IN THE SUPREME COURT)
OF PAPUA NEW GUINEA)

CORAM : RAINE, J.
Tuesday,
8th February 1972.

THE QUEEN

v.

PAULUS MEL OF KUKA

1972
Feb.7,8.
MOUNT HAGEN.

Raine, J.

(Only that part of the judgment thought to be of possible general interest is reproduced here).

The weather was dry, it was not raining, there had been no rain for a day or so previously nor were there puddles of water or mud at the side of the road. It was late afternoon, it was light. It does not seem that there were pedestrians at the scene, or travelling stock, the only vehicles involved are Mr. Leahy's truck which the accused had overtaken half a mile back - and which tailed the accused about two hundred (200) yards back, the accused's vehicle, the vehicle the accused tried to overtake, and the Falcon going in the opposite direction which made passing impossible. In McBride v. The Queen (1) Barwick, C.J. said "The section (largely similar to the one I have to consider) speaks of a speed or manner which is dangerous to the public. This imports a quality in the speed or manner of driving which either intrinsically in all circumstances, or because of the particular circumstances surrounding the driving, is in a real sense potentially dangerous to a human being or human beings who as a member or as members of the public may be upon or in the vicinity of the roadway in which the driving is taking place." (The words in brackets are mine and the words underlined are underlined by me).

Thus it will be seen that the possible factors referred to by the learned Chief Justice which I have underlined do not arise here, we have a normal enough man on a better than normal road on a normal afternoon driving in conditions where he was under no special duty such as might be the case in mist or dust where one would need to slow down, or driving where traffic, vehicular or pedestrian, was unusually heavy.

It therefore seems to me that I have to look to the "manner of driving" only in this case, things such as speed watchfulness, manoeuvres, braking and the like.

(1) (1965-1966) 115 C.L.R.44 at pp.49,50).

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Needless to say I apply the objective test in deciding the standard of the accused's driving. See R. v. Coventry (2). See also McBride's case (supra)(3) at p.55.

I should also make reference to two very recent cases in England with which I respectfully agree. I have not the reports with me, but I think the notes I have made at p.310 of the 3rd Edition of Judge Carter's well-known work are sufficient. In R. v. Hennigan (4) it was said, if my note is accurate, that the dangerous driving must be a cause of death and something more than "de minimis". In R. v. Gosney (5) Megaw L.J., after saying that the offence of dangerous driving was not an absolute one, said that in order to justify a conviction there must not only have been a situation which viewed objectively was dangerous, but also some fault on the part of the driver which looked at sensibly was a cause of that situation.

With great respect I am assisted by these two decisions as I have found that many, and I did not agree with them, tended to regard Coventry's case and McBride's case (both supra), and cases like R. v. Evans (6) and R. v. Ball & Laughlin (7) as authority for the proposition that any defence was irrelevant which sought to show that the cause of the accident that occurred or the dangerous situation that was created stemmed from factual situations virtually excusing the alleged fault or substantially reducing it. Megaw,L.J. said at p.224 of Gosney (supra) that while fault could be inferred from the very facts of the situation that "if the driver seeks to avoid that inference by proving some special fact, relevant to the question of fault.....he may not be precluded from seeking so to do." The conception of liability without fault, which His Lordship thought could be detected in Evans (supra), was totally rejected. There is no conflict between these recent English decisions and Coventry (supra) for at p.638 the joint judgment of Latham, C.J., Rich, Dixon and McTiernan, JJ. reads: "No doubt the language of the section does not exclude a defence of mistake of fact on reasonable grounds or of involuntariness (for example interference by another person with the driving of the car), and perhaps there may be other exceptional excuses, based on special facts to which a state of mind may not be immaterial". See also in McBride (supra) the judgments of Barwick, C.J. at p.54 and McTiernan, J. at p.55.

Solicitor for the Crown: P.J. Clay, Crown Solicitor.
Solicitor for the Accused: W.A. Lalor, Public Solicitor.

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(2) (1938) 59 C.L.R.633.
(3) (1965-1966) 115 C.L.R.44.
(4) (1971) 3 All E.R.133.
(5) (1971) 3 All E.R. 220 at 224.
(6) (1962) 3 All E.R.1086.
(7) (1966) 50 Cr. App.R.266.