Public Prosecutor v Tubbs Julia Elizabeth
[2001] SGHC 212

Case Number : MA 42/2001

Decision Date : 06 August 2001

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Hamidul Haq, Mohamed Nasser Ismail and Francis Ng (Deputy Public Prosecutors) for the prosecution; Sant Singh and Foo Cheow Ming (Sant Singh Partnership), Dhamendra Kunjuraman Nair (Haridass Ho & Partners) for the respondent

Parties : Public Prosecutor — Tubbs Julia Elizabeth

Criminal Procedure and Sentencing – Appeal – Trial judge's findings of fact made in heavy reliance on expert evidence – Inferences drawn from expert evidence – Whether inferences rightly drawn – Whether heavy reliance on expert evidence of any special significance

Criminal Law – Offences – Causing death by negligent act – Road accident – Failure to keep proper lookout – Whether doctrine of res ipsa loquitur applicable to infer negligence – Standard of care of reasonable and prudent driver under prevailing conditions at accident – Whether respondent negligent in failing to detect pedestrians early enough – Whether early detection makes a difference under the circumstances – Whether fatalities avoidable by reasonable and prudent driver – s 304A Penal Code (Cap 224)

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Introduction

The respondent was charged under s 304A of the Penal Code (Cap 224) for causing the death of three persons in a motor accident on the evening of 3 February 2000 by doing a negligent act. The charge read as follows:

> *that you, on or about the 3rd day of Feb 2000, at about 8.57 p.m., along Alexandra Road in the direction of Commonwealth Avenue infront of The Anchorage on the left, Singapore, being the driver of motor car SCA 6965K, did cause the deaths of 3 deceased persons namely, Shyn Ji Yun, M/2 (1st deceased), Oh Eun Sook, F/35 (2nd deceased) and Shyn Hong Wook, M/5, (3rd deceased) by doing a negligent act not amounting to culpable homicide, to wit, by failing to keep a proper lookout infront and simultaneously collided onto the said 3 deceased persons where the 1st deceased was seated inside a baby stroller and was pushed by the 2nd deceased together with the 3rd deceased crossing the road along Alexandra Road from the centre road divider from your right to the left of your motor car and consequently causing their deaths and you have thereby committed an offence punishable under section 304A of the Penal Code, Chapter 224.*

District Judge Audrey Lim acquitted the respondent of the charge on 30 January 2001. The prosecution appealed against the acquittal on the grounds that the judge erred in finding that it had failed to prove its case beyond reasonable doubt. I dismissed the appeal and now give my reasons.

The facts

The respondent was a British national with 20 years of driving experience in the United Kingdom, Australia and New Zealand. On 3 February 2000, at about 9pm, she was driving a motor car registered as SCA 6965K (`the SAAB`) along the right lane of Alexandra Road in the northbound direction towards Commonwealth Avenue. The weather that night was fair and dry.

The stretch of Alexandra Road in question was a dual carriageway with three lanes on each side. The speed limit was 60km/h, and the road was lit by street lamps on both sides. Separating the carriageways was a centre divider (`the median strip`) of about 2.3m in width, consisting of a grass strip raised 0.9m above ground level and separated from the road by a kerb. A railing on this median strip extended from the traffic light junction of Queensway and Alexandra Road (`the traffic junction`) all the way to about the entrance to the Anchorage Condominium (`the Anchorage`), which was on the left-hand side of the road from the point of view of the respondent. This railing was intended to prevent pedestrians from crossing the road, channelling them instead to the overhead bridge. Along the median strip, trees were planted at intervals of approximately 10 to 12 metres apart. The trees had a trunk diameter of about 20cm and had a high crown and unobstrusive foliage. From the traffic junction to the scene of accident was a stretch of road of approximately 200m in length, of which the last 120m leading to the point of impact was straight. The right lane on which the respondent was travelling was darker in colour than the centre and left lanes, as it had just been retarred.

