

**IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS
AT HONIARA**

(Criminal Jurisdiction)

Criminal Case No: 927 of 2020

REGINA

-V-

RALPH SAEA

PRESIDING MAGISTRATE: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Nickson Tonowane, Senior Legal Officer, for the Crown (DPP)

Mr Steven Weago, Senior Legal Officer, Public Solicitors Office, for the Defendant

Date of Sentence: 10th February 2021 at 10:30am

Notice: This copy of the Court's Reasons for Judgment/Sentence is subject to formal revision prior to publication.

SENTENCE

INTRODUCTION

1. The defendant, Ralph Saea, pleaded guilty to one count of Causing Death by Reckless and Dangerous Driving contrary to section 38 of the *Road and Transport Act* [Cap 131], and one count of Presence of Alcohol in a person's blood contrary to section 43A (1)(a) of the *Road and Transport Act* [Cap 131] (as amended by the *Police and Transport Legislation (Amendment)(Alcohol Testing) Act 2016*. I now convict him for both offences based on the pleas entered.

FACTS

2. The defendant's name is provided above and he is from Taivu Village, North East Guadalcanal, Guadalcanal Province. He was 23 years old at the time of the offending.
3. The Deceased was a 38 years old male person by the name of Erickson Ovoa of Guadalcanal Province.
4. The incident occurred on the 26th September 2020 at around 8:00am at the Corona Market, Tenaru area, Central Guadalcanal on Guadalcanal.



5. The defendant drank approximately 12 cans of canoe beers, with his cousins on the night before the offending and went to bed at about 3:00am in the morning.

6. He woke up at about 7:00am and decided to take the vehicle to Taivu village in East Guadalcanal. The vehicle was intended to bring some people who were residing at Barande area to Taivu village. He then drove off with the vehicle, a white tipper truck registered as MB 2524, in an easterly direction, at a speed of about 60 kilometers per hour, heading for Taivu village, East Guadalcanal.

7. The defendant drove towards the Corona Market. He saw a caldina car that was parked at the side of the lane (left side) that he was driving. When he got closer, the said vehicle signaled to indicate that it would turn onto the lane that the defendant's vehicle was using. So he turned to the opposite lane and drove off, intending to overtake the other vehicle. However, the said car veered off from its lane, in front of the defendant's vehicle, in a direction behind of the deceased's vehicle. At the time, the defendant veered off the lane that he was driving on, and he turned right and hit the deceased, together with the deceased's vehicle. The impact moved the deceased and his vehicle to about 2 meters backwards.

8. Earlier that morning, the deceased, who was driving a truck, stopped at *Corona* Market, at Tenaru area, prior to him being hit by the defendant's vehicle, to drop some women who were going to sell their garden products at the said market. He parked his vehicle, a blue colored two and half-ton truck with the registration number: MC 0657 in a westerly direction on the left side of the road at the *Corona* Market. The deceased stood in front of his vehicle, with his back facing the main road, whilst talking via his mobile phone when the defendant's driven vehicle hit him. Other people were still inside the vehicle that the deceased drove when the incident occurred.

9. The deceased sustained very serious injuries immediately, and was rendered unconscious and motionless. Other people who were inside the deceased's vehicle also sustained injuries as they fell down, because of the collision.

10. The defendant was intoxicated at the time of the offending, with the presence of alcohol concentration of 0.138% in his blood stream which was beyond the prescribed limit.

11. The deceased was brought to the National Referral Hospital in Honiara for the doctor's examination and he was pronounced dead due to the multiple injuries that he had sustained.

12. Following the deadly incident, the defendant, his father and relatives made the following compensation as demanded:

[1] On the 26th September 2020, a compensation in the sum of SBD 10,000 and a 12 feet shell-money (Talina) was given to the relatives of the deceased. The Talina was valued at SBD 6,000;

- [2] On the 27th September 2020, as further demanded by the relatives of the deceased, goods were delivered to the deceased's family during the burial of the deceased. The goods were valued at about SBD 15,000 to 20,000;
- [3] On the 6th October 2020, a compensation of SBD 10,000 was further given to the deceased's relatives, as demanded. That occurred during a negotiation talk between the deceased's families and the defendant's family to settle a reconciliation date;
- [4] The main reconciliation and *chupu* ceremony was held on the 11 November 2020. It involved an amount of SBD 130,000 cash, a 12 feet talina, pigs and raw food.

