# Chua Chye Tiong v Public Prosecutor
# [2003] SGHC 261

**Case Number** : MA 40/2003

**Decision Date** : 28 October 2003

**Tribunal/Court** : High Court

**Coram** : Yong Pung How CJ

**Counsel Name(s)** : R S Wijaya (Sam & Wijaya) for the appellant; Amarjit Singh (Deputy Public Prosecutor) for the respondent

**Parties** : Chua Chye Tiong — Public Prosecutor

*Criminal Procedure and Sentencing – Charge – Amendment – Power of High Court in appellate capacity to amend charge – Section 256(b)(ii) Criminal Procedure Code (Cap 68, 1985 Rev Ed)*

*Criminal Procedure and Sentencing – Sentencing – Disqualification order – Whether any special reasons to dispense with mandatory disqualification order – Section 3(3) Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed)*

*Road Traffic – Offences – Being privy to offence of causing vehicle to be used without a licence in force – Lax practice at company leading to use of de-registered vehicle – Whether manager of company "caused" use of de-registered vehicle – Whether manager privy to company's offence – Sections 29(1) and 131(2) Road Traffic Act (Cap 276, 1997 Rev Ed)*

*Road Traffic – Offences – Causing vehicle to be used without insurance policy in respect of third-party risks – Lax practice at company leading to use of uninsured vehicle – Whether manager of company "caused" use of insured vehicle – Whether accused had reason to believe vehicle lacked insurance coverage – Sections 3(1), 3(2), 3(4)(c) and 21(2) Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed)*

*Words and Phrases – "cause" and "causes" – Section 3(1) Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) – Section 29(1) Road Traffic Act (Cap 276, 1997 Rev Ed) – Whether failure to take reasonable care "caused" wrongful use of car*

*Words and Phrases – "privy" – Section 131(2) Road Traffic Act (Cap 276, 1997 Rev Ed) – Whether "privy" to offence requires prior knowledge of and consent to offence*

1 This was an appeal against the decision of the district judge when he convicted the appellant on four charges. The first and third charges were in relation to the appellant being privy to causing a vehicle to be used without a licence in force. The second and fourth charges pertained to the appellant being privy to causing a vehicle to be used without an insurance policy in respect of third party risks in relation to the user of the vehicle. The appellant was sentenced to a fine of $600 on each of the four charges, failing which six days' imprisonment per default in payment would be imposed. Additionally, the appellant was disqualified from operating all classes of vehicles for 12 months each for the second and fourth charges, the periods of disqualification to run concurrently. The appeal was brought against both conviction and sentence. At the end of the hearing, I dismissed the appeal. I now give my reasons.

**Charges**

2 The charges against the appellant read as follows:

(a) LTA Case No. ERP 47960/02

You, Chua Chye Tiong NRIC No. S0160768E are charged that you, on 21 January 2002 at 6.01pm

along Bencoolen Street, being the Manager of M/S Swee Seng Credit Pte Ltd, were privy to the offence committed by the said company, to wit: being the owner of motor car No. SCG 857 Y, did cause the said vehicle to be used without a vehicle licence in force (expired on 17 January 2002) and you have thereby committed an offence punishable under Section 29(1) read with Section 131(2) of the Road Traffic Act, Chapter 276.

(b) LTA Case No. ERP 47960/02

You, Chua Chye Tiong NRIC No. S0160768E are charged that you, on 21 January 2002 at 6.01pm along Bencoolen Street, being the Manager of M/S Swee Seng Credit Pte Ltd, were privy to the offence committed by the said company, to wit: being the owner of motor car No. SCG 857 Y, did cause the said vehicle to be used by an unknown driver whilst there was not in force in relation to the user of the said vehicle such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of the Motor Vehicles (Third Party Risks and Compensation) Act, Chapter 189 and you have thereby committed an offence under Section 3(1) and punishable under Section 3(2) read with Section 21(2) of the said Act.

(c) LTA Case No. ERP 47961/02

You, Chua Chye Tiong NRIC No. S0160768E are charged that you, on 22 January 2002 at 2.53pm along Buyong Road, being the Manager of M/S Swee Seng Credit Pte Ltd, were privy to the offence committed by the said company, to wit: being the owner of motor car No. SCG 857 Y, did cause the said vehicle to be used without a vehicle licence in force (expired on 17 January 2002) and you have thereby committed an offence punishable under Section 29(1) read with Section 131(2) of the Road Traffic Act, Chapter 276.