On the fateful night, the respondent was driving the SAAB and her husband Simon Briscoe (`Simon`) was the front seat passenger. They were on their way to attend the birthday party of a friend, and were considerably late by over an hour. They stopped at the traffic junction en route, and the SAAB was the first car on the right lane. At the junction, the respondent asked Simon to telephone their maid Olivia and instruct her not to answer their home doorbell as they had recently been subject to nuisance calls. Simon made this call and had ended it by the time the respondent pulled away from the traffic junction. She estimated her driving speed to have been around 50 to 55km/h. There was no traffic in front of her at the material time.

A pedestrian group consisting of the three deceased, a mother and her two children, all of whom were Korean nationals, were standing on the median strip, about 17m from the end of the railing. The mother, who was wearing a white dress, was pushing a stroller with an aluminium frame and white wheels in which was seated her two-year-old daughter. She was accompanied by her five-year-old son and was carrying a transparent laundry bag. From a driver`s viewpoint, the width of the pedestrian group would have been about 80cm wide. They were attempting to cross from the median strip to the Anchorage, where they lived, when they impacted with the respondent`s vehicle roughly in the centre of the right lane. The mother and her son were flung across the median strip by the impact, and the stroller with the daughter was dragged some 30m with the daughter inside before the vehicle came to a rest. They succumbed to their injuries and passed away later that night.

The respondent admitted that she had initially failed to notice the pedestrian group, and had only seen them when they stepped off the kerb of the median strip. She estimated them to be about 12 to 18 feet (4 to 6 metres) away at that point, but qualified that she was not sure of the distance. When she saw them, she jammed on the brakes very hard and swerved the car to the left, but the impact was almost instantaneous with her actions and she could not avoid the collision. The automatic braking system (`ABS`) of the car was not activated by her braking, nor were there brake or skid marks indicating heavy braking at the scene of the accident.

The respondent explained in her defence that several factors hindered her view of the pedestrians while they were standing on the median strip. Firstly, the visual clutter presented by the trees and railing on the median strip had partially obscured the pedestrian group standing on the median strip.

Secondly, a large shadow was cast by trees covering Lamp 112, which was the lamppost nearest to the collision point, located on the left-hand side of the road just beyond the entrance to the Anchorage. This shadow likewise hindered her observation of the pedestrian group. Finally, the respondent explained that her attention was divided among various legitimate driver tasks expected of any prudent driver; such as the checking of car mirrors, as well as scanning to the left and right to generally survey the entire road. This was necessary, explained the respondent, as this stretch of Alexandra Road was particularly hazardous with cars exiting from the Anchorage and switching to the right lane to turn to the opposite direction. Furthermore, she added that the presence of commercial and residential properties as well as bus stops on both sides of the road meant that there was further increased pedestrian and vehicular activity at the accident scene.

The issue of the extent and effect of the lighting of the scene was of particular concern to both parties. Notably, there was some discrepancy as to whether the shadow cast by the trees extended to the right lane. The investigating officer, SI Shariff, made a sketch in her field diary which showed that the shadowy area extended to only the left and middle lanes of Alexandra Road. This contrasted with the testimony of Cheah Wi Kwong (`Cheah`), an electrical engineer from Power Grid, who said that the right lane was affected by the shadows cast by trees, although the actual level of lighting in the right lane satisfied international standards. The fact that the shadow extended to the right lane was also supported by Charlie Chua, the chairman of the management committee at the Anchorage. Finally, photographs taken by a professional photographer, David Lee (`David`), tendered by the defence, showed that the shadow covered the right lane, although it fell short of the median strip itself. David`s photographs managed to depict night lighting conditions as they were taken with high-speed film and without a flash. In contrast, the photographs taken by the police employed flash photography and were less useful, as they had a `bleached` effect which obscured the lighting conditions.

The photographic evidence was particularly important as the lighting conditions were altered sometime in April 2000. In response to a request from the management of the Anchorage, the Land Transport Authority re-sited two lampposts and added an additional one sometime in April 2000, giving a total nett effect of one additional lamppost and brighter surroundings.