DISCUSSION AND ANALYSIS

Count 1: Causing Death by Reckless Driving

13. Section 38 of the *Road and Transport Act* [Cap 131]¹ states as follows:

38. A person who causes the death of another person by the driving of a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, shall be guilty of an offence and liable to imprisonment for five years.

Aggravating factors

14. **Maximum Penalty.** The maximum penalty for this offence of causing death by reckless or dangerous driving is five (5) years imprisonment. The maximum sentence for the second count of the presence of alcohol in a person's blood beyond the legally prescribed limit is 10,000 penalty units or 12 months imprisonment.

15. **Intoxication.** The agreed facts revealed that the defendant had been drinking beers the night before the offending. He went to bed at around 3am in the morning on the next day. He was still intoxicated when the incident occurred that morning of the deadly encounter. The results showed that he had an alcohol concentration of 0.138% in his blood stream which is beyond the statutory prescribed limit. There is no doubt that he had risked so many lives including that deceased's life that morning. He knew that he was still intoxicated, however, he chose to drive that vehicle. His bad judgment and recklessness resulted in an innocent person being untimely and inhumanly killed. In *Regina v Matamu* [2010] SBHC 33; HCSI-CRC 78 of 2010 (21 May 2010)², his Lordship Faulkner J, as he then was, stated that:

¹ *Road and Transport Act* [Cap 131]

² *Regina v Matamu* [2010] SBHC 33; HCSI-CRC 78 of 2010 (21 May 2010)

That is a clear indication that drinking a couple of beer as four falls within aggravating factors perimeters. The gravity of aggravation can be assessed from the consequences that flows from affection by alcohol.

16. **Loss of Life and hardships caused to the family members of the deceased.** The family of the deceased had lost a member of their family who is potentially a father, brother, cousin, kinsman, and fellow member of a tribe in a very untimely, unexpected and shocking manner. The deceased's life, just like our lives, cannot be easily traded or bought by money. Money alone and material goods cannot give a true comfort to the deceased's immediate family. I agree with the court's sentiments voiced in the case of *Regina v Kaipua* [2017] SBMC 27; Criminal Case 405 of 2016 (30 June 2017).³
17. **Travelling at a very high Speed.** The defendant was driving at the speed of 60km/hr which was quite unnecessary and excessive, especially at the Corona Market area where a number of people who were present there. The speed that he was driving and the influence of alcohol in his body made it difficult for him to make a good decision. He veered off his lane to the opposite lane and hit the deceased costing the deceased's life.
18. **People's Lives at Risk.** The manner in which the defendant was driving not only it was reckless and negligent, but at the same time risked the people's lives. The facts showed that other people who were inside the deceased's vehicle also sustained injuries as they fell down, because of the collision. The defendant could have caused the death of more than one people on that day. In *Regina v Oli* [2018] SBCA 3; SICOA-CRAC 32 of 2017 (11 May 2018)⁴, which was a boat accident at sea, the Court of Appeal relevantly quoted section 214 of the *Penal Code* [Cap 26] as follows:

214. It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to perform that duty.

Mitigating Factors

19. The mitigating factors include the following: early guilty plea and remorse, first offender, cooperation with the police; customary compensation and reconciliation, and his personal circumstances. I will elaborate more with respect to these factors in the coming paragraphs.