(d) LTA Case No. ERP 47961/02

You, Chua Chye Tiong NRIC No. S0160768E are charged that you, on 22 January 2002 at 2.53pm along Buyong Road, being the Manager of M/S Swee Seng Credit Pte Ltd, were privy to the offence committed by the said company, to wit: being the owner of motor car No. SCG 857 Y, did cause the said vehicle to be used by an unknown driver whilst there was not in force in relation to the user of the said vehicle such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of the Motor Vehicles (Third Party Risks and Compensation) Act, Chapter 189 and you have thereby committed an offence under Section 3(1) and punishable under Section 3(2) read with Section 21(2) of the said Act.

**The facts**

3 The appellant was Chua Chye Tiong ("Chua"), the manager of one of the branch outlets of a motorcar trading company, Swee Seng Credit Pte Ltd ("SSC"). SSC has its head office at Bukit Timah Plaza and two branch outlets at the Automobile Megamart in Ubi Avenue 2 and the Turf Club Auto Emporium at the Turf Club ("Turf City branch"). Chua was the manager of the Turf City branch. Chua's duties involved running the Turf City branch and taking charge of its daily sales and purchases. He was also expected to know the movements of the vehicles in the branch.

4 On the 17th of January 2002, the SSC head office applied to the Land Transport Authority ("the Authority") to de-register vehicle SCG 857 Y (the "Car"), a motorcar registered in SSC's name. The Car was stationed at the Turf City branch. Ms. Chan Kah Fung ("Chan"), a personal assistant at the SSC head office, submitted the application. Chan failed to inform Chua about the de-registration, although it was the practice and her duty to inform the branch manager when an application for de-

registration had been submitted. Chan received the documents confirming de-registration by the 18 January 2002. However, again she forgot to inform Chua about this.

5 On the 21 and 22 January 2002, the Car was driven by an unknown person. It was not disputed that, on those dates, the de-registered Car did not have a valid vehicle licence and insurance coverage. The Car was then detected passing different ERP gantry points on these two dates (21 January 2002: ERP gantry along Bencoolen Street and 22 January 2002: ERP gantry along Buyong Road).

**The prosecution's case**

6 The prosecution called the Managing Director of SSC, Poh Chee Yong ("Poh"), as their only witness. Poh testified that there was no physical system of control over the keys to the vehicles at the Turf City branch. These keys could either be found in the ignition slot of the vehicles or in a plastic tray or basket placed within the branch. Poh stated that such a state of affairs could result in a vehicle being moved out of the branch premises unnoticed. However, Poh stated that despite such lax practice, it was the job of the manager of the branch to keep basic records of all vehicles taken out of the premises and to account for all drivers of the vehicles. In general, it was the duty of the manager of the branch to care for and control all vehicles within the premises.

7 Ultimately, the prosecution attempted to show that Chua, as the manager of the Turf City branch, was responsible where a vehicle was taken out of the branch premises. As such, the prosecution contended that both Chua and SSC had essentially caused the Car to be used without a valid licence and insurance coverage. Additionally, the prosecution contended that Chua was also privy to SSC's offence.

**The defence**

8 Essentially, Chua attempted to show that he neither caused nor was privy to SSC's offence of causing the Car to be used without a valid licence. He claimed that he was not aware that the Car had been de-registered, as he was not informed about it. He was also not aware of SSC's application to the Authority to de-register the Car. He added that, at times, his colleagues would drive away vehicles without informing him. Furthermore, Chua claimed that the word "privy" in s 131(2) of the Road Traffic Act ("RTA") suggested prior knowledge and concurrence of the offence committed by SSC. In this respect, Chua argued that his liability was limited insofar as he was privy to SSC's offence. He relied on the case of *Compania Maritima San Basilio S.A. v Oceanus Mutual Underwriting Association (Bermuda) Ltd* [1997] 1 QB 49 to buttress this contention.