Finally, there were no independent eyewitnesses of the accident itself. At the material time, a motorist, one Cheng Keen Boon (`Cheng`), was driving in the middle lane of Alexandra Road about 4m behind the SAAB. However, Cheng said he had merely heard a thud, which was followed by the SAAB swerving a little into his lane. He had not realised that an accident had occurred and had simply continued on his way.

The expert evidence

Both prosecution and defence called two experts each to reconstruct the events leading up to the accident. Significantly, these four experts came to agreement during the course of the trial on several key facts:

(1) the SAAB was driven at a speed of about 50km/h;

(2) the average walking speed of the pedestrian group was about 1m/s;

(3) the five-year-old boy was on the right of the mother;

(4) the normal `perception and reaction time` (`PRT`) of a driver under the circumstances would

have been between 1.5 to 2 seconds;

(5) the point of impact between the SAAB and the pedestrian group was approximately 2m from the kerb of the median strip;

(6) although it was possible to have observed the pedestrian group at various approach distances, the point at which an approaching driver would be put on notice of the pedestrian group as an impending hazard would be when the centre of the group was at or about the western kerb of the median strip, and onward into the roadway lane;

(7) based on the above, the pedestrian group would have taken approximately 2s to move from the western kerb to the area of impact. Given the approach speed of the SAAB, the vehicle would have been approximately 28m from the area of impact when the pedestrian group was identifiable as a hazard; and

(8) adopting a PRT of 1.5s, and given that the SAAB was travelling at 50km/h and had a drag factor of 0.75, the SAAB would have travelled approximately 34m between the time the driver could begin perception and reaction, and when it came to a complete stop.

The experts however differed principally on whether the fatalities could have been avoided. Both experts for the prosecution, Peter Bellion (`Bellion`) and Chenry Baugham (`Baugham`), were of the view that the proximate cause of death was the respondent`s inability to detect the pedestrian group at the centre of the median strip. Bellion opined that the group was detectable from 50 to 70 metres, given the weather and lighting conditions and the fact that the SAAB`s headlights would illuminate a distance of between 45 to 60 metres, as well as the contrast between the deceased mother`s white dress and the blackened tar surface. Baugham agreed with this assessment in essence, although he thought the pedestrians were visible some 60m away.

The defence experts, Christopher Marks (`Marks`) and William Russell Haight (`Haight`), were however of the opinion that the accident was unavoidable even for a normal, prudent and attentive driver under the circumstances. Marks in particular conducted a pedestrian detection test on site, at 9pm on 6 March 2000 (prior to the change in lighting conditions). He concluded that under the circumstances the detection range of a pedestrian wearing white clothing against a black tarred surface was 24m. Haight further added that, even if the pedestrian group was visible 55m away, their movement would have been difficult to detect, and they would have been `hidden` in the background clutter of trees at the median strip, the strobe effect of headlights and other objects on the road.

The decision below

In a sterling and carefully considered judgment, the district judge at first instance set out her grounds of decision, which are briefly summarised as follows.

The judge relied on David`s photographs as a reliable representation of the lighting condition and concluded that the shadowy area did indeed extend to the right lane of the carriageway. She also accepted that the pedestrian group standing at the centre of the median strip would have been visible from 50 to 55 metres away, and that the respondent had failed to detect them at this point and had only seen them when they stepped off the kerb.

Nevertheless, the judge found that the respondent had not failed to keep a proper lookout by failing to detect the pedestrian group at the centre of the median strip. Applying **PP v Teo Lian Seng**

[1996] 1 SLR 19 , she found that the standard of care to be expected of a reasonable and prudent driver in the circumstances would fall somewhere in between that expected when driving on an expressway and in a housing estate. In such a situation, a reasonable and prudent driver would not be expected to focus on only one point when driving, but to scan the road and its immediate surroundings. The judge also accepted that the respondent had not been distracted by events within the car, such as talking to her husband or listening to music, nor was she mentally distracted by the fact that she was late for the party, or by the nuisance rings at her house. Taking into account the railing on the median strip and the dark patch of shadow around the area of impact, she found that it was a real possibility that the respondent could not see the pedestrians while they were standing at the centre of the median strip. As such, the respondent had not failed to keep a proper lookout.