³ *Regina v Kaipua* [2017] SBMC 27; Criminal Case 405 of 2016 (30 June 2017)

⁴ *Regina v Oli* [2018] SBCA 3; SICOA-CRAC 32 of 2017 (11 May 2018)

Comparative Sentences

20. In *Regina v Kaukui* [2010] SBCA 2; CA-CRAC 11 of 2009 (26 March 2010)⁵, the Court of Appeal stated as follows:

In our view the appropriate range of sentence in this instance of causing death by dangerous driving is between 3 and 4 years imprisonment. This takes no account of possible matters of mitigation operating in favour of the respondent. In this respect three matters were urged in support of a lesser sentence. One was the respondent's previous record and his personal circumstances. He has never before been convicted of any offence. He is now some 33 years of age and has been employed for 5 years or more as a legal clerk. That might be expected to have provided him with some experience of the seriousness of offences of the kind. The respondent is not married, but he provides support for a number of family dependants. He co-operated with police and pleaded guilty to count 1 as soon as it had been formulated.

21. In *Kaukui*,⁶ the Court of Appeal further commented as follows:

Agreement on the payment of compensation and its amount is regarded here as an important element going in mitigation; but at the same time it cannot satisfy the need for proper punishment in order to emphasise the seriousness of an offence like this. The utility of an appropriate sentence as a public deterrent against lethal conduct cannot be understated.

22. In *Regina v Matamu* [2010] SBHC 33; HCSI-CRC 78 of 2010 (21 May 2010)⁷, the defendant who worked as a RAMSI officer drove a vehicle at an excessive speed on the wrong side of the road and hit the deceased at Tashahe Hill. He pleaded guilty to one count of causing death by reckless driving and was sentenced to 3 ½ years imprisonment.

23. In *Mesepitu v Regina* [2006] SBHC 15; HCSI-CRC 601 of 2005 (15 February 2006)⁸; the Appellant was convicted on his own plea of guilty by the Magistrates' Court in Honiara of causing death by dangerous driving contrary to section 38 of the *Traffic Act* (Cap. 131). On 30th November 2005, he was sentenced to two years and six months imprisonment. He appealed against the sentence saying that was excessively harsh, however, the High Court dismissed the appeal and confirmed the sentence initially issued in the Magistrates Court.

24. In *Campbell v Reginam* [1994] SBCA 3; CA-CRAC 009 of 1994 (22 October 1994)⁹; the appellant appealed against a sentence of five years imprisonment imposed after he pleaded guilty to a charge of manslaughter arising out of a motor vehicle incident. The Court of Appeal imposed a sentence of 3 ½ years' imprisonment.

⁵ *Regina v Kaukui* [2010] SBCA 2; CA-CRAC 11 of 2009 (26 March 2010);

⁶ *Regina v Kaukui* [2010] SBCA 2; CA-CRAC 11 of 2009 (26 March 2010);

⁷ *Regina v Matamu* [2010] SBHC 33; HCSI-CRC 78 of 2010 (21 May 2010)

⁸ *Mesepitu v Regina* [2006] SBHC 15; HCSI-CRC 601 of 2005 (15 February 2006)

⁹ *Campbell v Reginam* [1994] SBCA 3; CA-CRAC 009 of 1994 (22 October 1994)

25. In *Regina-v-Ririana* [2019] Criminal Case No. 988 of 2018 dated 5th July 2019¹⁰; the defendant was sentenced to 2 years imprisonment for one count of causing death by reckless and dangerous driving contrary to section 38 of the Road and Transport [Cap 138], and 8 months for one count of Presence of Alcohol in a person's blood contrary to section 43A (1)(a) of the *Road and Transport Act [Cap 131]* (as amended by the *Police and Transport Legislation (Amendment)(Alcohol Testing) Act 2016*.
26. Hence, the sentencing tariff for an offence of causing death by reckless and dangerous driving ranges between 2 years and 4 years imprisonment. I am aware that each case ought to be determined in accordance with its own facts. The severity of the present case can be classified as mid-range which should fall between 2 years and 3 ½ years imprisonment.
27. In this present case, I am of the view that an immediate custodial sentence is the most appropriate sentence because it involved the loss of a life directly from the action of the defendant.