9 Lastly, Chua argued that the second and fourth charges against him were drafted in such a way as to require him to be privy to SSC's offence of causing the Car to be used without insurance coverage. Chua claimed that since he was not privy to such an offence, he could not then be made liable.

**The decision below**

10 The district judge found that Chua was trying to distance himself from his obligations as the manager of the Turf City branch. He noted that Chua was aware of the requirement that the manager was to be informed whenever a car was taken out of the branch premises. The district judge also found that it was Chua who had care and control over all the vehicles in the Turf City branch. As such, the movement of the Car, its use on the road and the task of ensuring that it was not used when it had been de-registered were ultimately Chua's responsibility. The district judge added that

the fact that there was lax control of the keys to the vehicles and that this was a common practice in the second-hand motorcar trade would not absolve Chua from blame.

11 The district judge cited the case of *M V Balakrishnan v PP* MA 198/1997 to confirm that the charges Chua faced pertained to strict liability offences under the RTA and Motor Vehicles (Third-Party Risks and Compensation Act) ("MVA"). The defence to such strict liability offences would be to show that reasonable care had been exercised. The question then arose as to whether Chua was vigilant with regard to the vehicles (and thus the Car) under his control. The district judge affirmed that it was Chua's responsibility to ensure that each journey embarked upon using a vehicle under his care and control was a "legal" one. The district judge stated that the purpose of the RTA and MVA was to achieve safety for all road users. He opined that it was therefore not onerous to require those who had the care and control of vehicles to ensure that a particular vehicle was properly licensed and insured for use on the road.

12 The district judge then discussed the words "cause", used in s 29(1) RTA and 3(1) MVA and "privy", used in s 131(2) RTA. He stated that, as a noun, the ordinary dictionary meaning of the word "cause" is given as "thing that produces an effect" or/and "person or thing that occasions or produces something". As a verb, "cause" means "be the cause of", "produce" and "make happen". The district judge reasoned that by the inaction of Chan, an agent of SSC, and SSC's acceptance (and endorsement) of the lax practice with regard to the keys, SSC allowed the use of the Car. As such, SSC had *caused* the wrongful use to occur. SSC's inactivity and acceptance of the lax state of affairs, in turn, showed that they had failed to take reasonable care to ensure that no wrongful use of the Car would occur after 17 January 2002.

13 Similarly, Chua too had caused the wrongful use of the Car to occur. If Chua had ensured that the vehicles under his care were properly licensed and insured, a wrongful use would not have occurred. The district judge found that Chua had allowed the lax attitude with regard to the keys to continue. Further, Chua should have exercised more care and control over the keys and vehicles under his supervision. In all, the district judge found that it was Chua's lack of reasonable care that led to the wrongful use of the Car.

14 The district judge then discussed the meaning of the word "privy". He cited 'Osborn's Concise Law Dictionary' and stated that "privy" meant "one who is a party to, or had a share or interest in something". He thus found that Chua certainly had to shoulder the blame for the lapses that led to the commission of the offence. He then convicted Chua on all four charges and sentenced him accordingly. He noted in sentencing that no special reasons against disqualification, with respect to the second and fourth charges, had been shown. Additionally, he considered the mitigation plea and circumstances that gave rise to the offence and decided that the period of disqualification to be imposed ought to be below the usual tariff. He thus ordered the periods of disqualification to run concurrently.

**Chua's appeal against conviction**

15 Counsel for Chua made several points towards his main contention that the district judge had erred in fact and law. For the sake of clarity, I deal first with the contention that the district judge had erred in fact.

***Whether too much weight was given to Chua's position***

16 Counsel contended that the district judge had placed too much weight on Chua's *position* as the manager of the Turf City branch. He claimed that Chua was not the person who was 'exercising a

directing mind over the company's affairs'. The Managing Director, Poh, played this role. Counsel did not elaborate further on this point. Essentially, he contended that it was Poh who was in total control of SSC's affairs. By inference, counsel for Chua suggested that Poh should have been the appropriate person to be prosecuted.