Additionally, the judge found that the failure to detect the pedestrian group at the centre of the median strip was not sufficient as the cause of the accident. She reasoned that a reasonable driver perceiving the pedestrian group would have continued to maintain his speed without slowing down until the group could reasonably be detected as a hazard, as it was within the expectations of a reasonable driver that pedestrians would look carefully and give way to cars before crossing. The approaching driver would only have been put on notice when the group presented itself as a hazard by stepping off the western kerb of the median strip. At this point, the accident would have been unavoidable as there would only have been two seconds before the SAAB would impact the pedestrian group at the centre of the right lane. The judge found that the respondent had applied her brakes at the point of impact, and had accordingly reacted within the accepted PRT of the reasonable and prudent driver. As the collision would have been unavoidable for the reasonable man in any case, there was thus no causation between the failure to keep a proper lookout and the fatalities that resulted.

The appeal

The appellant admirably presented a plethora of arguments on appeal, touching on almost every facet of the case at hand. For the sake of brevity I disposed of the appeal under the following five heads.

(1) REVIEWING THE FINDINGS OF THE LOWER COURT

It is trite law that the appellate court will not disturb the findings of fact of a lower court unless they are clearly reached against the weight of evidence. An appellate court must not merely entertain doubts about whether the decision is right but must be convinced that it is wrong: see **PP v Azman bin Abdullah** [1998] 2 SLR 704 and **Syed Jafaralsadeg bin Abdul Kadir v PP** [1998] 3 SLR 788 , as well as the decision of FA Chua J in **Lim Ah Poh v PP** [1992] 1 SLR 713 .

The appellant, however, contended that the findings of a lower court could be reviewed where they arose from inferences made from the contents of a witness`s evidence, as opposed to the actual demeanour of that witness in the court. In support, the appellant referred to my judgment in **PP v Choo Thiam Hock** [1994] 3 SLR 248 . In that case, I made the following comment on the findings of the district judge with regard to the credibility of the complainant, at p 253:

> *The undisputed and objective evidence was also a very strong indication of the true course of events. I have therefore considered very closely the evidence in the record, the arguments of counsel and the district judge`s grounds of decision. These were mainly targetted at the question of the complainant`s veracity. They were based not so much upon her demeanour as a witness but upon inferences made from the content of her evidence. This being so, an appellate court is of course in no worse position than the trial court to assess*

the same material.

This case should not be read beyond its context. On its facts, the demeanour of the witness was not at issue, and the appellate judge was theoretically in as good a position as the trial judge to make inferences from the face of the record. But even so, an appeal judge should not regard such circumstances as granting a free reign to substitute his view for that of the trial judge as and when he pleases. Indeed, the appeal in ***Choo Thiam Hock*** `s case only succeeded because there were strong objective facts indicating that the family of respondents had assaulted their Filipino maid. Notably, the victimised maid had sustained serious injuries and had made a plaintive plea for help at a public restaurant. I was also careful to emphasise in ***Choo Thiam Hock*** that this was a rare instance where the facts weighed so strongly against the decision of the trial judge that it required intervention on appeal, at p 256:

> *Taken all together, I consider this a rare instance in which it would (be) appropriate for me as an appellate judge to interfere with the district judge`s finding as to the credibility of the complainant. He did not base that opinion merely upon her demeanour in the witness box but quite rightly looked to the content of her evidence - unfortunately, in my opinion, he drew what appeared plainly to be incorrect conclusions from his examination of that content. I am of the opinion that the reasons he gave for doubting the complainant`s veracity were unsound.*

In the normal case, a judge sitting on appeal should be sensitive to the impressionistic nuances which invariably contribute to the inferences drawn by the trial judge, who had the opportunity of observing and evaluating the evidence first-hand. This does not mean that a respondent, by invoking the spectre of ***Lim Ah Poh*** (supra) and other like cases, can effectively keep at bay the scrutiny of an appeal court over the findings at first instance. This is merely a guiding principle and should not be applied to usurp the power of the appellate court to correct errors of law and fact made by a lower court. Rather, it serves as a gentle reminder that an appellate court should exercise careful restraint and only intervene in the rare case where logic clearly militates against the findings of fact made by the trial judge.

