

Accused in Traffic Death Case Avoids Jail – Offence Took Place Before the Imposition of New Sentencing Guidelines

Introduction

1. The benchmark sentence for the offence of causing traffic death by a negligent act under s 304A of the Penal Code has, for some time, been a heavy fine (*Gan Lim Soon v PP* [1993] 2 SLR(R) 67 (“*Gan Lim Soon*”), apart from disqualification from driving.
2. In *Public Prosecutor v Hue An Li* [2014] SGHC 171 (“*Hue An Li*”), a specially constituted three-member High Court departed from the prior position taken in *Gan Lim Soon*. The High Court set a new starting point for traffic death cases under s 304A(b): a brief period of imprisonment of up to four weeks.
3. Nonetheless, in *PP v LKH* (unreported), a decision after *Hue An Li*, the Court agreed to apply *Gan Lim Soon*’s benchmark on the basis that the offence was committed prior to the decision in *Hue An Li*. As a result, LKH was sentenced to a \$7,000 fine and disqualified from driving for 5 years. LKH was represented by Toh Kok Seng and Daniel Chen of Lee & Lee, assisted by Charles Ho.

Facts

4. LKH, 77 years old, pleaded guilty to one charge under s 304A(b) for causing death by a negligent act. The accident occurred at a controlled traffic junction. When the traffic light was green in LKH’s favour, without a green turning arrow, LKH made a right turn after checking for oncoming traffic. However, LKH failed to notice the Deceased’s motorcycle which collided with LKH’s car.

Sentencing & Prospective Overruling

5. At the initial hearing, the Prosecution pressed for a short imprisonment term.
6. On the other hand, the Defence argued for a fine and disqualification on the basis that LKH’s offence ought to be

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For any queries relating to this article, please contact the following persons:

Toh Kok Seng

Senior Partner – Litigation and Dispute Resolution

DID: 6557 4619

tohkokseng@leenlee.com.sg

Daniel Chen

Associate – Litigation and Dispute Resolution

DID: 6557 4784

danielchen@leenlee.com.sg

Authors:

Toh Kok Seng

Daniel Chen

(with thanks to Charles Ho)

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governed by *Gan Lim Soon's* benchmark since it occurred prior to the decision of *Hue An Li*.

7. The Court decided to adjourn the hearing to enable further submissions to be made on the matter.
8. At the further hearing, the Prosecution indicated that in view of LKH's medical condition, they would no longer be pressing for a custodial sentence
9. Also, the Defence advanced the following arguments:
 - a) The starting point for LKH's sentence ought to be a fine and disqualification from driving under *Gan Lim Soon's* benchmark. Due to how well entrenched *Gan Lim Soon's* old benchmark was, *Hue An Li's* overruling of it was pronounced to be prospective in nature. As such, *Hue An Li's* new benchmark should only apply to offences subsequent to the judgment. Since LKH's offence occurred prior to *Hue An Li's* decision, *Gan Lim Soon's* benchmark sentence of a fine and disqualification is applicable.
 - b) Even if *Hue An Li's* new benchmark applies, a custodial sentence is unwarranted given the absence of aggravating factors and the presence of mitigating factors. This is in line with Sundaresh Menon CJ's explanation in *Hue An Li* that the amendments to the Penal Code (which prompted the overruling of *Gan Lim Soon*) does not mean that that a sentence of imprisonment will be imposed in every s 304A(b) traffic death case. The court must still examine the circumstances of each individual case to determine the appropriate sentence and whether it warrants a sentence of imprisonment. Furthermore, it was clarified in Parliament that the amendment to s 304A of the Penal Code was not meant to signify intent to automatically increase the applicable fines or punishments. Hence, the mere application of *Hue An Li's* new benchmark does not necessarily mean that a custodial sentence is always warranted. Given the absence of aggravating factors and presence of mitigating factors in LKH's circumstances, an appropriate sentence should be a fine and

disqualification.

10. The Court agreed with the defence's position that *Hue An Li's* benchmark was inapplicable and considered such a position to be in line with existing authorities on prospective overruling such as *Abdul Nasir bin Amer Hamsah v PP* [1997] 2 SLR(R) 842. The Court proceeded to consider LKH's offence under *Gan Lim Soon's* framework.
11. In determining the appropriate sentence, the Court took into account the various mitigating factors including LKH's old age, driving records, health conditions, and his early plea of guilt. The court considered that these, coupled with the absence of any aggravating factors meant that the custodial threshold based on *Gan Lim Soon's* old benchmark was not crossed. As such, the court fined LKH \$7,000 and disqualified him from driving for a period of 5 years.

Comments – s 304A offences & Prospective Overruling

12. According to authorities on prospective overruling such as *PP v Manogaran s/o R Ramu* [1996] 3 SLR(R) 390 and *Abdul Nasir bin Amer Hamsah v PP* [1997] 2 SLR(R) 842, when prospective overruling applies, the pronouncements generally affect only acts or offences committed subsequent to the judgment. In line with such authorities, the Court in LKH's case did not apply the new benchmark set in *Hue An Li*.
13. While s 304A(b) offences that have occurred after *Hue An Li's* decision will be governed by the new benchmark, it remains unclear how much weight the court would accord to the precedents which applied *Gan Lim Soon*. Despite applying the old benchmark, it is likely that such precedents will remain relevant in guiding the court's evaluation of the various aggravating and mitigating factors even in the application of *Hue An Li's* new benchmark.
14. Furthermore, as *Hue An Li's* decision merely sets a starting point for sentencing, it does not follow that all s 304A(b) cases warrant custodial sentences. Should the circumstances of a case contain sufficient mitigating factors, it remains possible for the court to impose a non-custodial sentence.

CASE UPDATE