17 I did not agree with this argument. First, the decision to prosecute Chua and not Poh was not an issue for Chua or his counsel to decide upon. The prosecution had proceeded on the charges against Chua based on the evidence before them and the fact that Chua was a manager within the meaning of s 131(2) RTA. There was no further requirement for the prosecution or the district judge to consider the issue of who was "exercising a directing mind over the company's affairs". Additionally, the Car was located within and removed from the Turf City branch that was managed *by* Chua. As such, Chua could not distance himself from responsibility over the movements of the Car, as far as it was under his care and control.

***Whether Chua was to be blamed for the lax practice regarding the keys to vehicles***

18 Chua's counsel claimed that the lax control over the keys to vehicles was a common practice in the second hand motorcar trade. He added that the fourth defence witness at the trial, Toh Poh Tiong, a car dealer with another company, confirmed this as a fact.

19 Again, counsel failed to expand on this claim. Nevertheless, the inference that could be drawn from it was that Chua should not be blamed for a lax practice that was commonplace in the industry. I rejected this claim because it failed to appreciate the very point the district judge had already raised at trial – that the purpose behind the RTA and MVA was to safeguard road users. If a lax industry practice derogated from or threatened this purpose, it should not have been endorsed and applied by Chua. This is especially so when considering that Chua himself admitted during his examination-in-chief (to a question from the district judge) that the lax practice could have even resulted in a thief stealing a car.

20 Further, after this incident, the Turf City branch implemented a new policy of having a logbook record of the movements of all vehicles from the branch premises. If anything, Chua should have implemented this policy immediately upon assuming the responsibility of manager of the Turf City branch. This could probably have avoided some undesirable consequences, be they the theft of a vehicle or causing a de-registered vehicle from being used on the roads.

***Whether this case was different from other decided cases***

21 Chua's counsel argued that the case before the district judge was different from all other decided cases, as the prosecution had not adduced any evidence that Chua had granted implied or express consent for anyone to drive the Car. However, counsel did not cite a case on point to substantiate this argument. Essentially, in my view, this argument involved some issues of law rather than pure fact, as it brought into question the meaning of the word "cause" in s 29(1) RTA and s 3(1) MVA. The real issue became one of whether the word "cause" involved the requirement for an express or implied consent on the part of an accused.

22 In *Shave v Rosner* [1954] All ER 280, it was held that the word 'cause[s]' involved some degree of "dominance" or "control" over the person who used the vehicle or some positive or express mandate to him. This part of the holding was adopted locally in *Tan Cheng Kwee v Public Prosecutor* [2002] 3 SLR 390. I cite the relevant portion (with emphasis) below:

> When a strict liability offence involved *causing* an act that was in itself unlawful, all the

prosecution needed to establish was the *causal link*, or actus reus. This involved showing that the accused had some form of *control*, *direction* and *mandate* over the person doing the unlawful act proper…

23 The references to the word "mandate" and "control" in *Shave v Rosner* and *Tan Cheng Kwee* should not be restricted to a *verbal instruction* on the part of the accused. It should be read widely to include the endorsement of a state of affairs that led to the wrongful use of a vehicle. In this sense, as the manager of the Turf City branch, Chua had a "mandate" or "control" over people who wished to drive the vehicles from the branch premises. This was an aspect of the authority vested in him as a manager. The fact remained that Chua endorsed a lax practice that granted potential drivers easy and even unauthorised access to vehicles in the branch premises. In this sense, Chua had a form of "mandate" to *prevent* the unknown person(s) from using the Car unlawfully. This, he had not done.

24 As such, Chua's actions fell squarely within the meaning of the word "cause" as interpreted in the above two cases. There should not be an additional requirement of consent, implied or express, for the prosecution to satisfy. In any case, even if an express *or* implied consent were required to be shown, the fact that Chua had endorsed the lax practice was in itself an implied consent to potential drivers to use a vehicle in any manner they saw fit.

25 Having dealt with the main factual contentions, I now move on to deal with counsel's submissions on the law.

***The meaning of the words "cause" and "privy"***

26 Chua's counsel objected to the fact that the district judge had chosen to adopt the ordinary dictionary meaning of the words "cause" and "privy". Counsel argued that these two words were pivotal in determining Chua's liability (or otherwise) vis-a-vis the charges. He contended that the district judge should have used the meaning that cases have attributed to the words.

27 To substantiate this contention, counsel listed a series of cases that had attributed particular meanings to the two words. I begin with Chua's contention on the word "cause".