The present appeal was certainly not such an exceptional case. The fact that the bulk of the evidence arose from expert testimony was of no special significance. The trial judge would similarly have had to assess the demeanour of the expert witnesses in deciding on the reliability and soundness of their opinions. Furthermore, there was no indication that the inferences drawn by the trial judge from the expert testimony were so exceptionally illogical that they deserved to be overturned on appeal.

(2) RES IPSA LOQUITUR

In aid of his cause, the appellant sought to invoke the doctrine of res ipsa loquitur, arguing that the fact of the accident spoke for itself and that an inference of negligence could thereby be raised against the defendant. It is, however, settled law that this doctrine has no application in criminal cases in which negligence must be positively proved beyond reasonable doubt, per **Ramasamy v R** [1955] MLJ 95 and **Lai Kuit Seong v PP** [1969] 1 MLJ 182 . Furthermore, the appellant`s proposition involved a dubious leap of logic; it was not clear how a driver can be prima facie negligent when mobile pedestrians walk into his path of their own volition. The doctrine may very well have found some application in a civil case where the respondent had been the sole author of the outcome; for

example, if she had rammed into and damaged an immobile object. Short of such special facts, I found it patently clear that even in a civil action, the circumstances of the present case could not, without any wild stretch of the imagination, give rise to the doctrine of res ipsa loquitur against the driver. It was a total misunderstanding of the doctrine.

(3) THE STANDARD OF CARE EXPECTED ALONG THE ROAD IN QUESTION

The standard of care expected of a reasonable and prudent driver is not determined in a vacuum, but in accordance with the type of road and prevailing traffic conditions. I noted this principle in **PP v Teo Lian Seng** [1996] 1 SLR 19 , where I said, at p 27:

> *It must be emphasised that the standard required for expressways cannot be the same as that for normal roads. While on the latter, especially in housing estates, there would be a need to be alert at all times to the possibility of persons crossing the road indiscriminately, particularly children, or the elderly regardless of whether there are specific signs of their presence, such as schools, playgrounds or parks. And what is appropriate for a normal road would not be for car parks. What constitutes danger depends on the type of road.*

There is thus a spectrum of road situations ranging from expressways to housing estate roads, upon which the judge can pitch the standard of care required of the particular driver. In this respect, the appellant sought to persuade this court that the stretch of Alexandra Road in question should be considered more akin to a busy housing estate road than a major roadway or expressway, due to the presence of commercial and residential properties lining its length. The standard of care would thus be significantly higher than that considered by the trial judge, who considered that the character of the road was in between that of a housing estate and an expressway.

I found this argument rather far-fetched. Alexandra Road was and is a major thoroughfare, and the presence of an overhead bridge and a railing preventing unauthorised crossing was sufficient indication of the fact that this was no housing estate where pedestrians were wont to tread carelessly. The trial judge was therefore perfectly justified in characterising the activity level on the road as falling somewhere in between that of a housing estate road and an expressway. Accordingly, the standard of care expected of the reasonable and prudent driver was not so high as to require strenuous precaution to be taken against every potential hazard. A reasonable driver under the circumstances was entitled to assume that pedestrians on the median strip would not cross unexpectedly, and could simply maintain his speed and perform other legitimate driver tasks.

(4)FAILURE OF EARLY DETECTION OF PEDESTRIAN GROUP STANDING AT THE MEDIAN STRIP

The trial judge had accepted that the pedestrian group could have been seen at the centre of the median strip some 50 to 55 metres away. Given an approach speed of 50km/h, this meant that the pedestrians were detectable approximately four seconds prior to impact.

The appellant argued that the respondent was negligent in failing to spot the pedestrian group at this distance, and that such negligence was causative of the accident fatalities, as early detection could have allowed the driver to avoid or at least minimise the damage caused by the collision.

