

Toh Yong Soon v Public Prosecutor
[2011] SGHC 57

Case Number : Magistrate's Appeal No 466 of 2010 (ERP 60028 of 2010)
Decision Date : 15 March 2011
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Julian Tay Wei Loong and Cheryl Kam Li Anne (Lee & Lee) for the appellant;
Gillian Koh-Tan (Deputy Public Prosecutor) for the respondent.
Parties : Toh Yong Soon — Public Prosecutor

Road traffic

15 March 2011

Judgment reserved.

Choo Han Teck J:

1 The appellant employed a person known as Arivalagan s/o Muthusamy ("Ari") as a part-time driver for his company. Ari was subsequently found to be driving a lorry when he did not have a driver's licence. The appellant was himself charged under s 35(3) of the Road Traffic Act (Cap 276, 2004 Rev Ed), and s 3(1) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed). Section 35(3) created the offence of permitting a motor vehicle to be driven by someone who did not have a valid driver's licence. Section 3(1) created the offence of permitting a motor vehicle to be used when there was no insurance policy in force. The appellant pleaded guilty to both charges and was fined \$500 and disqualified from driving all classes of motor vehicles for 12 months in respect of the conviction under s 3(1). He was fined \$800 in respect of the s 35(3) conviction.

2 The appellant appealed only in respect of the disqualification. His counsel submitted that given the circumstances, the court ought to have accepted that there were special reasons not to impose the disqualification under s 3(1) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189) —

3. — (1) Subject to the provisions of this Act, it shall not be lawful for any person to use or to cause or permit any other person to use —

(a) a motor vehicle in Singapore; or

(b) a motor vehicle which is registered in Singapore in any territory specified in the Schedule,

unless there is in force in relation to the use of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Act.

3 Counsel for the appellant submitted that in this case, the appellant who he said had graduated from Nanyang Technological University with a degree in Accountancy, was working in his father's construction company. He had employed Ari believing that Ari was one Kumar s/o Muthusamy

("Kumar"), who had a valid driver's licence. Counsel submitted that it might be right to disqualify the driver (Ari) himself, and that it was not appropriate to disqualify an abettor like the appellant who was not the person who was driving without a licence.

4 There are no prescribed rules, as to what constitutes a "special reason" within the meaning of s 3(1). What is clear is that one might question the appropriateness of disqualifying an offender from driving, when the offence he had committed did not involve him driving personally. However, the law as provided in s 3 of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189) is clear and unambiguous. It applies not only to the person who drives (like Ari) but also to the person who permits another to drive (like the appellant). Hence, the punishment includes a disqualification for 12 months.

5 Whether or not the facts are admitted and whether or not the mitigation amounted to a special reason is a question of fact. In this case, the trial judge was not convinced that the appellant had done enough to show that he should be spared the disqualification. Having reviewed the facts and counsel's submissions, I am of the view that the sentence below should not be disturbed. Disqualification is a feature of the deterrent nature of the punishment for this type of offence. Hence, the "special reason" must be one that ameliorates the effect of the offence. An example is that of *PP v Chen Horng Yeh David* [2007] SGDC 326 where the insurance company had expressly agreed to undertake liability in the event of an accident. Furthermore, the facts to back up such circumstances must be proved to the satisfaction of the court.

6 For these reasons, I am of the view that the appeal failed and was therefore dismissed.

Copyright © Government of Singapore.