***"Cause"***

28 Counsel cited *Rushton v Martin* [1952] The Weekly Notes 258, *Ross Hillman Ltd v Bond* [1974] 1 QB 435 and *Shave v Rosner* [supra] to indicate that the word "cause" had been taken to involve some express or positive mandate or some degree of control and direction from the person who had 'caused' the prohibited use.

29 This argument was addressed earlier at paragraphs 23 and 24. There, I explained that Chua's endorsement of the lax practice, which in turn led to the removal of the Car from the branch premises, would fall within the meaning of "cause" as defined in *Shave v Rosner* and *Tan Cheng Kwee*. Counsel's contention, however, was premised on a very limited understanding of the word "cause", restricting its meaning to only those situations where a person expresses or implies consent to the use of a vehicle in a wrongful manner. Such an interpretation stultifies the legislation unnecessarily by limiting the actus reus element (on which strict liability provisions such as s 29(1) RTA and s 3(1) MVA hinge) to only *particular* forms of action. This would derogate from the wider purpose of the provisions, being, to safeguard road users.

30 Additionally, counsel objected to the district judge choosing the dictionary meaning of the

word "cause". The district judge had attempted to define "cause" in line with 'making happen' a particular effect or course of conduct. In my opinion, this definition was not flawed, even if it was only a crude working definition. Unlike counsel for Chua, the district judge did not focus on a particular *form* of action in his definition, choosing instead to focus on the effect of the provision. This simple definition puts forward the idea of 'causation', which is probably what was intended when the word "cause" was used in the provisions.

***"Privy"***

31 Counsel also objected to the district judge's working definition of the word "privy" found in s 131(2) RTA. The district judge's definition of "privy" was derived from 'Osborn's Concise Law Dictionary' and was recorded as referring to "one who is a party to, or had a share or interest in something". Counsel argued that the word "privy" should have been taken to mean "with knowledge and consent" or knowing an act beforehand and concurring in it being done. Counsel's argument was derived from the position taken in the case of *Compania Maritima v Oceanus Mutual* [supra].

32 In my opinion, the district judge's definition ought to be applied. Section 131(2) RTA is effectively the penalty provision for s 29(1) RTA. The RTA was attempting to curb a strict liability offence. As such, the district judge had to interpret the word "privy" in a manner commensurate with the purpose of the RTA. In this case, the district judge's definition remained true to the complexion of this strict liability provision and I could not find any reason to reject it in favour of counsel's suggestion.

33 The district judge took the correct approach in selecting the dry definition of the word "privy". As with many words in the English language, the word "privy" could be defined multitudinously. However, at trial, the district judge was not required to engage in a linguistic exercise to select the definition with the most flavour; rather he was required to engage in an exercise of statutory interpretation. The district judge had been highly cautious to select a definition that was particular to a strict liability provision. Additionally, his means of selection (Osborn's Concise Law Dictionary) was not erroneous.

***Whether Chua caused the wrongful use of the Car***

34 Counsel contended that it was solely SSC and not Chua who had caused the wrongful use of the Car on the roads. To support this contention, counsel first argued that Chua was not the directing mind over the company's affairs. Second, counsel argued that since it was the head office of SSC and not Chua who had the ultimate authority over the vehicles belonging to the company, Chua could not have caused the wrongful use.

35 Essentially, both of these arguments were one and the same, but expressed differently. In any case, I had already dealt with the first argument at paragraphs 16 and 17. The second argument, in my opinion, was simply an attempt to distance Chua from the responsibilities associated with his managerial position. Counsel for Chua had tried to place the blame for the offence solely on SSC in order to mask Chua's own personal liability with regard to the wrongful use of the Car.

36 Ultimately, as a manager, Chua had certain roles and responsibilities, one of which was to ensure that an event such as the wrongful use of the Car did not occur. Even if it was humanly impossible for Chua to have to watch over everything that occurred within the Turf City branch, his endorsement of the lax practice with regard to the keys made his job even more onerous. This was a fact that was also observed by the district judge in his grounds of decision. For Chua's counsel to now posit that Chua was entirely free of blame and had not at all played a part in causing the

wrongful use of the Car was inaccurate. As such, although the district judge had held that SSC, as a company, was liable for causing the wrongful use of the Car, this did not extinguish Chua's personal liability as well. It was Chua's endorsement of the lax practice regarding the keys to vehicles that caused the wrongful use of the Car.

