

appeal to 21 of (1967)  
SC 455

IN THE SUPREME COURT )  
OF THE TERRITORY OF )  
PAPUA AND NEW GUINEA )

CORAM : CLARKSON, J.

THE QUEEN v. GAIARI-GANERERA OF TATANA

1967  
February 2  
& March 3,  
Port Moresby

The accused stands charged that on the 27th August 1966 he unlawfully killed Kisea-Mamana in circumstances amounting to the crime commonly known as manslaughter.

The deceased's death resulted from injuries sustained when a truck driven by the accused, in which she was a passenger, overturned on the road near Sogeri.

At the conclusion of Counsel's addresses yesterday I reserved my decision in order to review the evidence and the submissions made to me. I do not attempt to summarise all that has been said in the six days of the trial but propose to set out in summary form the main conclusions I have reached. I will not therefore refer to all the possibilities canvassed by the prosecution and the defence, but I have tried to give due weight and consideration to each of them.

The accused is an experienced driver of all types of vehicles. At the relevant time he was driving a truck which, equipped with forms, was used for the transport of passengers. On the day of the accident he transported some passengers from Port Moresby to Sogeri and beyond, dropping the last of them at what was referred to as Cooper's Store.

In the late afternoon or early evening, the accused left the store, driving towards Sogeri. After driving between half a mile and a mile the truck ran off the road on its incorrect side and overturned, and the deceased, who was one of three passengers in the back of the truck, was thrown to the roadway. She suffered a serious head injury which caused her death.

The truck was admittedly in roadworthy condition and the accused as I have said was an experienced driver. There was nothing

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unusual about the road or the weather conditions. There was no indication of any attempt by the accused to stop.

The Crown case is that the accident was due to the criminal negligence of the accused. Shortly, it was said that he was intoxicated to such an extent that he was unable to manage his vehicle. It is not denied that the accused had been drinking but the defence claimed that any unusual behaviour of the accused was due to other causes, that the vehicle was driven in a proper manner and that, in any event, the Crown had not discharged the onus which lay on it of proving beyond reasonable doubt that the accused was guilty of criminal negligence.

I say at once that the evidence that the accused was intoxicated is overwhelming. The defence properly canvassed a number of possible explanations of his conduct, including concussion, shock, carbon monoxide poisoning, and concern for those injured, but each of these I reject. The accused in his statement said that his "head was going round" and that he thought he was "a little bit drunk", and in his statement to me he did not deny this. To this I add the evidence of Davidson and Giddings of events at the scene of the accident and the evidence of Dr. Heaysman. The extent of the accused's intoxication I shall consider later. I am satisfied that the accused suffered no significant injury and, in particular, that he did not suffer concussion.

Although as I have said I do not propose to summarise all the evidence there are certain aspects which require comment.

The accused maintained throughout that he was unaware he had any passengers on the back of the truck. Immediately after the accident he certainly behaved as though he thought his only passenger was his brother who was travelling in the cab with him. On the other hand, Daivan and his wife with whom the deceased was travelling claimed that they went to the store to catch the bus to Port Moresby, that having mounted it the driver asked for payment of the fare, that Kisea dismounted and made payment to someone in the cab, and that shortly thereafter the truck commenced its journey. I accept this evidence and

having done so I have been somewhat concerned as to what significance should be attached to the fact that some few minutes later the accused behaved in the way I have described.

As I understood the medical evidence, retrograde amnesia was not indicated because the accused remembered the capsizing and the events immediately preceding it. His apparent forgetfulness could of course indicate the extent to which the accused was intoxicated but neither of the two medical witnesses was asked to comment on this aspect, and in the circumstances I have felt it proper not to draw from it any inference adverse to the accused.

This brings me to consider the extent to which the accused was affected by liquor. I have already referred to his own description and the evidence of Davidson and Giddings shows, in my view, that the accused's muscle co-ordination, judgment and capacity to react normally were all significantly affected and to an extent which must have affected his capacity to drive. This is confirmed by the evidence of the passenger Daivan that the vehicle followed an erratic course for some distance before capsizing. It is not clear for how far such a course was followed, and Daivan's original estimate was substantially reduced in cross-examination. Even so, it was said to be from the bridge or culvert to the scene of the accident.

Other considerations confirm that the vehicle behaved erratically for an appreciable time. For instance, it was long enough for Daivan to become alarmed, to call out, to appreciate that his call had had no effect on the driver and to call again.

I conclude that the accused's ability to manage the vehicle was shown to be seriously impaired by his state of intoxication.

Finally, it is necessary to consider whether, in all the circumstances, the accused's conduct amounted to criminal negligence. The test to be applied is not in dispute (Druett's case).

Clearly, in my view, the accused was negligent in the sense that he would be liable to pay compensation for damage caused by his conduct, but did his conduct show such a disregard for the life and safety of others as to amount to a crime against the State? Again

in my view it did.

He was an experienced driver, he knew he was intoxicated and if he had stopped to think must have known his ability to drive was seriously impaired. He chose in this condition to set out on a journey which involved driving a large vehicle on a narrow road. He was a danger to himself and to anyone in the vicinity, and in the event he travelled less than a mile before his blameworthy conduct resulted in the death of the deceased.

Verdict : Guilty as charged.

*all taken  
to court  
in regard to  
making a  
statement.*