

GOPAL PILLAY

v.

REGINAM

[SUPREME COURT, 1967 (Hammett J.), 8th September]

Appellate Jurisdiction

Criminal law—sentence—causing death by dangerous driving—sentence increased on appeal—Penal Code (Cap. 8) ss.263A, 319.

On an appeal against a sentence of eighteen months' imprisonment passed in the Magistrate's Court upon a conviction for causing death by dangerous driving the Supreme Court increased the sentence to one of three years' imprisonment.

Appeal against a sentence of the Magistrate's Court.

Appellant in person.

T. U. Tuivaga for the respondent.

The facts are set out in the judgment of Hammett J.

HAMMETT J. [8th September, 1967]—

The appellant was convicted on two counts in the Court below.

Firstly : Unlawful use of a Motor Vehicle contrary to P.C. Sec. 319.

Secondly: Causing death by Dangerous Driving contrary to P.C. Sec. 263 A.

On the 1st count he was sentenced to 6 months imprisonment and on the 2nd count to 18 months imprisonment.

He appeals against these sentences on the ground that they are excessive.

The facts, admitted by the appellant in the Court below are that on 8.4.1967 at 1.00 a.m. the appellant, who had no form of driving licence at all, took a car he found parked in the driveway of the owner's house, without any authority or right whatsoever.

He drove it towards Nausori and ran off the road into the back of a pedestrian who was walking on the pathway on the side of the road. This pedestrian was carried along by the car for over 50 yards and then fell off.

This pedestrian was killed by the appellant who did not stop but later abandoned the car on the side of the road.

The appellant has 4 former convictions, one of which was for the same offence as that charged in the first count.

There are no merits in the appeal against the sentence imposed on the first count — which is dismissed.

A On the second count I consider that the sentence of 18 months' imprisonment for causing death by Dangerous Driving was inadequate in the circumstances of this case.

B I set aside the sentence of 18 months' imprisonment and in lieu thereof I pass a sentence of 3 years' imprisonment. I would add that it appears to me to be unfortunate that the Court has no power to disqualify the appellant from holding a driving licence for the offence — otherwise I have no doubt the Court below would have so ordered for a considerable period. This appears to be an hiatus in the law which appears to merit consideration by the Legislature.

Appeal against conviction under s.319 dismissed. Sentence under s.263A set aside and increased sentence passed.