***Whether Chua was privy to SSC's offence***

37 Counsel claimed that Chua was not privy to SSC's offence because Chua did not know that the Car had been de-registered. Counsel argued that Chua was only an employee who had to take instructions from the Managing Director of SSC and had to be informed of all changes regarding the status of the vehicles under his charge. Thus, not being informed of the fact of de-registration had left Chua in the dark about the Car.

38 Counsel therefore submitted that since it was this fact of de-registration that led to SSC's offence, Chua could not be held to be privy to SSC's offence, as he did not know about the de-registration. Counsel claimed that this was an intervening cause beyond Chua's influence or control, which produced an effect entirely outside Chua's means of knowledge. Counsel relied on the case of *Killbride v Lake* [1961] NZLR 590 to substantiate this point.

39 Admittedly, counsel had a point with regard to Chua's lack of knowledge about the de-registration of the Car. This was due to the error on the part of Chan. However, here, counsel missed the point made by the district judge with regard to the reason behind Chua being privy to SSC's offence. The district judge stated that, insofar as the offences were those of SSC (by virtue of the fact that they had caused the offence and were also the registered owner of the Car), Chua, as the manager of the Turf City branch (having care and control of the Car), was privy to the offences.

40 This interpretation by the district judge was an accurate potrayal of s 131(2) RTA. Section 131(2) RTA applied in situations where the person who had committed an offence under s 29(1) RTA was a company. In such cases, a manager of the company would also be liable if he were privy to the company's offence. The district judge found, as a matter of fact, that Chua had care and control over the Car and had perpetuated the same lax practice that SSC had also endorsed. It was this lax practice that led to the Car being used unlawfully. As such, if SSC had committed an offence, Chua too would be privy to such an offence because he was "a party to or had a share" in the committal of the offence. The common thread the district judge found in this scenario was the endorsement by both SSC and Chua of the lax practice.

41 I opined that this finding of fact by the district judge was sound, accurate and based on all the evidence before him. In the absence of any evidence to show that the district judge had made an erroneous decision, this appellate court would be slow to disturb the district judge's finding. This would accord well with the principle enunciated in *Public Prosecutor v Azman bin Abdullah* [1998] 2 SLR 704 at 710.

42 I noted that counsel's substantive arguments on fact and law pertained to the meaning to be accorded to the words "cause" and "privy" and whether Chua had either caused the wrongful use of the Car or was privy to SSC's offence. Counsel's arguments on these issues failed for the reasons that were cited in the above paragraphs. As such, on the first and third charges (s 29(1) RTA read with s 131(2) RTA), the appeal was dismissed.

43 However, there remained some troubling issues with regard to the second and fourth charges under s 3(1) MVA, punishable under s 3(2) read with s 21(2) of the said Act. I now deal with the substantive points of appeal with regard to these charges.

***The charges under the MVA***

44 Counsel argued that the second and fourth charges subjected Chua to charges of being "privy" to an offence committed by SSC, namely, causing the Car to be used by an unknown driver without a valid insurance policy covering third party risks. However, Chua appealed on the ground that the MVA did not provide for an offence of being "privy" to a company's offence in s 3(1) MVA. Counsel for Chua claimed that under the MVA, a person is *only* guilty if he uses, causes or permits any person to use a vehicle without third party insurance coverage.

45 Counsel was half-accurate in this part of his appeal. The provisions that the prosecution had relied on in constructing the second and fourth charges against Chua were ss 3(1), 3(2) and 21(2) MVA; none of the three provisions mention the word "privy". As such, the prosecution had made an error in their drafting of the second and fourth charges.

46 However, contrary to counsel's suggestion, the charge against Chua did not fail entirely simply because it had been erroneously drafted. This court retained a power under s 256(b)(ii) of the Criminal Procedure Code (Cap. 68) to amend the second and fourth charges to rectify the error. The existence of this power was discussed in *Garmaz s/o Pakhar & Another v Public Prosecutor* [1996] 1 SLR 401 (CA) and [1995] 3 SLR 701 (HC).

