notify the police or any of the other emergency services. Before me, he tried to explain that, even though he knew how to get to Ms Rajee's residence, he could not remember her exact unit number. However, I rejected his explanation. A cool and sober mind would have deduced that volunteering information such as Ms Rajee's telephone number to the police and/or emergency services would have enabled them to trace her exact address and take necessary action to abate the threat, if any. In fact, the appellant did not even stop to consider or attempt to procure other means of transport. By his own admission, the thought of taking a taxi over to her house did not even cross his mind. Clearly, he could have done a great deal more before getting into his car on impulse and driving to Ms Rajee's house.

19 Next, the prosecution submitted that the facts of the present case were different from the example I gave in *Joseph Roland*, where I considered that rushing a seriously ill wife to the hospital were urgent and critical circumstances constituting 'special reasons'. Their argument was that firstly, Ms Rajee was merely a friend of the appellant. Also, Ms Rajee had unduly felt threatened after merely receiving verbal threats over the telephone from loan sharks. They submitted that there was no credible evidence to show that the threats would actually be carried out and that such circumstances cannot be so extenuating and pressing as to warrant the appellant to drive whilst inebriated.

20 In my opinion, it was irrelevant that Ms Rajee was only the appellant's friend. Section 67 (2) of the Act does not require a special relationship nor does it require an imminent threat of physical harm to an offender's kin. While I agreed with the prosecution that there was no threat of physical harm emanating from the loan sharks, the material threat that motivated the appellant to drive was not from the loan sharks, but from Ms Rajee's threat to take her own life and the lives of her children. The legislature's aim of granting a discretion to the trial judge is to temper the rigidity of a mandatory disqualification by allowing the judge to take into account relevant factors which appeared to demonstrate whether a situation was extenuating or pressing enough to amount to 'special reasons'. I did not think that it was necessary to limit a judge's discretion by confining it to certain factors.

21 Taking into account the circumstances of the case, I was not satisfied that the facts were sufficient to amount to 'special reasons' under law.

Discretion

22 In any case, even if 'special reasons' were established, it did not automatically follow that the appellant would not be disqualified. There must be a separate process of considering whether the discretion must be exercised in favour of the offender (See *PP v Balasubramaniam*, *supra* at 827). This view is also supported by the wording of s 67(2) of the Act and has always been the approach of the English courts in similar cases (See for example *DPP v O'Connor* (1992) 96 Cr App R 135 at 146).

23 In *PP v Balasubramaniam*, *supra*, Karthigesu J emphasised that the judge, in deliberating over whether to exercise discretion in an offender's favour, must pay special regard to the legislative intent on s 67(2) of the Act. He stated at 829:

... It seems clear to me that the legislative intent is that those who choose to drink and drive must be prepared to suffer a minimum period of a disqualification of 12 months should they exceed the prescribed limit of alcohol in their blood ..., but at the same time the legislature has recognised that there may exist certain extenuating or pressing circumstances which may prevail upon the driver to take the risk of driving knowing that he was not fit to drive due to the presence of alcohol in his body. It is in this kind of situation when the offence is committed under some extenuating or pressing circumstances that the court is given the discretion not to disqualify or to disqualify for a lesser period than 12 months.

24 It is clear that Parliament regards drink driving offences so seriously as to warrant an almost mandatory minimum period of 12 months' disqualification. However, in order to properly exercise the discretion bestowed by act of Parliament, it is helpful to refer

to *MV Balakrishnan v PP* [1998] 3 SLR 586 at 590, where I quoted from *Re Kanapathipillai* [1960] MLJ 243 H:

Magistrates must appreciate that where there is a duty to disqualify a convicted person from holding a licence to drive a motor vehicle ... such duty falls not within the discretion of the convicting court but is imposed by the act of the legislature. This duty is not identified with the maximum punishment to be mitigated according to established principles. The duty is mandatory but the act of the legislature has given a limited discretion to a convicting court, to be exercised judicially, to refrain from implementing the law's clearly expressed requirement for a reason which is special to the offence but not for a reason special to the offender...

25 In my opinion, the limited discretion not to disqualify can only be made in very exceptional circumstances, having regard to the special circumstances as well as to the whole of the circumstances surrounding the commission of the offence. In the English case of *Taylor v Rajan* (1974) RTR 304, 340, Lord Widgery CJ stated that, in considering the whole of the circumstances of the case, a sentencing court was required to:

...have regard to the manner in which the defendant drove, because if he committed traffic offences, such as excessive speed or driving without due care and attention, this again is a consideration which tells against his having the discretion exercised in his favour, and they should generally have regard to whether the defendant acted responsibly or otherwise....Last, but by no means least, if the alcohol content in the defendant's body is very high, that is a very powerful reason for saying that the discretion should not be exercised in his favour...

26 In the instant case, the judge noted the high concentration of alcohol in the appellant's blood. At 64 micrograms per 100 millilitres of breath, this was more than 1.8 times above the prescribed limit of 35 micrograms per 100 millilitres of breath. The appellant was caught speeding at 133 kmph along Ang Mo Kio Ave 5, which is a residential area with a speed limit of 60 kmph. The offences were also committed on a late Saturday night when the likelihood of people returning home from a night out was much higher. Undoubtedly, he posed a serious danger not only to himself but also to other road users and pedestrians.

27 While the appellant's conduct was probably indicative of his anxiety to ensure the safety of Ms Rajee and her two children, this should not detract one from the fact that he was speeding whilst under the influence of drink. Even if an inebriated person faces an emergency which is so extenuating or pressing as to warrant the taking of a calculated risk by driving, it cannot be overemphasised that that person must do so responsibly, keeping well within the speed limits and making an extra effort to drive safely. The appellant not only failed to appreciate that he was in no position to drive, but went so far as to speed at 133 kmph in a 60 kmph residential zone in his inebriated state. This was clearly inexcusable. Hence, even if there was a finding of 'special reasons' in this case, the whole of the circumstances did not merit a judge exercising his discretion in the appellant's favour.

Final sentence

28 Roads in Singapore have to be made as safe as possible for law-abiding road users and pedestrians. In cases of drink driving, the courts are always mindful that a motor car in the hands of an inebriated person is a potentially devastating weapon. In *PP v Mohd Isa* [1963] MLJ 135, Thomson CJ stated that the most satisfactory penalty for most motoring offences is disqualification because a fine is paid once and then forgotten. In this case, the 12 months' disqualification order would mean that for the entire year in which the order is in effect, the appellant is reminded every day of his offence and the unwarranted risks in which he had placed ordinary members of the public. I believe that a lengthy period of disqualification from driving would be the most appropriate sentence for such offenders.

29 In coming to the appropriate period of disqualification that was to be imposed, the judge was entitled to take relevant factors in the appellant's mitigation plea into account. The appellant had no antecedents, and had pleaded guilty and co-operated fully with the police. These are recognised mitigating factors. Further, regardless of whether 'special reasons' were found, the court should also have regard to the motivation leading to the commission of the offence, which, in this case arose out of the

appellant's concern and anxiety for the lives of a close friend and her two children. As such, I felt that the combined punitive effect of the fine as well as the 12 months' disqualification period was an appropriate sentence.

Conclusion

30 For the above reasons, I dismissed the appeal.

Appeal against sentence dismissed.

Sgd:

YONG PUNG HOW
Chief Justice

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