

A Certified True  
COPY of the  
Original.

IN THE SUPREME COURT OF NAURU

30  
G. L. SHARPE  
REGISTRAR, SUPREME COURT

CRIMINAL CASE NO. 5/98

THE REPUBLIC

V

MICK ADEANG

---

JUDGMENT OF DONNE C.J.

---

The accused is charged with five (5) offences:

Manslaughter

Negligent Act Causing Harm

Driving Under the Influence of Alcohol

Reckless Driving

Driving Without a Licence.

He pleaded guilty to the last charge and not guilty to each of the others.

The evidence establishes that on the day in question, the accused was driving his Holden Commodore car towards Aiwo on the main ring road in the vicinity of the Golf Club grounds. He was travelling in a line of traffic, one motor car being in front of him and two following him. There is no accurate evidence of speed, but, while one witness said it was fast, it is clear the accused was travelling at a speed consistent with the other vehicles at the time and I do not hold that on the evidence there is established excessive speed up to the stage of his overtaking to which I shall now refer.

When he was almost at the intersection of the main road and the

COPY

intersection of the road to the N.P.C. area , referred to as the Power Station road the accused who was then on his left hand side of the road considered to overtake the vehicle in front of him and in doing so veered over to the right hand lane and in the course of that movement he collided with the motorcycle driven by Mr. Allan Scotty which was proceeding out of the Power House road on to the main road and was in the course of turning right into it. The collision caused the motorcycle to disintegrate. Mr. Scotty suffered severe injuries which caused his death.

The car being overtaken drove on apparently unaware of the accident and the driver of it is not known. Consequently, there is no evidence of Mr. Scotty's travel prior to the accident except one passenger in the second vehicle behind the accused saw briefly him coming out of the junction. Clearly the accused's overtaking movement had not been completed when the accident occurred and it can be concluded that the first vehicle had not

COP

been inconvenienced by Mr. Scotty's entry into the main road. It must have been a sudden entry. It is therefore highly probable that Mr. Scotty had no regard to the line of traffic approaching on his left and did not stop or slow down for it to allow it to pass before making his turn into the main road.

The evidence established that this intersection is one to be approached with care by users of both the main road and the Power Station road. There is difficulty of vision for vehicles moving into the main road from the side road and to a lesser degree by those on the main road approaching the side road. This is caused by shadow cast by the foliage of a large tree on the north corner of the intersection. It is a hazard well known to road users of both roads.

I am satisfied that if the deceased had taken reasonable and proper care he would have seen the traffic approaching from his left and would

COPY

never proceeded into the main road when he did. It was obviously unsafe to do so. In so driving, he undoubtedly contributed to his death and the accident. However, I am equally satisfied that the accused was negligent in attempting to overtake the vehicle in front of him at the point he did. The overtaking movement was commenced just before the entrance of the intersection. It is well established in law that to overtake at an intersection is a negligent act. Furthermore, the exercise of proper care by the accused would have enabled him to see the deceased entering the main road. He obviously did not see him and it is evident he took no steps to stop or avoid hitting the motorcycle. He failed to keep a proper look out.

The conduct and general condition of the accused is the subject of the alcohol related charge. Certainly his failure to stop his vehicle for over 100 yards of the impact, his conduct at the scene of the accident when he ultimately returned and the strong smell of alcohol in his vehicle could well

be considered consistent with excessive consumption of alcohol. I, however, accept the evidence of his sister who had used his vehicle the previous evening where drink was consumed in the car over a lengthy period and that could account for the vehicle stench. His other conduct in question could be consistent with shock. The opportunity to put the matter to test was when the accused reported to the Police Station. The Police Officer interviewing him at that time said he considered from his observation of the accused's bloodshot eyes and the smell of his breath that he was intoxicated. The officer knew of the accident and of the accused's involvement in it, including his conduct. In spite of his suspension he took no steps to confirm it. No medical examination was initiated, no motivation or other other tests commonly used to establish intoxication were initiated. I find it disturbing that none of the accepted police procedures were followed to establish the accused's condition.

COPY

In the result, I find the charge of driving under the influence of alcohol to be not proven and the accused is not guilty of the offence.

Dealing now with the charge of manslaughter, the offence is defined in section 301 of the Criminal Code as "a person who unlawfully kills another under such circumstances not to constitute murder is guilty of manslaughter".

The ingredients of the offence of manslaughter viz the death of the motorcyclist being caused partly by the negligence of the accused have been established. However, it must be considered whether the accused's negligence was of such a grave nature as to allow a verdict of manslaughter to be given. The degree of negligence in charges of manslaughter has been the subject of judicial consideration particularly since the question is related to the driving of a motor vehicle.

In Andrews v D.P.P. 2 All ER 1937 at pp. 555-6 Lord Atkin said:

In my view, the negligence of the accused in this case cannot be held to be sufficient to support a charge of manslaughter and he is hereby acquitted of that charge.

Turning now to the charge of reckless driving, the question of "mens rea" must be considered. Did the accused intentionally drive with reckless regard to the safety of others. The evidence does not allow a finding beyond reasonable doubt that the overtaking by the accused manifested a reckless intention to disregard the safety of others. There was no oncoming traffic and I have found the deceased negligently moved on the main road in the face of oncoming traffic on his left. He thus contributed to the accident and



COPY

his death.

I am satisfied there was no reckless intent on the part of the accused and he is accordingly acquitted on the charge of reckless driving.

As to the charge of a negligent act causing harm, I have no doubt for the reasons I have given that the accused's overtaking at the time and place he did, is guilty of this charge and I held accordingly.

He has pleaded guilty to the charge of not having a driving licence at the time of accident.



CHIEF JUSTICE

20/2/99