

**Public Prosecutor v Wong Ang Yew Justin**  
**[2004] SGDC 241**

**Case Number** : DAC 52649/2003, 52650/2003, MA 69/2004

**Decision Date** : 30 September 2004

**Tribunal/Court** : District Court

**Coram** : Ronald Gwee Tiong Kee

**Counsel Name(s)** : Mr Surian Sidambaram and Mr Harvin Bath (Surian and Partners) for defendant; ASP James Ng for prosecution

**Parties** : Public Prosecutor — Wong Ang Yew Justin

30 September 2004

**District Judge Ronald Gwee**

1. The accused, Wong Ang Yew Justin ("Wong") faced 2 charges. The Prosecution alleged that Wong had driven motor car SDM 6524A (the "car") on 21 February 2003 at about 4.05 am along Jalan Besar. Wong was (and still is) under a period of disqualification from holding or obtaining a driving licence from 6 February 2003 to 5 November 2005. If the Prosecution proved that Wong had been driving at the material date and time, Wong would be guilty of the 2 charges, the first for driving whilst under disqualification, the second for driving without the requisite insurance coverage.

2. The Prosecution and the Defence submitted an Agreed Statement of Facts ("SOF"). Pursuant to this SOF, it was common ground that Wong was under the aforesaid period of disqualification, and that if Wong had been driving on 21 February 2003, there would not have been the requisite insurance coverage.

3. Therefore the issue in dispute in the trial was focused on just this one question: Was Wong driving the car on the said date and time? The defence was one of complete denial; that Wong was not the driver. After hearing the evidence of all the witnesses and the closing submissions of the Defence and the Prosecution, I found that the Prosecution had failed to prove beyond a reasonable doubt that Wong was indeed the driver. I thus acquitted Wong of the 2 charges. The Prosecution appealed.

4. The Prosecution relied on the evidence of the 2 police officers, PW1 and PW2, who were involved in requiring the driver of the car (alleged by the Prosecution to be Wong) to undergo a breathalyzer test along Jalan Besar. The police officers had initially asked the driver to move the car as it was causing obstruction along the road.

5. PW1 asked the driver for his driving licence and identity card. The driver said he did not have his identity card with him. The driver handed an expired driving licence (having expired on 21 August 2002) bearing Wong's name and particulars, to PW1. It was not disputed that this driving licence was genuine. PW1 did not notice that the driving licence had already expired.

6. Whilst talking to the driver, PW1 detected the smell of alcohol on the driver's breath and subjected the driver to a breathalyzer test. The driver failed this test and PW1 decided to place the driver under arrest for suspected "drink driving". At this point in time, 3 other persons approached. These 3 were passengers in the car. When asked by PW1 who the 3 persons were, the driver replied that they were his friends. The 3 passengers also said that the 4 of them (the 3 passengers and the driver) were friends.

7. PW1 informed the 3 passengers that he was placing the driver under arrest. The 3 passengers then pleaded with PW1 to "let their friend off" and to give the driver "a chance". At about this time, particulars of the driver and the 3 passengers were being taken down by PW1 and PW2. Whilst all this was occurring the driver took the opportunity to escape and leave the scene. PW1 and PW2 were not able to apprehend the driver. Thus it could not be said with certainty who the driver was: the Prosecution say it was Wong. Wong denies this.

8. In order to prove its case, the Prosecution were relying on the fact that the driver had handed to PW1, a driving licence in Wong's name; and on the identification by both PW1 and PW2 in Court, of Wong, sitting in the dock, as the driver of the car on the material date and time.

9. The defence was simply that Wong was not the driver, and that he did not even know the 3 passengers. The Defence also called these 3 passengers (DW2, DW3, DW4) to give evidence. It was the evidence of each of the 3 passengers that they did not know Wong, and that Wong was not the driver of the car that night. It is pertinent to note that the aforesaid evidence of the 3 passengers was unshaken after cross-examination. No rebuttal evidence was led to contradict any material aspect of the evidence of the 3 passengers.

10. It was the Prosecution's contention that these 3 passengers were friends of Wong, and that Wong was indeed the driver. If this were true, it would mean that all 3 passengers were blatant liars, as all denied knowing Wong at all, and denied that Wong was the driver. If Wong was a friend or even an acquaintance to one, if not all of the 3 passengers, there could have been evidence proffered to show this, to contradict their evidence. No such evidence was presented by the Prosecution. In fact, DW4 (one of the 3 passengers) had, during the course of investigations, been asked to identify Wong as the driver. DW4 had indicated that Wong was not the driver. If DW4 had been lying, further investigations could have exposed him, and at the very least shown that DW4 was at least an acquaintance of Wong's, if not a friend of Wong's. No such evidence was led at trial.

