Chandara Sagaran s/o Rengayah v Public Prosecutor
[2003] SGHC 17

Case Number : MA 280/2002

Decision Date : 05 February 2003

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Kertar Singh (Kertar & Co) for the appellant; Sia Aik Kor (Deputy Public Prosecutor) for the respondent

Parties : Chandara Sagaran s/o Rengayah — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Considerations – Using vehicle without third-party risks insurance cover – Whether holding foreign driving licence a mitigating factor – Whether driving without valid local driving licence an aggravating factor – Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) ss 3(1) and 3(2)

The charge

1 This was an appeal against sentence. The appellant, Chandara Sagaran s/o Rengayah ('Chandara'), is a Malaysian citizen and a Singapore permanent resident. He has held a Malaysian driving licence to drive the equivalent of Singapore's Class 3 vehicles since 1989. He does not hold a Singapore driving licence.

2 On 29 September 2002 at about 8.35 am, the appellant was driving along the Pan Island Expressway in a company vehicle SCF 6564 H ('the company vehicle'). A traffic police corporal on patrol noticed that the appellant was not wearing a seat belt and stopped him for investigation. Four different charges were subsequently brought against him in the district court. He pleaded guilty to all four charges.

3 The first charge alleged that the appellant had taken and driven away the company vehicle without the consent of the owner, thereby committing an offence punishable under s 96(1) of the Road Traffic Act (Cap 276) ('RTA'). The offence is punishable with a fine not exceeding $1,000 or to imprisonment for a term not exceeding three months. The judge imposed a $1,000 fine, with ten days' imprisonment in default.

4 The second charge alleged that the appellant had driven the company vehicle without a Class 3 driving licence, thereby committing an offence under s 35(1) of the RTA. Under s 131(1A) of the RTA, the offence is punishable with a fine not exceeding $1,000 or to imprisonment for a term not exceeding three months. The judge imposed a $800 fine, with eight days' imprisonment in default.

5 The third charge alleged that the appellant had used the company vehicle without an insurance policy or security in respect of third party risks, thereby committing an offence under s 3(1) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189) ('MVA'). Under s 3(2) of the MVA, the offence is punishable with a fine not exceeding $1,000 or to imprisonment for a term not exceeding three months or to both. In addition, the offender shall be disqualified, in the absence of special reasons, from holding or obtaining a driving licence for a minimum period of 12 months from the date of conviction. The judge imposed a $600 fine, with six days' imprisonment in default, and two years' disqualification from driving all classes of vehicles.

6 The fourth charge alleged that the appellant had failed to wear a seat belt while driving the company vehicle, thereby committing an offence under r 4(1) of the Road Traffic (Motor Vehicle, Wearing of Seat Belts) Rules (Cap 276) ('RTR'). Under r 12 of the RTR, the offence is punishable with a fine not exceeding $1,000 or to imprisonment for a term not exceeding three months. The judge imposed a $500 fine, with five days' imprisonment in default.

7 The appellant duly paid the fines but appealed against the sentences. After hearing arguments from both parties, I dismissed his appeal. I now give my reasons.

The appeal

8 The appellant appealed against his sentences on two grounds. First, the two-year disqualification order imposed under s 3(2) of the MVA for using a vehicle without third-party risks insurance cover was manifestly excessive. Secondly, the total sentences imposed for the four charges were manifestly excessive.

The two-year disqualification order

9 The judge was mindful that the sentence here was above the minimum period of 12 months' disqualification prescribed under s 3(2) of the MVA for using a vehicle without third-party risks insurance cover. He held however that the present case warranted a longer period of disqualification due to the presence of various aggravating factors, particularly, the fact that the appellant did not hold a valid driving licence.

10 The appellant contended that the judge had erred on two main grounds. First, since it was the absence of a driving licence that led to him driving the company vehicles without third-party risks insurance cover, such an absence could not constitute an aggravating factor in sentencing. I found this argument fallacious. A person may drive a vehicle without third-party risks insurance cover for different reasons. For instance, he may have carelessly forgotten to renew his insurance coverage or driving licence. In such cases, one can plausibly argue that the breach is merely 'technical' and hence does not warrant disqualification above the minimum period of 12 months.

