

Supreme Court's JUDGMENT

delivered in Stockholm on 22 March 2024

Case no.

B 1504-22

PARTIES

Appellant

VR

Counsel: Attorney NL

Respondent

Prosecutor General

Box 5553

114 85 Stockholm

THE MATTER

Aggravated drunken driving

RULING APPEALED

Judgment of the Svea Court of Appeal of 07/02/2022 in case B 76-20

JUDGMENT

The Supreme Court modifies the Court of Appeal's judgment in Case B 76-20 in such a way that a conditional sentence is imposed, combined with 50 hours of community service. If imprisonment had been chosen, a sentence of one month's imprisonment would have been imposed.

VR shall receive compensation from public funds for litigation costs in the Supreme Court of SEK 13,838 and in the Court of Appeal of SEK 19,375, relating to defence costs in these instances.

CLAIMS IN THE SUPREME COURT

VR has requested that the Supreme Court shall dismiss the charge or, in any event, reduce the sentence. He has also requested compensation for his litigation costs in all instances.

The Prosecutor General has opposed modification of the judgment of the Court of Appeal.

REASONS FOR THE JUDGMENT

Background

1. Early on the morning of 4 August 2018, a Saturday, VR drove a passenger car at high speed on County Road 276 and straight onto a roundabout at the Rosenkälla traffic junction, adjacent to the E18. The car ended up on a pile of stones in the centre of the roundabout, where it came to a stop. VR had driven from his home in Åkersberga, a distance of seven kilometres. A police patrol quickly arrived on the scene, and VR was taken to

the police station for a blood-alcohol test. The test showed that VR had a Blood Alcohol Concentration of 0.143.

2. VR was charged with aggravated drunken driving. He confessed to driving under the influence of alcohol but denied liability on the grounds that he had been driving in a state of somnambulism. The District Court convicted him for aggravated drunken driving and sentenced him to one month's imprisonment. The Court of Appeal upheld the District Court's judgment. The Court of Appeal found that the sleepwalking defence was baseless.

The somnambulism defence

3. Somnambulism, or sleepwalking, is typically described as a state in which a sleeping individual performs acts that he or she would normally do while awake, or might prefer to avoid while awake.

4. In a situation such as the present case, which involves relatively complex behaviour, the criminal significance of somnambulism should be assessed as a question of whether the requisite intent is present. In cases of reflexive or similarly involuntary acts, on the other hand, the objective conditions for criminal liability may be lacking in the first place.

5. Under criminal law, the requirement of intent entails a necessary degree of awareness, on the part of the offender, regarding his actions. If the awareness of the offender is sufficiently impaired, criminal intent does not arise. The degree of awareness required is quite low. It is only required that the offender has had a certain degree of basic understanding of the context and environment in which the criminal act is committed. (Cf., e.g., "Low Blood Sugar" NJA 1969 p. 401, and "Delusion" NJA 2020 p. 169 para. 14 and 15.)

6. A somnambulism defence is not grounds for applying an evidentiary requirement for intent that differs from what is applicable in criminal cases in general. The prosecutor must prove such circumstances that support the assessment that it has been established beyond reasonable doubt that the offender acted with intent, and this also applies to the requirement of a sufficient degree of awareness included in the requirement of intent. (Cf. "Delusion", para. 17.)

7. In general, here as elsewhere, the court's assessment of the offender's intent must be based on the facts in the case, that is the detailed circumstances of the act and what the offender may have expressed. The type of criminal act with which the offender is charged then becomes relevant.

8. The opinion of a sleep expert, or other facts about somnambulism, may be useful. Such information can explain the typical nature of sleep, as well as the likelihood that the criminal act in question was committed while asleep. However, the assessment of criminal intent is always the responsibility of the court, taking into account all the facts of the case.

The assessment in this case

9. VR has stated that he had had a very stressful day at work because he carried out a suicide assessment of a patient in his work as a doctor. He came home from work at around 6 PM. During the evening, he drank boxed red wine, consuming roughly the equivalent of one bottle of wine. He went to bed at 10 PM, when he also took 20 milligrams of the sleeping pill zolpidem. Shortly after falling asleep, during an incomplete and brief awakening, he experienced the sense that he received a call from the patient whom he had

assessed during the day requesting him to come. He has stated that he then fell asleep again, and that his clear memories of the night end here.

10. Furthermore, VR explained that he knows well the route that he travelled on the night in question, which is a stretch of road he has commuted on for 20 years. According to VR, he must have been sleepwalking and sound asleep during the drive, i.e., in a state of somnambulism and unaware of his actions. He has pointed out that the car was driven straight into the roundabout and up the pile of stones there. He has also pointed out that he arrived at the scene of the accident in the middle of the night wearing only the clothes he had gone to bed in, without a mobile phone, watch, driver's license or money. He has reported sleepwalking on another occasion in recent years, when he climbed out of a window and was observed by a neighbour.

11. The facts in the case show that somnambulism is an uncommon but observed side effect of zolpidem. The facts in the case also include more general information regarding cases in which a sleepwalker entered a car and drove quite far.

12. There are no witnesses to the drive in question. In VR's own account, he merely states that he has no memory of the drive. The assessment of whether it has been proven that he was sufficiently aware of driving the car must therefore be based on facts regarding the actual circumstances of the act of driving.

13. It has been proven that VR took the keyring with him on the night in question and left his home, went over to the multi-car garage, unlocked it with an RFID tag, unlocked the security grille around the car using another key, opened the car door, entered the car and drove out of the garage. The drive

then went from Åkersberga, out of town and along County Road 276 for about seven kilometres, before ending with the accident. The maps submitted show that this section of road includes bends and other traffic features.

14. VR's actions were thus rather complex and protracted, necessarily involving a not inconsiderable number of observations, decisions as the vehicle operator and active manoeuvres of various kinds. VR's awareness has admittedly been impaired for various reasons. However, it seems extremely unlikely that he would have been so unaware of his context and surroundings that he failed to realise while driving that he was driving. This assessment is not changed by the other facts in the case.

15. It is therefore proven beyond a reasonable doubt that VR acted with a sufficient degree of awareness to commit the offence with criminal intent. As the District Court and the Court of Appeal have found, the conditions for liability for aggravated drunken driving exist.

16. Aggravated drunken driving of this kind normally carries a sentence of one month's imprisonment. More than five years have now passed since the offence was committed. Against that background, there are special reasons to impose a conditional sentence combined with community service instead.

17. At this outcome, VR should be compensated for his costs of litigation in the Court of Appeal and the Supreme Court (cf. Chapter 31, Sections 2 and 10 of the Code of Judicial Procedure).

Justices of the Supreme Court Anders Eka, Dag Mattsson (reporting Justice),
Stefan Johansson, Jonas Malmberg and Anders Perklev participated in the
ruling.

Judge referee: Sandra Lundgren