11. No connection between the 3 passengers and Wong was shown by the Prosecution at all, save for the Prosecution's assertion that Wong had been the driver that night. No rebuttal evidence was led to contradict the evidence of **each** of the 3 passengers that they did not know Wong and that Wong was not the driver.

12. With regard to the driving licence in Wong's name that had been produced by the driver, it was Wong's evidence that he had lost this particular licence some time before. Although Wong had not made any police report with regard to his alleged loss, this in itself did not mean that Wong was lying in this respect, or could not be believed on this aspect. If Wong was not the driver that night, there would be a coincidence of Wong's driving licence being produced, to be explained. Wong said that he had lost this particular licence. If such were the case, he would not have any control over the possession of the licence or in whose hands the licence might subsequently turn up. The Prosecution did not offer any evidence to contradict Wong's oral evidence that he had lost his licence previously, instead relying on PW1 and PW2 being able to identify Wong as the driver, to show that it must have been Wong who handed over the licence to PW1.

13. If Wong is to be believed, that he had indeed lost his licence, he would then not have had any control over it. It may surface in rather unfortunate circumstances and be used fraudulently. It was a coincidence that had to be explained, but the strongest point that the Prosecution would have been relying on would be the positive identification of Wong in Court as being the driver.

14. It is pertinent to note that prior to the trial, there had never been an identification parade for PW1 and PW2 to identify Wong as the driver. Although the Investigation Officer ("IO") of the case, DW5, wanted to conduct such an identification parade, her decision was overridden by her superior. During the course of investigations, PW1 and PW2 had been separately shown a photocopy of Wong's identity card by the IO, DW5. From the evidence of PW1 and PW2, it appears that both PW1 and PW2 knew they were being shown a photocopy of the identity card of Wong (obtained during investigations), corresponding to the particulars in the driving licence that had been handed over by the driver to PW1. In such circumstances it was not surprising that PW1 and PW2 would both identify the person whose photograph appeared in the photocopy of Wong's identity card, as being the driver. I found that this "identification" was a far cry from an identification arising from a proper identification parade, and was thus of very limited value. Further, PW1 and PW2 were shown only one photograph, in a process that was almost guaranteed to result in a positive "identification" of Wong, since it was Wong's driving licence that had been handed to PW1, and both PW1 and PW2 knew there were being shown a photocopy of Wong's identity card. In fact, PW1 admitted as much, in cross-examination, that the name and address on the photocopy (which corresponded with the driving licence) did influence him in making the "identification".

15. We turn now to the identification in Court of Wong as being the driver. Whilst both PW1 and PW2 were able to identify Wong, sitting in the dock, as the driver, it is pertinent to note that the incident occurred almost a year before the trial began. When the 3 passengers (who were undoubtedly at the scene) were produced in the Courtroom, PW1 was unable to identify **any** of the 3 passengers. From the evidence, it was clear that PW1 had had considerable contact time with the 3 passengers, comparable with the contact time he had had with the driver. During the events which led up to the driver absconding, there was nothing unusual in what transpired. PW1 had directed the driver to move the car, received a driving licence (which he did not even notice had expired in the year prior to the incident: had he noticed, his suspicions may have been aroused), detected alcoholic breath, conducted a breathalyzer test. It was quite routine, until the driver stole away. PW1 and PW2 did not realize that the driver had absconded until it was too late. By then, it is questionable whether PW1 and PW2 would have taken note of the features of the driver and locked his image in their minds so as to be able to properly identify him later. When it came to PW2 to identify the 3 passengers produced in Court, he was only able to identify one of the 3. PW2 had less contact with the driver as compared to PW1. PW2 said in evidence that he did not have any conversation or contact with the driver (only observing him from about 3 arm lengths away) and that PW1 was the only one who had contact or conversation with the driver. PW2 had considerable contact with the 3 passengers and yet was able to identify only one of the 3. The powers of recognition and recollection of facial features of both PW1 and PW2 were thus called into question. It is also pertinent to note that there was no clear, direct evidence that the 3 passengers or any one of them, during the incident, referred to the driver by his name, or specifically to the driver as "Wong", "Justin" or any other form of Wong's name. PW1 in evidence-in-chief said, "They then pleading (*sic*) with me to let their friend off, who is the Defendant. Also, pleading with me to give the Defendant a chance." He said this after he had identified Wong in Court as being the driver, and was giving evidence on the basis that Wong was the driver. But no evidence was led, as mentioned above, that any of the 3 passengers was heard referring to the driver as "Wong", "Justin" etc. The 3 passengers each gave evidence in Court that the driver that night was one "Jacky".