I turn first to the issue of whether the reasonable driver, under the circumstances, should have spotted the pedestrians. Lighting takes centrestage as the key factor influencing the detectability of the pedestrian group. The main point of contention in this regard was the effect of the shadowy area

extending to the right lane. The appellant sought to downplay the significance of the shadow, on the basis that the lux reading taken under it was above internationally accepted standards, and that additionally the shadow did not in any case extend to cover the median strip where the pedestrian group was standing.

However, the impact of lighting on detectability is not determined solely by reference to lux readings. Although the level of illumination both under and outside of the shadowy area was satisfactory, the pertinent point was the contrast between areas of bright and low lighting. This contrast could prove confusing to the oncoming driver, who would have to adjust between different levels of perception within the same scene. It was in this manner that the shadows adversely affected the detectability of pedestrians on the median strip. Indeed, this was the view of Marks, who explained how the contrasting lighting levels could be a trap for the approaching driver:

> *In my opinion this created a trap for the oncoming driver who would perceive the road to be well lit until entering the shaded area when the low illumination levels and visual clutter from the background and oncoming vehicle headlights would combine to make pedestrian detection extremely difficult and could result in complete failure to detect a pedestrian on or close to the median strip.*

The darkness of the shadow and how far it extended were therefore merely contributory factors to the lighting situation and were inconclusive of the larger issue of detectability. Having regard to the overall lighting situation as depicted in David`s photographs, I was satisfied that the very existence of shadows on the right lane, in contrast with the brighter lighting at other parts of the scene, somewhat impeded the detectability of the pedestrians on the median strip.

These lighting conditions were further exacerbated by the visual clutter along the median strip in the form of tree trunks and the metal railing. Additionally, the need for the driver to focus on his left to avoid cars emerging from the Anchorage and cutting into the right lane would also have distracted his attention from the median strip. On the other hand, I noted that there were some factors which improved the detectability of the pedestrians, particularly the white dress worn by the mother, the reflective material of the stroller, and the wide breadth of the group as a whole. Taking all these factors in totality, while I would accept that it was technically possible to have seen the pedestrians on the centre of the median strip four seconds prior to impact, I was not convinced beyond reasonable doubt that the reasonable driver would have done so under the circumstances. In this respect, I found that the respondent was not negligent in failing to spot the pedestrians standing on the median strip.

In any case, turning to the second limb of the appellant`s argument, I found it difficult to agree that early detection would have made a difference to the driver`s reaction. I say this for two reasons. Firstly, early detection does not require the reasonable driver to slow down or take evasive action, as concluded by the trial judge upon applying the test in ***Teo Lian Seng*** (supra). Notably, the pedestrians were not unaccompanied children or elderly folk, for whom a wider berth of caution would have been warranted. In ascertaining how the reasonable man would have reacted under the circumstances, I also found particularly relevant the testimony of Cheng, who was driving behind the respondent at the material time and also a seasoned traveller along Alexandra Road:

> *Q: If you see person standing on median, would you apply brakes?*
>
> *A: No. Because pedestrian waiting for car to pass. Unless I see him moving forward, I would apply brake or sound horn.*

Thus the perception of pedestrians standing on the centre of the median strip of a busy thoroughfare would not engender an assumption that they would haphazardly cross the road. I had previously made this point in ***Teo Lian Seng*** (supra), albeit with regard to expressways, at p 27:

> *The degree of observation required of the respondent must be in relation to what is expected along the expressway. Even if the boys were seen, there would have been no expectation that they would have tried to cross.*

I would only add that this reasoning applies equally to a major roadway with an overhead bridge and obstructive railings, designed to assure drivers of their uninterrupted right of way.

The second reason why the issue of early detection was largely irrelevant was that it was mere speculation that it would have lowered the response time of the respondent. The appellant essentially argued that, had the respondent registered the potential threat presented by the pedestrians four seconds prior to impact, her reaction would have been quicker when they actually stepped off the kerb two seconds later, given that their existence was already registered in her mind. It was, however, unfortunate that this crucial question, upon which the case could very well have turned, was never posed by the prosecution to the expert witnesses. Instead, before this court there was simply a unanimous and unqualified agreement among all four experts from both sides that the acceptable PRT was between 1.5 to 2 seconds.

