Silvalingam Sinnasamy v Public Prosecutor
[2001] SGHC 154

Case Number : MA 44/2001

Decision Date : 29 June 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Selva K Naidu (Naidu Mohan & Theseira) for the appellant; Tan Boon Gin (Deputy Public Prosecutor) for the respondent

Parties : Silvalingam Sinnasamy — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Penalties – Drink driving – Accused reversing car into parking lot hitting front bumper of another car – Slight damage – Previous conviction ten years ago – Blood alcohol exceeding prescribed limit by 192 mg per 100 ml – Whether sentence of five weeks' imprisonment, fine of $7,000, and disqualification from driving for six years manifestly excessive – s 67(1) Road Traffic Act (Cap 276, 1997 Ed)

Road Traffic – Offences – Drink driving – Previous conviction under former s 68(1) of Road Traffic Act – Whether accused a second time offender for purpose of sentencing under s 67(1)(b) of Road Traffic Act – s 68(1) Road Traffic Act (Cap 92, 1970 Ed) – s 67(1) Road Traffic Act (Cap 276, 1997 Ed)

: The appellant, Silvalingam Sinnasamy (`Mr Sinnasamy`), pleaded guilty in the district court to two charges: a charge under s 67(1)(b) of the Road Traffic Act (Cap 276, 1997 Ed) (`RTA`) and a charge under s 65 of the RTA. He appealed against the sentence imposed by District Judge Christopher Goh in respect of the charge under s 67(1)(b) of the RTA.

The facts

Prior to his conviction under s 67(1)(b) of the RTA, Mr Sinnasamy had been convicted on 25 February 1987 of an offence under the former s 68(1) of the RTA (Cap 92, 1970 Ed), which reads:

> *Any person who, when driving or attempting to drive a motor vehicle on a road or other public place, is under the influence of drink or of a drug to such an extent as to be incapable of having proper control of such vehicle, shall be guilty of an offence ...*

Section 67(1)(b) of the RTA, under which Mr Sinnasamy is now convicted, was enacted in 1996. Section 67(1) reads:

> *Any person who, when driving or attempting to drive a motor vehicle on a road or other public place -*
>
> *(a) is unfit to drive in that he is under the influence of drink or of a drug or an intoxicating substance to such an extent as to be incapable of having proper control of such vehicle;* ***or***
>
> *(b) has so much alcohol in his body that the proportion of it in his breath or blood exceeds the prescribed limit,*

> *shall be guilty of an offence and shall be liable on conviction to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for a term not exceeding 6 months and,* ***in the case of a second or subsequent conviction****, to a fine of not less than $3,000 and not more than $10,000 and to imprisonment for a term not exceeding 12 months. [Emphasis is added.]*

The main question in the appeal was this: having been convicted on 25 February 1987 under the former s 68(1) of the RTA, was Mr Sinnasamy a second time offender for the purpose of sentencing under s 67(1)(b) of the RTA?

Decision of the judge

The judge was of the view that the main aim of s 67(1)(b) of the RTA is to target drivers who drink and drive, and that the amendments were introduced to assist the prosecution, by doing away with the need to prove that the driver is incapable of controlling his vehicle when his blood alcohol concentration level exceeds the statutorily prescribed limit. In his opinion, it was clearly the intention of Parliament that such offenders should be treated as second time offenders and accordingly be made subject to the enhanced punishment prescribed in s 67(1) of the RTA.

The appeal

Mr Selva K Naidu, who appeared on behalf of Mr Sinnasamy, submitted that the judge was wrong in holding that Mr Sinnasamy should be treated as a second time offender under s 67(1) of the RTA. The thrust of his submission was that the former s 68(1) and the current s 67(1)(b) create distinct offences. Under the former s 68(1), the key element of the offence was `driving under the influence of drink to such an extent as to be incapable of having proper control of the vehicle`. Under s 67(1)(b), the key element is now having `so much alcohol in his body that the proportion of it in his breath or blood exceeds the prescribed limit`.

