

Sam Ke Ting and the basikal lajak case

Who is the reckless driver?

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by Sia Chin Chin


The recent case of Sam Ke Ting driving into a group of teenagers riding on 'basikal lajak' (illegally modified bicycles) at 3am and killing eight of them has sparked much discussion about what makes up reckless driving and who is at fault.

Accused of a fatal accident in 2017, Sam was acquitted twice in the magistrates' court in 2019 and 2021, as the prosecution failed to prove a prima facie case and failed to prove its case beyond reasonable doubt respectively.

However, the High Court has convicted her under Section 41(1) of the Road Transport Act 1987.

Many of us thus ask ourselves: could we also be charged under this act if we accidentally knock someone down on the road?

Under the Road Transport Act, 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.

 **Amendment to the act** 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. [A recent

amendment of October 2020 replaced bicycles, electric bicycles and tricycles with micro-mobility vehicles.]



However, it is noteworthy that before October 2020, despite the use of the words driving and motor vehicles in these provisions, they were equally applicable to and are chargeable against road users who are riding bicycles, electric bicycles, and tricycles [PerAmelati Anak Parnell JC in Public Prosecutor v Kasno bin Sani (2021)].

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As for Sam Ke Ting's situation, the crux of the debate revolves around the legal interpretation of 'reckless' or 'dangerous'.

In granting leave to appeal against the conviction on 18 April, the appellate court bench allowed six questions of law to be raised by the defence, including whether the offence under Section 41(1), 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 was deemed dangerous compared to the position of the cyclists on the road.


Because the Road Transport Act does not provide the 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 [PerAmelati Anak Parnell JC in Public Prosecutor v Kasno bin Sani (2021)].

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], Amelati Anak Parnell JC opined:

...it is not the law that merely because an accident happened which 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 which has shown a selfish disregard for the safety of other road users... In our judgment, the essential or core ingredients of recklessness under s. 41(1) of the Act have not been proved beyond reasonable doubt by the prosecution.

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That Sam has been given a chance to appeal, the court will probably 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.



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 of the act, 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.

There is a strong need to develop best practices, which include education, to encourage young road users' safety awareness on the roads.

An excellent example was in 2019, when [Cleveland Police launched the UK's first scheme to tackle youngsters' antisocial cycling](#). After many complaints from the public in Middlesbrough about adolescents riding at speed through shopping centres and in built-up areas, the police introduced £30 fines and sent the youngsters on a course to teach them to ride responsibly if they were caught riding antisocially or dangerously.

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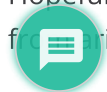
This money then goes to local charity Middlesbrough Environment City to benefit the neighbourhood, and the cyclist can then attend a three-hour cycling proficiency course and get a certificate.

In the interest of public road safety, we should rigorously regulate the unsafe use of modified bicycles (basikal lajak) or the antisocial use of a vehicle (including Mat Rempits), both through laws and best practices.

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

Youths should also be encouraged to take a leading role in curbing this antisocial behaviour among their peers.

Hopefully, by addressing this problem, we can prevent cases similar to Sam Ke Ting's from arising.



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