11 In this appeal however, the appellant *knew* that he did not hold a valid driving licence and consequently had no third-party risks insurance cover. A longer period of disqualification was warranted here not only because the appellant's conduct was deliberate, but also because he lacked the requisite level of knowledge to navigate our roads and consequently had placed the safety of other road users in jeopardy. This in turn increased the risks of a traffic accident, and consequently leaving the victims without any compensation should he not be able to satisfy judgment. The prevention of such a result lies at the heart of the enactment of s 3(2) of the MVA: *Stewart Ashley James v PP* [1996] 3 SLR 426 at 428A-B. In my opinion, public interests demand the imposition of a longer period of disqualification in order to deter such irresponsible conduct.

12 The appellant's second argument was that since he held a valid Malaysian driving licence and had a clean driving record in Malaysia, he was hence "an experienced and qualified driver" and could not be said to have put the safety of others and himself in jeopardy. There was therefore no need to

prohibit him from driving for such a prolonged period. I found this argument totally unconvincing. Section 38(1) of the RTA allows a 'foreign driving licence' holder who is *temporarily* in Singapore to drive without a local driving licence. Section 2(1) of the RTA in turn defines a 'foreign driving licence' as one issued in a country which has in force a treaty with Singapore to recognise licences issued in countries which are parties to the treaty. Malaysia is such a country by virtue of the 'Agreement on the Recognition of Domestic Driving Licences Issued by ASEAN Countries', which entered into force on 6 January 1988.

13 Since the appellant is a permanent resident, and not merely temporarily in Singapore, he would still require a local driving licence to drive on Singapore roads. While temporary periods of driving without a local licence poses only manageable public safety risks, the same cannot be said for regular and longer periods of driving without a local licence, as a permanent resident can do. Similarly, while it would be unduly inconvenient to require temporary visitors to obtain a local driving licence, the same also cannot be said for permanent resident drivers. More importantly, the fact that the appellant was a qualified driver in another country did not mean that he could not have put the safety of other road users and himself in jeopardy. The clearest illustration of this was the fact that he was caught not wearing a seat belt while he was driving. Clearly, he either was unaware of an important local road safety regulation or he deliberately chose to flout it. Lastly, while a permanent resident is entitled to certain rights, he is also subject to responsibilities. In this case, the appellant's responsibilities were to obtain a valid local driving licence and to ensure that there was adequate third-party risks insurance cover. The fact that he had fulfilled these responsibilities in another country was not a mitigating factor in sentencing before our courts. The judge was hence correct in imposing a two-year disqualification order on the facts of this appeal.

The total sentences imposed for the four charges

14 The aggregate sentences for the four charges were a cumulative fine of $2,900 and two years' disqualification from driving all classes of vehicles. As in all cases where a cumulative sentence is imposed for multiple offences, the key consideration in this appeal was the application of the totality principle, that is, the judge must not only ensure that the individual sentences were neither unreasonable nor excessive, he must also ensure that the overall punishment meted out for the multiple offences was proportional to the overall gravity of the appellant's conduct, taking into account the circumstances in which he committed the offences and his previous records: *Maideen Pillai v PP* [1996] 1 SLR 161 and *Ow Yew Beng v PP* [MA/30/2002]. In *Chia Kah Boon v PP* [1999] 4 SLR 72, I further held that the totality principle applied equally to a cumulative sentence made up of fines although hitherto it had been applied locally only in the context of cumulative imprisonment terms. In view of the aggravating factors in this case, especially the fact that the appellant had seriously jeopardised the safety and interests of the public, by driving without a valid driving licence and without third-party risks insurance coverage, the overall punishment meted out was certainly proportional to the gravity of his conduct. In fact, the sentences were nowhere near the statutory maximum - the appellant could have been imprisoned for up to three months for each of these offences.

Conclusion

15 For the foregoing reasons, I dismissed the appeal and upheld the decision of the judge.

Copyright © Government of Singapore.