IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA

Appellate Jurisdiction
Criminal Appeal No.85 of 1979

BETWEEN: REGINA Appellant

AND : MOHAMMED HAKIM SAHIB
s/o Mohammed Hussein Sahib Respondent

Mr Pillai Counsel for the Respondent
Mr D. Williams Counsel for the Appellant

JUDGMENT

This is the Director of Public Prosecution's appeal against a fine of $150.00 and disqualification for 4 years as being grossly inadequate following a conviction for:-

(i) causing death by dangerous driving.

The accused (respondent) was also convicted for:

(ii) failing to stop after an accident,
(iii) driving when not the holder of a motor driving licence, and
(iv) driving when not insured for third party risks.

He pleaded not guilty to all four offences on 21/8/79 but on the hearing date 22/10/79 he pleaded guilty to them.

On counts (ii), (iii) and (iv) he was fined $50.00, $20 and $30.00.

The facts show that on 19/8/79 at [illegible].00 p.m. the accused who was represented to the learned magistrate as being "just over" 17 years had driven a van along the road at Namaka at a high speed. He

struck Saimoni Dua, a child of 10 years who was on the grass verge. The child was thrown 20' into the drain and the accused continued at a high speed without stopping.

An intensive search for the offending vehicle revealed it at Votualevu Technical School on 20/8/79. The respondent denied involvement in the accident but blood and a piece of bone were found on the bonnet and he then admitted being involved.

At 5.00 a.m. on 20/8/79 the child died from brain damage at Lautoka Hospital.

It appeared from the petition that the Director of Public Prosecutions was appealing against all the sentences and Mr. Pillai, for the accused, was obviously under that impression. However, Crown Counsel intimated that the appeal only related to the first count.

In my view there was reason for considering the adequacy of the sentence on count II failing to stop. I informed Mr. Pillai that I would exercise my powers of revision under section 306 Criminal Procedure Code and he had his submissions on that sentence already prepared and referred me to a number of authorities in urging that the sentence was adequate.

R. V. Guifoyle 1973, 2 AER,844, sets out the approach to be adopted towards sentence on charges of causing death by dangerous driving. The accused was 17 years and 8 months old at the time of the offence which is something more than just over 17 years. He was not the holder of a driving licence and apparently had never had a driving test. His conduct in driving the van on a road was irresponsible but that in itself is not evidence of recklessness or of a total disregard for the safety of others.

the facts allege that he drove at a high speed but that is a vague term and without further details I cannot take the view that there was a selfish disregard for the safety of others or recklessness of the kind which would justify a term of imprisonment.

Accordingly I am not disposed to enhance the sentence and the Director of Public Prosecution's appeal is dismissed.

Turning now to the charge of failing to stop in count II and the fine of $30.00 imposed for that offence.

I quote from the judgment of the Chief Justice, Sir Clifford Grant, in Ram Lal v. R Cr. Appeal 40/76 ('76 Vol,II cyclo-styled reports p.870 and 871), in which a driver had failed to stop after fatally injuring a pedestrian:-

> "For the purpose of sentence the callous disregard shown by the appellant for the welfare of the seriously injured pedestrian and his deliberate failure to stop and to subsequently report the accident should not be regarded as part of the offence of causing death by dangerous driving but should be dealt with on its merits."

He quashed a fine of $30 on the failing to stop charge and substituted a term of 6 months' imprisonment.

Mr. Pillai referred me to judicial authority in Fiji to the effect that it was not unnatural for an offender to try and avoid detection and that this was not a good reason for imposing a more severe sentence. I would not diverge from that approach. But I do point out that remorse, repentance and a demostrated desire to atone for an offence are strong mitigating features which are not revealed by endeavours to conceal one's guilt. However, apart from such considerations the statute itself makes it an offence to try and conceal one's involvement. Section 43(1) of the Road Traffic Ordinance requires

a motorist to stop on being involved in an accident; that is the first obligatory step in revealing his involvement. It also requires him to give the name of the vehicle owner, his own name and address and the registration number to anyone reasonably requiring the same. Section 43 also requires that where personal injury is caused the driver shall in addition report the accident to the police within 24 hours. The Ordinance purposely makes it an offence for a person to try and avoid detection when he has been involved in a motor accident and attaches a maximum penalty of $400 fine or 2 years' imprisonment for such an offence.

The conduct of the respondent in this case was most reprehensible. He says in mitigation that he did not stop because he was afraid of being beaten by bystanders. There could be no similar excuse for not immediately reporting the matter to the police with a view to obtaining assistance for the injured person.

There are no mitigating features in the respondent's behaviour. Because of his age I am reluctant to send him to prison. I set aside the the sentence imposed on count II by the learned magistrate and substitute therefor a fine of $250.00 with 6 months' imprisonment in default of payment. The respondent to be allowed 10 days in which to pay.

LAUTOKA
1st February, 1980

(J.T. WILLIAMS)
JUDGE