

IN THE DISTRICT COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
CRIMINAL CASE NO. 285 OF 2010

Transcript of the audio recording of the Reasons  
for Verdict at the trial of Chan Wang-pong,  
charged with Dangerous driving causing death,  
before Deputy District Judge A. Yuen

Date: 24 January 2011

Present: Mr Lam Chun-chin, Counsel on fiat, for HKSAR  
Mr Nicholas Adams, instructed by Messrs Haldanes, for  
the Defendant

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1. Defendant faces one count of dangerous driving causing death.

2. The burden is on the prosecution to prove beyond reasonable doubt that the defendant is guilty.

3. Prosecution adduced 7 witnesses.

4. PW1, Mr Ngok Ma-shing, aged 71, he testified that on 27 August, year 2009, at around 8.45 pm, he just finished watching Chinese opera at Lei Yue Mun Road playground and was waiting to cross the Lei Yue Mun Road near junction with Ko Chiu Road. He was with a kaifong, Mr Wong, and the two stood on the pavement close to the kerb.

5. There was a pedestrian crossing with pedestrian traffic light and safety island at that junction. PW1 testified that the pedestrian traffic light was red at that time. After waiting for a brief moment, a private car drove past him at a high speed, and then PW1 heard a loud bang sound. Then PW1 saw a person lying on the floor, while at the same time something hit his head and caused his head to bleed. PW1 then covered his head

A and eventually was helped to sit on the pavement. He was then  
B taken to hospital for treatment.

C 6. PW1 further testified that when the private car drove  
D past him, there was no one on the road or crossing the road, nor  
E he noticed anyone on the safety island.

F 7. In cross-examination PW1 agreed that he focused mainly  
G on the pedestrian traffic light while waiting for the crossing  
H of the road and did not really pay attention to other persons  
I nearby. As far as the speed of the private car is concerned, all  
J PW1 can say was that it was at a high speed but could not tell  
K at what speed it was.

L 8. PW2, Mr Lam Ting-kwan, testified that on 27 August,  
M year 2009, at around 8.45 pm he just came out from an alley into  
N Lei Yue Mun Road. He noticed a private car coming from his left  
O at a high speed. He paid attention to it. He noticed that the  
P private car braked briefly when it reached the outside of the St  
Q Antonius Girls' School. However, the private car did not slow  
R down. Then he heard a bang sound. He ran over to take a look  
S and found a person lying on the ground and another elderly man  
T sitting on the pavement.

U 9. As to the speed of the car, PW2 said it was travelling  
V at a high speed. When it braked, it created a loud screeching  
O sound. There was a pedestrian crossing and safety island outside  
P the St Antonius Girls' College. At the material time he saw no  
Q person using that crossing or on the safety island. However, as  
R to the pedestrian crossing and the safety island outside the Lei  
S Yue Mun playground, he was not sure if someone was on the road  
T or on the safety island at the material time of the incident.

U 10. PW3, Mr Ho, was the site manager of Sum Kee  
V Construction Company Limited. The company was the contractor  
O responsible for the roadwork at Lei Yue Mun Road junction of Ko  
P

A Chiu Road in August, year 2009. A section of the fast lane of A  
B Lei Yue Mun Road had been closed since 8 August 2009. Plastic B  
C barriers, flashing lamps and road signs were put up. As to the C  
D closure of the fast lane, it extended from Yau Tong bound before D  
of closure was 150 metres.

E 11. PW4, SPC1428, he was the first police officer who E  
F arrived at the scene after the accident. He made enquiries with F  
G defendant who was the driver of the vehicle HK 9666 as to how G  
H the accident took place. Defendant said he was travelling along H  
I Lei Yue Mun Road heading Yau Tong direction. He was on the I  
J second lane at a normal speed. The traffic light was green and J  
K therefore he proceeded forward. When he reached St Antonius K  
position.

L 12. PW5, SPC50274, testified that the speed limit of this L  
M stretch of Lei Yue Mun Road was 50 km/h. At the scene he also M  
N made enquiries with defendant as to how the accident took place, N  
and defendant told a similar version to PW5.

O 13. PW5 took photos and drew sketches of the scene. He O  
P also measured the lengths of four tyre marks on the road surface P  
Q which apparently were related to this case. He also checked the Q  
R damage done to defendant's vehicle which was basically confined R  
to the nearside of the vehicle. He confirmed that the handbrake  
and footbrake of defendant's vehicle were in good condition.

S 14. PW6, Mr Chui, he is a motor vehicle examiner. He S  
T examined defendant's vehicle after the accident and confirmed T  
U that there was no mechanical defect whatsoever with defendant's U  
vehicle and that defendant's vehicle got ABS which was also in  
good condition.

