

IN THE KIRIBATI COURT OF APPEAL]
CRIMINAL JURISDICTION]
HELD AT BETIO]
REPUBLIC OF KIRIBATI]

Criminal Appeal No. 4 of 2017

BETWEEN

ATTORNEY-GENERAL

APPELLANT

AND

KARARAU MIKAERE

RESPONDENT

Before:

Blanchard JA

Handley JA

Hansen JA

Counsel:

Taburuea Rubetaaka for appellant

Aomoro Amten for respondent

Date of Hearing: 10 August 2017

Date of Judgment: 16 August 2017

JUDGMENT OF THE COURT

Introduction

[1] The respondent was charged with dangerous driving causing death contrary to s.31(1) of the *Traffic (Amendment) Act 2005* (the Act). He was acquitted after trial before Zehurikize J. The Attorney-General appeals against the verdict claiming the decision was against the weight of evidence and otherwise involved errors of fact and law.

The evidence

[2] The accident occurred on 12 September 2011 at Bikenibeu, South Tarawa. A truck driven by the respondent hit a girl of three or four who ran across the road from his right. He was unable to stop in time. She was fatally injured and died shortly afterwards.

[3] The truck belonged to the Kiribati Protestant Church (KPC). The respondent was delivering food to three church youth groups who were engaged in workshops. He was accompanied by two members of the KPC youth movement. They sat in the cabin of the truck. Because it was raining the containers of food were carried inside the cabin. One of the passengers who gave evidence said the containers were held by the passengers and placed on the dashboard though not so as to impede the driver's view ahead.

[4] The passenger said that, because of the conditions, the respondent was driving slowly at, he estimated, between 20 and 30 kilometres per hour. He had bent over in the cabin and looked up to see the victim right in front of the truck. He was unable to say how she got there.

[5] A policeman who was travelling behind the truck, separated only by a motorcycle, was also unable to say how the accident happened. He was able to confirm, however, that because of the weather conditions he too was driving slowly. He estimated his speed at 35 kilometres per hour.

[6] The respondent, who made a statement and gave evidence, was the only witness who could give a full account of the accident. He also estimated his speed at 20-30 kilometres per hour. He said that as he neared the scene he noticed a group of women and children on the side of the road to his left. He

said he was conscious of the risk that one of the group might step into the road. Suddenly the child ran in front of his vehicle from the opposite side of the road. He had no time to brake before he hit her, eventually stopping about 10 metres past the point of impact.

[7] There was evidence that the truck's brakes were defective. A police vehicle inspector who examined the truck said that the brake pedal had to be pumped to operate. The respondent acknowledged that he was aware of the defective brakes before he drove the truck. He said he pumped the brake just once to operate them but on the day he had no time. The truck had hit the child before he had any chance to apply the brakes.

Judge's decision

[8] The Judge noted that s.31(1) of the Act provided:

“A person must not cause the death of another person by driving a motor vehicle on a road or elsewhere at a speed or in a manner dangerous to another person or persons”.

[9] He considered whether the evidence established that the respondent drove at a speed that might have been dangerous and/or in a dangerous manner by virtue of any of the facts and circumstances relied on by the prosecutor, namely:

- Driving when he knew the vehicle had defective brakes.
- Allowing food to be carried in the cabin.
- Failing to keep a proper lookout.

[10] The Judge accepted the evidence that the respondent drove at between 20 and 30 kilometres per hour. He held that was not a speed that posed a danger to the victim or anyone else. The Judge found there was no evidence that the defective brakes contributed to the accident; he accepted that the respondent had no time to apply the brakes before hitting the child. He said the way in which the food was carried in the cabin created no risk; it did not impede the respondent's ability to drive safely. The Judge also rejected the allegation that the respondent failed to keep a proper lookout. He said the evidence was to the contrary. He found the cause of the accident to be the victim suddenly crossing the road in front of the respondent's vehicle, giving him no opportunity to avoid her.

[11] The Judge considered whether the evidence would support a conviction on a lesser offence, specifically that of careless driving causing death. He decided it did not.

Grounds of Appeal

[12] For the Attorney-General it is submitted that the verdict was against the weight of evidence; that the Judge failed to apply an objective test in evaluating the evidence; and that he erred in finding that the evidence did not establish that the respondent had driven in a dangerous manner by driving when he knew the brakes to be defective and in failing to keep a proper lookout. It is contended in the alternative that the Judge was wrong not to convict the respondent of the lesser offence of careless driving causing death.

Decision

[13] We find nothing wrong with the way in which the Judge evaluated the evidence and reached his decision. The Attorney-General was right not to press the argument advanced at trial that the respondent drove at a dangerous speed; the evidence was clearly to the contrary. Likewise, the contention that it was dangerous to drive with food in the cabin. Although that was relied on in oral argument, there was no evidence that the presence of food containers in any way impeded the respondent's ability to drive the truck.

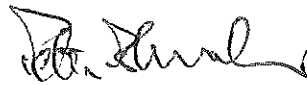
[14] The only issues of substance remaining in contention concern the role of the defective brakes and whether the respondent failed to keep a proper lookout. The Judge's finding, based on the uncontradicted evidence of the respondent, supported by one of the passengers, that the victim ran suddenly in front of the truck, is conclusive on both issues. The defective brakes played no part in the accident. The respondent had no opportunity to apply the brakes until after impact. We note that when he did so he stopped 10 metres further on, confirming that he was driving at a moderate speed and was able to brake effectively.

[15] The question of whether the respondent failed to keep a proper lookout required an evaluation of all the circumstances. They included the presence of the group of pedestrians on the left hand side of the road. The Judge was fully entitled to take the view that, in paying particular attention to them, the respondent showed an appropriate concern for the safety of other road users. There was nothing in the evidence to establish that he could or should have seen the child earlier.

[16] We agree with the Judge that the evidence did not prove guilt on the lesser charge of careless driving causing death.

Result

[17] The appeal is dismissed.



Blanchard JA



Handley JA



Hansen JA