In raising this issue the appellant therefore sought to persuade this court to draw the inference that earlier detection (at the four-second mark) would have lowered the acceptable PRT (at the two-second mark). I, however, did not consider this a matter within the ordinary human experience for which the court could come to its own conclusions, without the assistance of expert testimony. Indeed, the issue was not one easily explicable by recourse to common sense. Had the respondent registered the potential hazard, but dismissed it and shifted attention to perform other legitimate driver tasks, could it safely be said that her reflexes would have been quicker? Does a visual imprint of danger, assessed and dismissed, affect psycho-motor reflexes two seconds later? These are technical considerations behind PRT which I found unsafe to resolve without the aid of expert testimony on point.

Furthermore, the experts had the opportunity to consider all the issues raised by the appellants, and made an unqualified finding on the issue of PRT. It was not open to the court now to simply disregard their opinion and substitute its own speculation on the matter. This cardinal principle finds enunciation in Gould J`s decision in **McLean v Weir** [1977] 5 WWR 609, where, commenting on medical expert evidence, he said at p 620:

> *[I]f the medical evidence is equivocal, the court may elect which of the theories advanced it accepts. If only two medical theories are advanced, the court may elect between the two or reject them both; it cannot adopt a third theory of its own, no matter how plausible such might be to the court.*

This principle was applied locally in **Tengku Jonaris Badlishah v PP** [1999] 2 SLR 260 at 271, and most recently by the Court of Appeal in the recent case of **Saeng-Un Udom v PP** [2001] 3 SLR 1 . In the present context, no challenge had been raised as to the basis of the experts` view on the PRT under the circumstances. While the court is not obliged to accept expert evidence by reason only

that it is unchallenged (see **Sek Kim Wah v PP** [1987] SLR 107 [1988] 1 MLJ 348), where the expert`s view is based on sound grounds and supported by the basic facts, the court can do little else but to accept the evidence. Accordingly, I found no reason in this case to disturb the findings of the experts as to the PRT, especially since the prosecution did not consider it necessary to so challenge their views at the trial stage.

(5)FAILURE TO AVOID ACCIDENT WHEN PEDESTRIAN GROUP STEPPED OFF THE MEDIAN STRIP

The crux of this appeal lay in the question of whether, when the pedestrian group stepped off the median strip, the reasonable and prudent driver, keeping a proper lookout, could have avoided a collision resulting in fatality. If so, the respondent would have negligently caused the deaths of the pedestrians.

The analysis of this issue was largely simplified by the arithmetic provided by the experts. The experts agreed that the pedestrian group was identifiable as a hazard when the centre of the group was at the western kerb of the median strip. They assumed a walking speed of 1m/s, and figured that there would be a two-second window before they covered the two metres to the point of impact. Based on the further assumption that the approach speed of the SAAB was 50km/h or 14m/s, the SAAB would at this two-second mark have been about 28m away.

The appellant raised two arguments to show that, but for the negligence of the appellant, the fatalities could have been avoided. Firstly, the appellant submitted that the approach speed of the SAAB was actually higher than the impact speed of 50km/h. Arguably, this would have made it more difficult for the driver to decelerate in time. However, this simply ignored the experts` agreed view that the approach speed was 50km/h. For the reasons stated earlier, I declined to speculate on issues that were not put to the prosecution`s own experts at the trial stage itself.

Secondly, the appellant advanced the argument that the respondent saw the pedestrians too late and only braked and took evasive action ***after*** the collision. This, they contended was supported by the testimony of Cheng, who said that he had heard a `thud` sound, followed by a swerve. Furthermore, the appellant cited the non-activation of the ABS, and the lack of brake or skid marks on the scene, to indicate that the respondent had not applied maximum braking to avoid the collision.

