

HONG KONG / JUDGMENT

HKSAR v. SHEK MING YAU

COURT

Court of First Instance

DECIDED

29 March 2007

CASE / FILE NUMBER

HCMA879/2006

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Coram: Deputy High Court Judge Line in Court Date of Hearing: 29 March 2007 Date of Judgment: 29 March 2007

J U D G M E N T

1. This is an appeal against a conviction for causing death by dangerous driving. The Appellant was driving a public light bus on Hoi Ha Road, in the Sai Kung Country Park. It is a two-lane road. The carriageways are divided by continuous double white lines.
2. The photographs in the case show the scene where a cyclist met his death. At that point Hoi Ha Road has a left-hand bend for those driving uphill, as the Appellant was. There was a cyclist pedalling uphill. The Appellant decided to give him a very wide berth and he pulled across the double white lines, such that his vehicle was wholly on the other carriageway. Coming downhill, approaching the bend, was the cyclist who was engaged in a cycle race. He was confronted by the PLB in his lane. He could not avoid the collision that occurred, as a result of which he very sadly died.
3. The issue in this appeal is was the manoeuvre that the Appellant carried out a dangerous one? In my judgment, it obviously was. Double white lines prohibit a vehicle from crossing. The man driving in the opposite direction, whether on a bike or in a motorcar, can expect to have his side of the road clear from oncoming traffic. For the Appellant to put his vehicle completely on the wrong side of the road over the double white lines, in my judgment, did meet the statutory definition of dangerous driving, in that the way he drove fell far below what would be expected of a competent and careful driver and it would be obvious to a competent and careful driver that driving in that way would be dangerous.

4. You cross double white lines if you are a driver at your peril and the perils are two-fold: one is you risk an accident and you invite prosecution for dangerous driving. The argument was advanced by the Appellant that it was the death that caused the allegation of dangerous driving here and the Appellant would not have been prosecuted for dangerous driving merely if he had carried out the manoeuvre and there had been no collision. I reject that. Certainly, my experience is that if there is one certain way to invite a prosecution for dangerous driving, it is to overtake on and to cross double white lines.
5. Accordingly, the appeal against conviction is dismissed. There is no appeal against the sentence. (P Line) Deputy High Court Judge Representation: Mr David Leung, Senior Government Counsel of the Department of Justice, for the Respondent Mr James H.M. McGowan, instructed by Peter K.H. Wong & Co assigned by Director of Legal Aid, for the Appellant PAGE - PAGE CRT32/29.3.2007/DB HCMA879/2006/Reasons for Judgment A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V & `#\$ Normal.dot setup Microsoft Word 9.0 judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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