Mr Naidu went on to submit that, since they are distinct offences, if Parliament had intended for a previous conviction under the former s 68(1) to be treated as a conviction under s 67(1)(b), it would have done so by way of a deeming provision, such as with s 68(4) of the RTA. This section provides:

> *Where a person convicted of an offence under this section has been previously convicted of an offence under section 67, he shall be treated for the purpose of this section as having been previously convicted under this section.*

The need for a deeming provision in s 68(4) is understandable, since ss 67 and 68 are clearly distinct offences. Section 67 covers persons who are driving while under the influence of drink, while s 68 covers persons who are ***not driving*** , but are nevertheless in charge of a motor vehicle when under the influence of drink.

According to Mr Naidu, the former s 68 is clearly distinct from s 67(1)(b), because the former s 68 has been re-enacted as s 67(1)(a). The language of the present s 67(1)(a) is almost the same as that of the former s 68. The key element in both the former s 68 and the present s 67(1)(a), is that of driving while under the influence of drink to such an extent as to be incapable of having proper control of such vehicle. In contrast, s 67(1)(b) makes it an offence to have alcohol in the body

beyond statutorily prescribed limits, regardless of whether the driver has proper control of the vehicle.

However, even if Mr Naidu is right, there is still no basis for saying that Mr Sinnasamy should not have been treated as a second time offender under s 67(1). This is because s 67(1) does not draw a distinction between s 67(1)(a) and (b) for the purposes of enhanced penalties for second time offenders. A person is guilty of an offence under s 67(1) if he either drives while in an intoxicated state and does not have proper control of the vehicle (s 67(1)(a)), ***or*** , if he drives while he has so much alcohol in his body that the proportion of it in his breath or blood exceeds the prescribed limit (s 67(1)(b)). Either way, he is guilty of the offence of `driving while under the influence of drink` under s 67(1) and liable to the sentences prescribed there. Thus, if he had first been convicted under s 67(1)(a), which Mr Naidu concedes is a re-enactment of the former s 68, that would count as a first conviction under s 67(1). If he was subsequently convicted under s 67(1)(b), that would, on the language of the provision, be that person`s second conviction under s 67(1), and the enhanced penalties for second time offenders would follow.

Notably, both s 67(1)(a) and (b) come under the same section heading, `Driving while under influence of drink or drugs`. Both of them seek to discourage the same mischief, driving while in an intoxicated state, and Parliament has made it clear from the language of s 67(1) that, regardless of whether the first conviction comes under s 67(1)(a) or s 67(1)(b), if someone decides time and again to drive while in an intoxicated state, he will have to suffer the enhanced penalties.

Mr Naidu also submitted that the sentence imposed by the judge was manifestly excessive. Mr Sinnasamy was in the process of reversing his car into a parking lot when he hit the front bumper of another car. There was some slight damage to the bumper, but nothing substantial. In addition, his previous conviction occurred ten years ago. On the other hand, Mr Sinnasamy was found to have 272mg of alcohol per 100ml of blood, way above the prescribed limit of 80mg of alcohol per 100ml of blood.

The judge imposed a sentence of five weeks` imprisonment, a fine of $7,000, and disqualification from holding or obtaining a driving licence for all classes of vehicles for a period of six years. In **PP v Lee Soon Lee Vincent** [1998] 3 SLR 552 , the respondent, upon a second conviction under s 67(1) of the RTA, was sentenced to two weeks` imprisonment, fined $6,000 and disqualified for four years. In that case, however, the respondent`s breath alcohol level was over the limit by only 3mg per 100ml of breath. In this case, Mr Sinnasamy`s blood alcohol level was over the limit by 192mg per 100ml of blood. He exceeded the statutory limit by almost 3[half] times. I have said before in **Ong Beng Soon v PP** [1992] 1 SLR 731 at 733, that `A person substantially over the limit is obviously in more flagrant violation of the Act than a person marginally over the limit.` The sentence imposed by the district judge was not manifestly excessive and was in fact fully justified.

Outcome:

Appeal dismissed.