This argument, however, missed the mark. The first hurdle the appellant had to surpass was whether the reasonable and prudent driver could have decelerated in time to avoid a fatality. This was amply answered by the experts` acceptance of two key facts: that the accepted PRT under the circumstances was between 1.5 and 2 seconds, and that the SAAB would take 34m to come to a complete stop from 50km/h given a PRT of 1.5s. Hence, if the driver had reacted within the lower range of the PRT, ie 1.5s, the car would still have collided with the pedestrians and come to a halt some 6 to 7 metres after the point of impact. Arguably, this could have sufficiently reduced the speed of impact to avoid fatality. However, no evidence was led on this point and in any case this was simply the `best-case scenario` within the accepted PRT range. Had the driver instead engaged the brakes at the upper end of the accepted PRT, ie 2s, braking would have been simultaneous with impact, which meant that the collision would have taken place at the full approach speed of 50km/h, for which fatality would certainly have resulted. The inescapable conclusion to be drawn from the expert testimony was therefore that the reasonable and prudent driver could still have caused the fatalities as he may not have been able to decelerate prior to impact. Hence, quite apart from whether the respondent`s reaction was actually negligent, her negligence could not thereby be said to have caused the deaths, as they may have very well been unavoidable for the reasonable driver.

It was therefore strictly unnecessary to determine whether the respondent was negligent in her

reaction, that is, whether she had depressed the brakes after the point of impact, outside of the accepted PRT. This was an extremely difficult issue to determine as there was no expert assistance on the matter. In any case, I make the following observations for the sake of completeness. The trial judge accepted the respondent`s testimony that she engaged the brakes simultaneously with the impact. This nevertheless raised the question of why the car came to a halt only after 30m, when the braking distance of the car would have rightly been about 13m (working backwards from the agreed fact that the braking distance was 34m, given a PRT of 1.5s, the car would have travelled 21m before the brakes were engaged, and have taken the remaining 13m to decelerate). It also did not square well with the respondent`s own admission that she only saw the group stepping off the kerb four to six metres from the point of impact, for she would have had less than 0.5s to react and engage the brakes at impact. This admission was, however, qualified by the respondent, as she was unclear of the exact distances in the moments before the accident. Turning elsewhere, the evidence of Cheng was not helpful, for his observation that there was a `thud` of impact followed by a swerve was strictly unrelated to the issue of braking. Similarly, the lack of skid or brake marks on the road surface was also inconclusive, for it was not shown by expert testimony that the braking would have caused the car to enter into a skid. Taking the available evidence into account, I found no compelling reason to disturb the trial judge`s finding that she spoke the truth when she said that she had braked upon the point of impact. The respondent had given consistent testimony throughout the trial, and her credibility had not been questioned by the trial judge. The only uncertainty with her account lay with the braking length of 30m, which could have been explicable for many reasons, one of which could be that she released the brakes in panic after the shock of impact. In any case, I found that the respondent had acted reasonably by responding and engaging her brakes within the accepted PRT, that is, two seconds after perception and at the point of impact. This was, however, no longer a live issue once, as mentioned earlier, it was clear that a reasonable driver may not have been able to avoid the accident fatalities.

Conclusion

In coming to my decision, I noted that the question of conviction swung on the events occurring within a four-second window of time. It would have been easy, in the hallowed and esoteric rationality of a courtroom, and with the benefit of hindsight, to dissect the respondent`s reactions ad infinitum and surmise what she could and should have done within those precious four seconds leading to the tragic accident. But in the legal post mortem that follows the facts, one should not miss the wood for the trees. The respondent had a clear right of way on a major thoroughfare. She was under the speed limit and not acting irresponsibly in any way. Her vision was somewhat affected by shadows and visual clutter on the median strip. No independent witnesses offered further assistance, and once the prosecution experts conceded that a reasonable person would have taken 1.5 to 2 seconds to react, it was clear that under the circumstances a reasonable and prudent driver may not have been able to avoid the fatalities. I therefore found that the appellant had not proven beyond a reasonable doubt that the respondent had negligently caused the death of the pedestrians and accordingly dismissed the appeal.

Outcome:

Appeal dismissed.