

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

CORAM : OLLERENSHAW, J.

Friday,

21st February, 1969.

REGINA v. BRUNO LAVATUL

J U D G M E N T

1969

Feb. 7, 12,

13, 14, 17,

18, 19 and 21.

RABAUL

Ollerenshaw, J.

The accused man, Bruno Lavatul, is charged under Section 328A of the Code that he drove a motor vehicle dangerously on the Kokopo Road on a journey from Ialakua, Raluana, to Rabaul and that he thereby caused the death of one Yakim.

In opening, the Crown Prosecutor said that the particulars of the dangerous driving upon which the Crown relied were the excessive speed of the vehicle, the danger of which was heightened by the accused's complete lack of consideration for the safety of other road users. To say "complete lack of consideration" is hardly to particularize. However, there was more to his opening and the full weight of the Crown case was not long in emerging and seemed to be appreciated and understood by the defence although without any admission.

The accident occurred near Malaguna No. 1 Village and in front of the building of the New Britain Native Associations Society at about 6 o'clock in the morning of Saturday the First of June, 1968.

The accused man had driven his Volkswagen motor car about eleven miles of his journey towards Rabaul when three native persons, who were at separate spots by the roadside near the building I have mentioned, saw the car swerve to its right and go off the bitumen on to the dirt and grass verge that ran along beside the bitumen, called by some witnesses a footpath although it was not kerbed as was the footpath on the other side of the road. It travelled for about sixty yards along this verge in the course of which journey it hit a man in the back who was walking along the verge towards Rabaul. It then ploughed through parts of an hibiscus hedge that

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ran between the verge and the lawn of the Society and after rolling over several times came to rest upside down on this lawn and facing the direction from which it had come. Its course probably had been arrested by collision with a stump that is shown inside the hedge and in the grounds of the Society in the sketch, Exhibit "P". The distance to where the vehicle finished up from where it entered the dirt verge was approximately seventy or so yards.

The man's body came to rest on the verge some twenty-five yards beyond where he had been hit. When the Volkswagen hit him it threw him this distance. The man was Yakim and he suffered multiple severe injuries from which he died a few days later.

These are the facts of the killing as I find them upon the whole of the evidence and the probabilities clearly arising from such evidence.

The three persons I have mentioned are Idiasi, Lala and Umri. Idiasi was sitting on the other stump shown in the sketch, Exhibit "P", and the photograph, Exhibit "E", beside the road. He was waiting for the time to go to his work in Rabaul and probably for a bus or public motor vehicle to take him there. Lala was waiting for a vehicle to take him to Rabaul where he worked and his interest in the accused's car was first aroused because he thought it was a vehicle that would suit his purpose. He was standing beside the road somewhat further towards Rabaul than Idiasi's stump. Umri, a police constable, was standing at the opposite side of the road from these two men and roughly midway between Idiasi and Lala. He had come from his house nearby to cross the road on the way to the beach to take his morning bath. Before crossing he looked to his left and then to his right and he continued to wait because he saw the Volkswagen coming towards him from the direction of Kokopo. I have no hesitation in accepting the evidence of these witnesses. I think that they all were truthful. Idiasi was slow and not always exact and Umri was particularly impressive.

I may mention here that at the time there would have been other people besides these three and the victim about the road, e.g., walking towards Rabaul and I do not doubt that the accused man would

have expected people to be on or near the road at this time. Notwithstanding this and the narrowness of the road, particularly the bitumen part some 19'7" to 20' wide, the accused was travelling at the highly dangerous speed of 70 miles per hour, as I find, when his vehicle swerved to its right and went off the bitumen and collided with a man.

The accused man was uninjured and left the scene soon afterwards in a public motor vehicle. He went to the Rabaul Police Station and then returned to the scene where he had a conversation with Sub-Inspector Milton and made this short statement : "There was this man jumping about in the middle of the road who had been frightened by a green Datsun going to Kokopo and in trying to avoid him I crashed into him and my car turned over."

A little later at the Police Station after the accused man had declined the offer of a doctor, saying that he felt perfectly all right, he was charged and he elected to make a statement part of which was as follows : "I was running in the Kokopo to town road and they were having a party at Malaguna near where the Co-operatives is. There was a green car, a Datsun travelling to Kokopo. Suddenly we found the man there on the road jumping all around in the middle of the road. I was travelling at between 35 and 40 miles per hour and suddenly I got a shock and tried to avoid him and turned my car down the side of the road to try to save him. I hit against (sic) those three big logs and stayed there and went up to the Police Station to report it."

