

Sam Ke Ting and basikal lajak: who is the reckless driver? – Sia Chin Chin

The crux of debate revolves around legal interpretation of ‘reckless’ and ‘dangerous’

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Now that Sam Ke Ting (right) is given a chance to appeal, there is a need for the court to assess the elements of ‘reckless’ or ‘dangerous’ and objectively look into the relevant facts surrounding the fatal accident before conviction could be imposed to avoid misdirection of conviction under Section 41 RTA 1987. – Bernama pic, May 10, 2022

THE recent case of Sam Ke Ting driving into a group of teenagers riding “basikal lajak” (illegally modified bicycles) at 3am, and killing eight of them, has sparked much discussion around the issues of what constitutes reckless driving and an argument over who is at fault.

Being accused of a fatal accident which occurred in 2017, Sam had previously been acquitted twice in the magistrates’ court in 2019 and 2021 as the prosecution failed to prove a prima facie case and to prove its case beyond reasonable doubt respectively. However, the high court has convicted her under Section 41(1) of the Road Transport Act (RTA) 1987.

Many of us thus ask ourselves – could we also be charged under this act if we accidentally knock someone down on the road we did not see or anticipate in front of us?

Under RTA 1987, some of the commonly encountered provisions for charges of transport offences include careless and inconsiderate driving and driving under the influence of drugs and alcohol.

In the amendment to RTA made in October 2020, Section 41 (1) (causing death by reckless or dangerous driving) was included as one of the chargeable offences for micro-mobility vehicles, inclusive of bicycles, electric bicycles, and tricycles.

However, it is noteworthy that prior to October 2020, despite the use of the word “driving” and “motor vehicles” in these provisions, they were equally applicable to and are chargeable against road users riding bicycles, electric bicycles, and tricycles.

Regarding Sam's situation, the crux of debate revolves around the legal interpretation of "reckless" or "dangerous".

In **granting the leave to appeal** against the conviction on April 18, the appellate court bench allowed six questions of law to be raised by the defence, including whether the offence under Section 41(1) RTA 1987, specifically the "cause of a dangerous situation", was due to the driver or the cyclists, and whether the speed of the driver at 44.5km/h is deemed dangerous compared to the position of the cyclists on the road.

Because RTA does not provide a definition of "reckless" or "dangerous", the interpretation is determined by the courts using legal principles.

To be guilty of reckless driving, the driver (defendant) must have created an obvious and serious risk of injury to the person or damage to property and must either have given no thought to the possibility of that obvious risk or have seen the risk and nevertheless decided to run it.

It is not automatically assumed that if a driver killed someone that he or she is guilty of reckless driving. For example, in upholding the acquittal of the accused, in the case of *Public Prosecutor v Kasno bin Sani* [2021] AMEJ 1635, Amelati Anak Parnell JC opined the following:

"...it is not the law that merely because an accident happened that led to fatal consequences, it follows that the appellant was driving in a manner dangerous to the public. The prosecution needed to show something more, i.e., that the accused was driving in a manner that has shown a selfish disregard for the safety of other road users...in our judgment, the essential or core ingredients of recklessness under Section 41(1) of the act have not been proved beyond reasonable doubt by the prosecution."

What about the cyclists?

Now that Sam is given a chance to appeal, there is a need for the court to assess the elements of "reckless" or "dangerous" and objectively look into the relevant facts surrounding the fatal accident before conviction could be imposed to avoid misdirection of conviction under Section 41 RTA 1987.

One may then ask – what about the basikal lajak cyclists, who were aged 13 to 16? Are they not considered reckless drivers?

Besides road transport offences as stipulated under Section 54 RTA 1987 which are chargeable against those aged between 12 to 18 and beyond, the unsafe use of modified bicycles (basikal lajak) or antisocial use of a vehicle could likely be chargeable under Section 431 of the Penal Code (mischief by injury to public road, bridge or river).

This states that whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, river, or channel, impassable or less safe for travelling or conveying property, shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

However, tackling the issue of youth and children who engage in such practices needs a more holistic and nuanced approach apart from just legal punishment.

Education of youngsters

There is a strong need to develop best practices, which include education, to encourage young road users' safety awareness on the roads. A very good example was in 2019, when Cleveland police launched the UK's first scheme tackling youngsters' antisocial cycling.

After numerous complaints from the public in Middlesbrough about adolescents riding at speed through shopping centres and in built-up areas, the police introduced £30 fines (RM162.35) and sent the youngsters on a course to teach them to ride responsibly if they were caught riding anti-socially or dangerously.

This money then goes to local charity Middlesbrough Environment City to benefit the neighbourhood and the cyclist can then attend a three-hour cycling proficiency course and get a certificate.

Moving forward, it is in the interest of public road safety that we should rigorously regulate the unsafe use of modified bicycles (basikal lajak) or antisocial use of a vehicle (including mat rempit), both through laws as well as best practices.

Community leaders and school administrators need to work together with law enforcement agencies to educate the youngsters.

Youth should also be encouraged to take a leading role in curbing this anti-social behaviour among their peers. Hopefully, by addressing this problem, we can prevent cases similar to Sam's. – The Vibes, May 10, 2022

Sia Chin Chin is a senior lecturer at Taylor's Law School

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