47 The DPP suggested that the second and fourth charges be amended to excise the phrase "were privy to the offence committed by the said company". I agreed and amended the second and fourth charges to read as follows:

LTA Case No. ERP 47960/02

> You, Chua Chye Tiong NRIC No. S0160768E are charged that you, on 21 January 2002 at 6.01pm along Bencoolen Street, being the Manager of M/S Swee Seng Credit Pte Ltd, to wit: being the owner of motor car No. SCG 857 Y, did cause the said vehicle to be used by an unknown driver whilst there was not in force in relation to the user of the said vehicle such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of the Motor Vehicles (Third Party Risks and Compensation) Act, Chapter 189 and you have thereby committed an offence under Section 3(1) and punishable under Section 3(2) read with Section 21(2) of the said Act.

LTA Case No. ERP 47961/02

> You, Chua Chye Tiong NRIC No. S0160768E are charged that you, on 22 January 2002 at 2.53pm along Buyong Road, being the Manager of M/S Swee Seng Credit Pte Ltd, to wit: being the owner of motor car No. SCG 857 Y, did cause the said vehicle to be used by an unknown driver whilst there was not in force in relation to the user of the said vehicle such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of the Motor Vehicles (Third Party Risks and Compensation) Act, Chapter 189 and you have thereby committed an offence under Section 3(1) and punishable under Section 3(2) read with Section 21(2) of the said Act.

I then turned to consider whether to convict Chua on the amended charges.

***The s 3(4)(c) MVA issue***

48 Counsel argued that since Chua was not aware of the de-registration of the Car, by virtue of

s 3(4)(c) MVA, Chua could not be guilty of an offence under s 3(1) MVA.

49 Section 3(4)(c) MVA states:

> (4) A person shall not be guilty of an offence under this section if he proves – … (c) that he neither knew nor had reason to believe that there was not in force in relation to such user a policy of insurance or such security as complies with the provisions of this Act.

Counsel's argument effectively brought across the point that Chua "neither knew nor had reason to believe" that the Car was de-registered, and therefore, lacking insurance coverage.

50 This argument did find some support in the fact that Chan had repeatedly failed to inform Chua of the de-registration and also that Chua was not aware that SSC had applied to de-register the Car on the 17 January 2002. Up till the time the offence was committed, Chua was indeed in the dark about the de-registration, and thus, the Car's lack of insurance coverage. As such, insofar as Chua had no actual knowledge that the car lacked the requisite insurance coverage, Chua could not be found guilty of an offence under s 3(1) MVA.

51 The issue, then, revolved around whether Chua had no "reason to believe that there was not in force in relation to such user a policy of insurance". The point in favour of Chua would be the fact that he was not informed of the application to LTA to de-register the Car. This would have left Chua with no "reason to believe" that the Car was going to be de-registered, let alone a "reason to believe" that there was not in force a policy of insurance.

52 However, at this juncture, it was useful to refer to the district judge's finding that those who have the care and control of vehicles should be required to check, if need be on a daily basis, whether a particular vehicle is properly licensed and insured to be used on the road. The district judge found that such diligence was not unduly placed, as licenses, permits, insurance policies and the like may be affected by the effluxion of time or other events that may change their efficacy. I was of the opinion that the district judge had not overstated this point with regard to the strict liability provisions of the RTA and MVA that were in question before him.

53 The district judge had deferred to this strict view in order to uphold the policy reasoning behind strict liability statutes such as the MVA. For instance, the MVA must be construed strictly in order to preserve its purpose of safeguarding road users. In *Sriekaran s/o Thanka Samy v Public Prosecutor* [1998] 3 SLR 402 I held that the policy behind the MVA's mandatory disqualification provision was to deter "vehicles being used in circumstances endangering the user and other persons on the road, leaving such persons without compensation should the user not be able to satisfy the judgment". Going by such an approach, it would only be appropriate to read s 3(4)(c) in the manner that best heeded such policy reasons. In fact, s 3(4)(c) must be read strictly. A softer reading might encourage frivolous defences that could derogate from the policy behind the MVA.