The accused man did not give evidence but did make a statement from the dock, which in some important respects is in conflict with his earlier statements and he added (inter alia) that Peter Tavip, his passenger on the front seat who he says was drunk, "... fell on top of my hand, caused my eyes to look at him and I push him off to go back to his seat on my left side." He then proceeds to say in effect that it was not the deceased man who was disturbed by the green Datsun - he suffered a worse fate from it - but himself. The accused man "... looked to the road suddenly appeared a green Datsun utility was on its incorrect side of the road heading straight for me. It looked to me what was a certain collision. I swung my

wheel to the right side of the road. I saw a man rolling on the side of the road on the bitumen. I put my feet on the brake, missed the brake, jammed on the accelerator pulled my car to the hedge of hibiscus on the side of the Co-operative Society and my Volkswagen turned several times and it turned on its top"

It will be seen that the victim, who had been jumping about in the middle of the road in the earlier statements as the accused approached, is now already rolling on the side of the road apparently as the result of a collision with the Datsun. The accused man concluded his statement from the dock: "I say to you now I am not responsible for injury done to (sic) the man with the blue laplap. I don't know how his injury occurred or caused by the on-coming vehicle."

I do know how the injury to the man occurred. It was done by the accused man's car and likewise I have no doubt that there was no on-coming car. It was not observed by any of the three witnesses I have mentioned, and the evidence of Peter Tavip carries the matter no further. I believe that the story of the Datsun is a complete fabrication and I disbelieve the exculpatory parts of all the accused man's statements. It is true that the story of the Datsun was supported by Peter Bart, a passenger on the back seat of the accused's Volkswagen who was called as a witness on his behalf, but he in my observation is a first class perjurer. I do not doubt that he spent the journey sleeping it off like his two companions on the back seat of the Volkswagen. I say no more about him except to add in passing that if he were not a perjurer then not only would Peter Tavip be but also Eremas and Henry, the two drivers who gave evidence that a little earlier the accused man had forced their respective vehicles off the road.

I would add here that the story that the Agricultural Officer, Peter Tavip, was drunk and interfered with the accused's driving is also a fabrication. He was as good a witness as any I have seen in the course of upwards of forty years association with Law Courts. I find him to have been completely truthful, not given to exaggeration, and accurate. It is true that he was upset by some suggestions made about him in cross-examination. I find, however, that this upset was not false but genuine.

To return to the incident the question arises in my mind: How did the accused man's vehicle come to swerve off the road. This admits of one of only two possible answers: Either for some reason best known to himself he took this quite unnecessary and dangerous course or else, as I think is more likely, he lost control from fatigue or drowsiness at the dangerously excessive speed at which he was travelling. He had been to parties at three different places, Rata vul, Malaguna and Raluana, as I find, since half-past-eight in the evening preceding this morning on which he was returning from the last one to Rabaul. At one of them, Malaguna, he was seen dancing while holding a bottle of drink and he admitted to having had one stubby bottle of beer at Raluana. It is possible that he had had more to drink and was more affected by it than appears directly from the evidence. However, I do not rely at all on such possibility.

In the Crown case I admitted against the objection of counsel for the accused man evidence of his manner of driving during the whole journey from Raluana to the accident. I did this because it was but a journey of a little less than eleven miles and, in the Crown's allegation as to speed, much shorter in time than that distance would suggest and also because of the Crown's allegation that the dangerous driving that killed was but a part of a pattern of irresponsible driving throughout the whole journey.

There followed Peter Tavip's account of a nightmarish journey of almost incredible irresponsibility on the part of the accused man. At first he was content with a speed of 30-35 miles per hour but zigzagged on the road from left to right and back from right to left. He came around the curves at the Blue Lagoon on his incorrect side of the road and then accelerated to 50, 60 and 70 miles per hour and sometimes to 75. From there on it appears that mainly his speed was from 60 to 70 miles per hour. At such speeds sometimes he took his hands off the steering wheel, and on two successive occasions he crossed to his incorrect side of the road to charge on-coming vehicles which swerved away off the bitumen and so saved themselves and their passengers as well as the accused's vehicle and its passengers. On another occasion he overtook a vehicle so dangerously

as to cause its passengers to cry out in astonishment and Peter Tavip to shut his eyes, doubtless thinking that at last the end had come. To Peter Tavip's remonstrances and begging to be let down or let drive, the accused man made some callous remarks and referred to his past experience as a driver. On some occasions he just grinned.

In the upshot I do not find this evidence of any assistance mainly because I do not think that the accused man deliberately drove at Yakim to scare him as the Crown suggests may have been the case. It may be as the Crown alternatively suggests that the swerve to the right was part of another deliberate zigzag in the course of which the accused man lost control, or the result of his once again taking his hands off the steering wheel. Be these things as they may I prefer the explanation I have already mentioned.

I am completely satisfied on the facts which I find that there is no hypothesis reasonably open, which is consistent with an absence of dangerous driving on the part of the accused man at the time his vehicle hit the man named in the indictment. I am satisfied beyond any reasonable doubt that the accused man drove his motor vehicle on a road dangerously and thereby killed Yakim.

I find a verdict of guilty.

FOR SENTENCE

The offender has been found guilty of the dangerous driving of a motor vehicle and thereby causing the death of a man.

Notwithstanding what has been said for him and by him I consider that upon the facts of this case he is worthy of severe punishment.

This kind of driving on the Kokopo Road must be deterred: the community must be protected. I consider that the appropriate sentence is one of two years and six months imprisonment with hard labour and that is the sentence I impose.

Solicitor for the Crown : S.H. Johnson, Crown Solicitor.

Solicitors for the accused : P.G. Lefevre Hickey & Co.