16. On the issue of identification evidence, the High Court in the case of **PP v L [1999] 3 SLR 219** set out the 3 stage test laid down by the Court of Appeal in **Heng Aik Ren Thomas v PP [1998] 3 SLR 465**. The test is as follows:

- The first question that a judge should ask when encountering a criminal case concerning identification evidence, is whether the case against the accused depends wholly or substantially on the correctness of the identification evidence that is alleged by the defence as being mistaken.
- If so, the second question should be this. Is the identification evidence of good quality, taking into account the circumstances in which the identification by the witness was made?
- Where the quality of the identification evidence is poor, the judge should go on to the third question. Is there any other evidence that goes to support the correctness of the identification?

17. The first question is clearly answered in the affirmative. As for the second question, we have to carefully consider how the "identification evidence" arises in this case. There was no identification parade, nor was there any independent identification by PW1 or PW2 that Wong was the driver. The "self-fulfilling" "identification" of Wong from a demonstration of a photocopy of Wong's identity card was of very little value, in the circumstances. The only time that PW1 and PW2 were asked to identify the driver (in the flesh, so to speak) was in Court, at the trial. This was almost a year after the encounter with the driver. As demonstrated in Court, the powers of recollection of both PW1 (who could not identify any of the 3 passengers who were undoubtedly at the scene) and PW2 (who could only identify one of the 3 passengers) were called into question. In respect of the second question, therefore, it must be said that the "identification evidence" in this case was not of good quality, and was poor. There has to be a consideration of the third question.

18. In paragraph 29 of **PP v L**, The Honourable the Chief Justice said,

"The Court of Appeal in **Heng Aik Ren Thomas v PP** had noted that, if the identification evidence was of poor quality, there was a need for supporting evidence. This need not be corroboration evidence of the kind required by *R v Baskerville* [1916] 2KB 658. All that was required was evidence that would make the judge sure that there was no mistake in the identification. The Court of Appeal accepted that odd coincidences could, if unexplained, be supporting evidence."

19. The only link that the Prosecution have tying Wong to the events of the material night (other than the "identification") is Wong's driving licence. The fact that the driver (assuming if it was not Wong) could recite the particulars is not at all surprising. If such a person intended to use the driving licence fraudulently, it would not be surprising for the person to have memorized the details in order to be able to recite it if required to do so, to perpetrate the fraud. And if indeed the driving licence had been lost, there was no telling where it might "turn up". Thus, there may be a plausible explanation for this "coincidence" of Wong's driving licence surfacing in this manner.

20. Therefore the question that has to be answered is, whether the presence of the driving licence was sufficient evidence for this Court to be "sure that there was no mistake in the identification"? If the supporting evidence had to be considered to ascertain if the Prosecution's case had been made out, that the identification was indeed correct, the test to be applied must be whether the Prosecution has satisfied the Court beyond a reasonable doubt. The Defence is entitled to an acquittal if it is able to raise a reasonable doubt. There was a possible explanation or theory, not too far-fetched in the circumstances, why Wong's driving licence surfaced as it did.

21. It is insufficient for the Prosecution to show that the identification was probably correct. The Prosecution had to prove its case beyond a reasonable doubt. The Honourable the Chief Justice, in paragraph 39 of **PP v L**, cited **Tang Kin Seng v PP [1997] 1 SLR 46** where it was said that,

"There will always be that minutiae of doubt as to whether the accused might perhaps be the victim of a strange set of coincidences. The question in each of these cases must be whether, given the evidence presented, whether that doubt is a real or reasonable doubt or whether it was a merely illusory or fanciful one."

22. In paragraph 68 of **Teo Keng Pong v PP [1996] 3 SLR 329**, it was said that,

"...the burden on the prosecution is to prove its case beyond reasonable doubt. It is not to prove the case beyond all doubts. ...In almost all cases, there will remain that minutiae of doubt. ...The question in all cases is whether such doubts are real or reasonable, or whether they are merely fanciful. It is only when the doubts belong to the former category that the prosecution had not discharged its burden, and the accused is entitled to an acquittal."

23. Chan Sek Keong J (as he then was) in PP v Ang Soon Huat [1990] SLR 915; [1990] SGHC 121 cited what Lord Denning said in the case of Miller v Minister of Pensions [1947] 2 All ER 372,

“If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course it is possible, but not in the least probable’, the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

24. The hardest evidential hurdle the Prosecution had to address was the clear evidence of the 3 passengers that Wong was not known to them and was not the driver on the material night. This evidence was not contradicted. This constituted a real and reasonable doubt regarding whether or not Wong was the driver. It cannot be said that this doubt was a fanciful or illusory one. It could not be said that Wong’s defence was not “in the least” a probable one.

25. Based on the evidence produced by the Prosecution, and bearing in mind the doubts raised by the Defence, it would have been unsafe to convict Wong on the 2 charges he faced. I found that the Prosecution had failed to prove its case against Wong beyond a reasonable doubt. For the reasons stated above, I acquitted Wong on both charges.

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