54 As such, I held that Chua would have had "reason to believe" that there was no insurance policy in force if only he had bothered to check if the Car was indeed covered by a valid licence and a proper insurance policy. Chua would have been the best person to ensure that such checks were made (or at least implemented a policy to ensure that someone made such checks) because he was the manager of the Turf City branch. This failure to be vigilant was Chua's own fault and he could not now argue that he had no "reason to believe", when a simple check would have placed him on notice.

55 Therefore, I found no reason to allow Chua's appeal on the second and fourth charges. I accordingly convicted Chua on all the four charges in question, including the amended second and

fourth charges.

56 I then turned to Chua's appeal against sentence.

**Chua's Appeal Against Sentence**

57 Counsel contended that the sentence, in particular the 12-month disqualification period for the second and fourth charges was manifestly excessive.

58 I dealt, first, with counsel's contentions on the 12-month disqualification period. In Chua's re-examination at trial, he had claimed that if he did not have a licence, he would not be able to work. As such, Chua sought to preserve his livelihood and probably submitted this argument through his counsel as a "special reason" for the court to consider. The issue then revolved around whether there were any "special reasons" that the district judge ought to have accounted for.

59 There were a number of case authorities where the issue of a "special reason" have been discussed. Essentially, the law on this issue is clear. In *Re Kanapathipillai* [1960] MLJ 243, a "special reason" was held to mean one that was "special to the facts which constitute the offence". Such a special fact may not amount in law to a defence to the charge but would be one which the court ought to take into consideration when imposing punishment. However, a circumstance peculiar to the offender would not be a "special reason" within the exception.

60 This statement of the law was followed in a number of cases regarding traffic offences. For ease of reference, some of the prominent endorsements of the meaning of "special reasons", as noted in *Re Kanapathipillai*, were *Public Prosecutor v Hiew Chin Fong* [1988] 1 MLJ 467, *M V Balakrishnan v Public Prosecutor* [supra], *Sriekaran s/o Thanka Samy v Public Prosecutor* [supra] and *Sivakumar s/o Rajoo v PP* [2002] 2 SLR 73.

61 For the current purposes, *Hiew Chin Fong* would be useful to determine if Chua's possible loss of livelihood constituted a "special reason". In *PP v Hiew Chin Fong*, the respondent was not disqualified by the lower court despite committing offences of driving a vehicle without a valid licence and insurance policy coverage. The Malaysian Criminal Appeal Court held that the lower court might have symphatised with the respondent whose livelihood depended on him having a driving licence. The Appeal Court allowed the prosecution's appeal and ordered the respondent to be disqualified from obtaining or holding a driving licence for a period of 12 months.

62 In the process of arriving at this decision, the Court laid down several statements of law on what should not be considered "special reasons". The Court held that: (a) financial hardship to the offender; (b) that the offender knew no other means of earning his livelihood; (c) that the effect of the disqualification must necessarily and consequently deprive the offender of his livelihood or occupation; and (d) that the offender was a poor man and would have difficulty to get to his work were all not "special reasons" to justify non-imposition of the mandatory disqualification.

63 The reason in this case (of a possible loss of livelihood in the motorcar trade) was no more special a reason than that in *Hiew Chin Fong*. As such, counsel's reasoning, which was effectively a circumstance peculiar to Chua, could not be considered a "special reason". Additionally, the imposition of a 12-month disqualification from operating all classes of vehicles was not an excessive punishment. Section 3(3) MVA, allowed the district judge the discretion to order a longer period of disqualification if he saw fit. The district judge had sentenced Chua to a 12-month disqualification period for each of the second and fourth charges. However, he took Chua's mitigation plea and the circumstances which gave rise to the offences into consideration and chose to order the periods of

disqualification to run concurrently. As such, Chua only faced a disqualification period of 12 months instead of 24 months.

64 Next, I turned to Chua's appeal against the imposition of a $600 fine on each of the four charges. Counsel contended that the fines were manifestly excessive. I disagreed with this contention. On the contrary, I found that the sentence imposed by the district judge was an accurate reflection of the gravity of the offence. As such, I declined to alter the district judge's decision.

65 For these reasons, I dismissed Chua's appeal on sentence and upheld the sentence imposed by the lower court.

*Appeal against conviction and sentence dismissed.*