A  
B 15. PW7, Mr Wong Tai-wai, testified as an expert in  
C traffic accident investigation. After examining the information  
D he gathered from the case, he produced two reports. In his first  
E report, he concluded that defendant had steered sharply and  
F abruptly to his right, therefore, causing the vehicle to spin  
G clockwise when it travelled along the pedestrian crossing. It  
H was at this point of time that the rear nearside corner of  
I defendant's vehicle hit the deceased who was standing in close  
J proximity of the pavement kerb. The car continued to spin and  
K finally stopped at a position with its front pointing against  
L the traffic direction. The deceased was thrown in the direction  
M of traffic down the road before landing on the inner lane.  
N

O 16. As far as the speed of defendant's vehicle at the time  
P of accident, the report says, and I quote, "No accurate speed  
Q information could be obtained from the set of spinning tyre  
R marks."  
S

T 17. In his second report, PW7 was asked to give his  
U opinion as to the speed of defendant's vehicle at the time of  
V accident and whether or not the accident could be avoided if  
W defendant was travelling at a speed of 50 km/h.  
X

Y 18. On the assumption that defendant had applied hard  
Z braking during the whole course of spinning, PW7 opined that the  
AA speed of defendant's vehicle just before spinning could have  
AB been 80 km/h.  
AC

AD 19. Then on the assumption that defendant's vehicle  
AE travelled in a straight line, PW7 opined that if defendant was  
AF doing a speed of no more than 50 km/h, the accident could have  
AG been avoided.  
AH

AI 20. However, in cross-examination, PW7 agreed that there  
AJ was no evidence that defendant did brake hard during the whole  
AK

A course of the spinning. He also agreed that when the vehicle was  
B spinning, the driver might have difficulty pressing the foot  
C pedal of the brake hard enough. He also agreed that from what he  
D gathered from the tyre marks after skidding for a distance of 5  
to 6 metres, the vehicle started to spin and therefore not  
travelling in a straight line.

E 21. What it means by driving dangerously is defined in  
F section 36(4) and (7) of the Road Traffic Ordinance. In a gist,  
G court has to ask himself whether or not defendant's manner of  
H driving, having regard to the whole circumstances of the case,  
I falls far below what could be expected of a competent and  
careful driver, and whether or not it would be obvious to a  
competent and careful driver that the manner of driving would be  
dangerous.

J 22. In the case, the whole basis of prosecution's case is  
K that defendant was travelling at a speed far beyond the speed  
L limit of that section of Lei Yue Mun Road. When he reached the  
M pedestrian crossing in question, he lost control of his vehicle  
N causing it to spin and hitting the deceased who was standing on  
the pavement near the kerb side and therefore causing the death  
of the deceased.

O 23. However, after careful considering of the  
prosecution's evidence, I found that:

- P (1) There is no clear evidence as to what speed  
Q defendant was doing before he reached the junction  
R of Ko Chiu Road and Lei Yue Mun Road. The fact  
S that both PW1 and 2 said defendant travelling at a  
T high speed is obviously not reliable and the  
expert opinion of PW7 that defendant should be  
U doing a speed of 80 km/h was based on an  
assumption that PW7 admitted might not stand.

A (2) There is no dispute that when defendant was A  
B approaching the pedestrian crossing in question, B  
C the traffic light was green in his favour, and C  
D that section of Lei Yue Mun Road was more or less D  
E a stretch of straight road with a slight bend to E  
F the right and therefore defendant had the right to F  
G proceed forward and in the normal course of event G  
H no reason defendant should suddenly steer sharply H  
I and abruptly to his right. It is therefore I  
J logical, reasonable and consistent with J  
K defendant's explanation to police at scene that K  
L someone suddenly came out onto the road, therefore L  
M causing him to steer to his right to avoid this M  
N person. N

(3) Prosecution suggested that even if that was the J  
K case, had defendant been doing a speed at or K  
L within speed limit, that is, 50 km/h, he could L  
M have avoided the accident. That is, if he had M  
N been doing a speed of 50km/h or less when he N  
O braked hard and steered, the car could have been O  
P stopped before reaching the pedestrian crossing. P

Q However, according to PW7, the expert, a vehicle Q  
R could still spin even at low speed, and because R  
S the vehicle was spinning, therefore the driver may S  
T not be able to brake hard during the whole course T  
U of the spinning and therefore defendant's vehicle U  
V could still end up in the position as it was in V  
this case, that is, a spot beyond the pedestrian  
crossing.

(4) There is no clear evidence where the deceased was T  
U standing before impact. Prosecution's case was U  
V that the deceased should have been standing on the V  
pavement near the kerb side at the pedestrian

A crossing waiting to cross the road before he was A  
B hit by defendant's vehicle. However, after B  
C careful consideration of the evidence, it suggests C  
D that the point of impact between the deceased and D  
E defendant's vehicle could be at a point beyond the E  
F pavement at point of impact. In fact, clear F  
G evidence that PW1 and a kaifong, Mr Wong, were G  
H standing next to each other and they were standing H  
I on the pavement close to the kerb when they were I  
J waiting to cross the road, but they were not hit J  
by defendant's vehicle at all. This indicates the  
deceased not standing in close proximity of PW1  
and this kaifong and therefore to a certain extent  
rebutts the prosecution's case.

K 24. In short, prosecution cannot prove beyond doubt that K  
L the defendant was travelling at a speed beyond the speed limit L  
M of 50 km/h at the time of the accident and that the deceased was M  
standing on the pavement at the pedestrian crossing.

N 25. Evidence suggests that something did take place which N  
O surprised the defendant and therefore causing him to take an O  
P evasive action of steering the wheel sharply and abruptly to his P  
Q right and therefore causing the vehicle to spin. By steering to Q  
R his right, it is obvious that defendant was steering his vehicle R  
S away from the pavement, towards the barricades of the roadwork S  
which was on the right side of Lei Yue Mun Road. By doing so,  
defendant was avoiding hitting people on the pavement who were  
waiting to cross the road.

T 26. Having regard to the whole circumstances of this case, T  
U I cannot say defendant's manner of driving falls far below what U  
would be expected of a competent and careful driver, let alone

dangerous, I therefore found the defendant not guilty.



A Yuen  
Deputy District Judge

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