

Neutral Citation Number: [2019] EWCA Crim 963
2018/04438/A4
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 17th May 2019

B e f o r e:

LORD JUSTICE DAVIS

MRS JUSTICE SIMLER DBE

and

THE RECORDER OF LONDON

(His Honour Judge Hilliard QC)

(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

SHAREEN RAHMAN CHOWDHURY

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Mr Zaki Hashmi appeared on behalf of the Applicant

J U D G M E N T
(Approved)

Friday 17th May 2019

LORD JUSTICE DAVIS: I shall ask The Recorder of London to give the judgment of the court.

THE RECORDER OF LONDON:

1. On 25th July 2018, in the Crown Court at Guildford, the applicant was convicted of causing death by careless driving and was sentenced to six months' imprisonment, suspended for eighteen months, with a curfew between specified hours for three months and an unpaid work requirement of 140 hours. She was disqualified from driving for three years and until she had passed an extended driving test.

2. The applicant now renews her application for leave to appeal against sentence after refusal by the single judge.

3. On 9th December 2016, at about 8.45pm, Radhika Gurung was walking along the pavement on Monument Road in Woking when she was struck by the Peugeot car being driven by the applicant and killed. Radhika Gurung was 49 years old and a wife and mother. Her family described a woman who had instilled values in them and who remained a great inspiration. The sentence passed can never equate to the value of the life that has been lost. No sentence that was passed could begin to undo the tragedy that has befallen her family. We have read the eloquent statement made by Sofin Gurung.

4. The applicant had passed her driving test three weeks before 9th December. She was waiting to turn on to Monument Road. Also coming down Monument Road towards her, and in the same direction as she intended to travel, was a BMW car being driven by a co-accused, Bilal

Waheed. He was driving at between 46mph and 52mph, where the limit was 30mph. The applicant pulled out on to Monument Road when it was not safe to do so. Her car was struck by the BMW and, in turn, she struck Radhika Guring who was on the pavement. She died at the scene from the injuries she received.

5. The applicant told the police that she had seen the BMW and had thought that she had enough time to complete the manoeuvre. A witness said that the applicant said "I panicked and someone hit me from behind". Plainly, the drivers of both vehicles were at fault.

6. Mr Waheed pleaded guilty to the same offence of which the applicant was convicted after her trial. He was sentenced to twelve months' imprisonment suspended for 24 months, with a curfew for four months and 180 hours of unpaid work. He was also disqualified from driving for three years and until he had passed an extended driving test.

7. In passing sentence the judge said that the culpability primarily lay with Mr Waheed, and at a secondary level with the applicant. She was an inexperienced driver who pulled out from the junction in circumstances where she clearly should not have done. He said that she also failed to have proper regard to the risk she created for vulnerable road users. It was not an error caused by momentary inattention. She had been stationary at the junction for at least nine seconds before she pulled out.

8. The applicant was then aged 27. She had no previous convictions. She was the mother of two small children, then aged 2 and 6, and the carer for her elderly mother. She had been diagnosed with post traumatic stress disorder as a result of the events on the night, resulting in flashbacks and physical reactions to reminders about the incident. She had expressed her remorse in a letter to the judge, and he also had positive references about her.

9. The only aspect of the sentence about which complaint is now made is as to the length of the period of disqualification from driving. It is said that on its own terms it was too long and it is also pointed out that it was the same as the period imposed on the co-accused Waheed. As to that, we observe that he had the mitigation of having pleaded guilty and that in other respects their sentences differed.

10. In practical terms, of course, a period of disqualification from driving may have a punitive effect, although in this case we are told that it will not cause the applicant more than inconvenience. But a period of disqualification also serves as a protection for the public in the future.

11. In this case it was one part of a number of elements which made up the total sentence passed by the judge for each offender. True it is that the pre-sentence report concluded that the applicant posed a low risk of offending in the future. But in our judgment what must not be forgotten is that the judge in this case had the advantage of having heard the applicant give evidence at her trial. She did not accept that her lack of experience had contributed to the accident. The judge disagreed. Nor did she accept any lack of care and attention on her part, but she was nonetheless convicted. There was, therefore, a continuing misunderstanding by the applicant as to her culpability.

12. It is sufficient, in our judgment, to say that the judge was well placed not only to decide what the respective sentences should be for each offender but, so far as the applicant is concerned, to assess what the appropriate period of disqualification from driving was, not least for the purposes of protecting others in the future, following his own evaluation of both the driving and the driver in this particular case. He having performed that exercise, we are not

persuaded that the period of disqualification can be said to be manifestly excessive.

13. Accordingly, this renewed application must be refused.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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