STARTING POINT

28. After having considered the aggravating and the circumstances of this case, I am of the view that a starting point of 56 months (4 years and 8 months) is appropriate for this present case.
29. **Early Guilty plea and remorse.** The defendant entered an early guilty plea which saves the court's time and resources of having to deal with this matter by way of a trial. His early plea is also a sign of remorse and honest on the part of the defendant. It would be painful for relatives and witnesses to recount the death of the deceased that occurred right in front of their eyes. I deduct 10 months for the early plea entered.
30. **First Offender.** The defendant has no previous conviction. I deduct 2 months to reflect this.
31. **Cooperation with the Police.** The defendant cooperated well with the Police and admitted the offence early. I deduct a further 2 months.
32. **Compensation and reconciliation.** A traditional and customary reconciliation was held on the 11 November 2020 at the Henderson Police Station on Guadalcanal and witnessed by chiefs, relatives of the defendants and the deceased, and other distinguished guests. Presentation of gifts and goods was made in accordance with the Guadalcanal custom through a ceremony traditionally known as *Chupu* to the deceased's family. A substantial cash money in the sum of SBD 130,000 including banana fruits, potatoes, yams, taro, sugarcanes, coconut, betel-nut fruits, 4 live pigs, and two *chupus* (groups of goods) were given to the family of the deceased. The entire *chupu*, including the goods, gifts and the cash money of SBD 130,000

¹⁰ *Regina-v-Ririana* [2019] Criminal Case No. 988 of 2018 dated 5th July 2019

were accepted by the deceased's family. I also note that prior to the *chupu* ceremony on the 11 November 2020, SBD 10,000 and a shell-money known as *Talina* were given to the deceased's family on the 26th September 2020. The defendant's family also bought goods for the burial of the deceased valued between SBD 15,000 and 20,000 and on the 6th October 2020, the defendant's family gave another SBD 10,000 to the deceased's family. This means that the deceased's family received a whopping SBD 150,000 in pure cash whilst the value of the goods apart from the cash would be more than SBD 50,000, and together with the cash, the total value of all the goods/compensation would be approximately around SBD 200,000 or more. The animosity between the defendant's family and the deceased's relatives have been restored to normalcy through the reconciliation and compensation paid. I also remind myself of the sentiments echoed by Ward CJ in *Regina v Asuana* [1990] SBHC 52; HC-CRC 34 of 1990 (12 October 1990) that court must avoid attaching such weight to it that it appears to be a means of subsequently buying one out of trouble.¹¹ I deduct 10 months to reflect the huge monetary and customary compensation including the *chupu* presented to the family of the deceased.

33. **Personal Circumstances.** The defendant is a young man of around 23 years of age. He would turn 24 this year. He still has very high rehabilitative prospects. I deduct 2 months to reflect this.
34. Hence, I am of the view that 30 months (2 years and 6 months) imprisonment is appropriate for the first count.

Count 2: Presence of alcohol in a person's blood

STARTING POINT

35. The sentencing tariff for this offence of presence of alcohol in a person's blood ranges from custodial sentences for the worst forms, and penalty fines and bound-over sentences for the less serious ones.¹² After having considered both the aggravating and the mitigating factors and the fact that a death occurred as a result of this incident, I am of the view that an immediate custodial sentence is appropriate.
36. It is my considered view that a starting point of 10 months is appropriate. After having considered all the mitigating factors such as early guilty plea and remorse, first offender, cooperation with the police, customary compensation and reconciliation, and his personal circumstances, I deduct 5 months to reflect all the mitigating factors. Hence, I am satisfied that 5 months imprisonment is appropriate for the second count.

¹¹ *Regina v Asuana* [1990] SBHC 52; HC-CRC 34 of 1990 (12 October 1990)

¹² *Road and Transport Act* [Cap 131] (as amended by the *Police and Transport Legislation (Amendment)(Alcohol Testing) Act 2016*. See also *Regina v Ririana* [2019] Criminal Case No. 988 of 2018 dated 5th July 2019

37. The offences in counts 1 and 2 are inextricably linked and arose out of the same transaction.¹³ Hence, they shall be served concurrently.

CONCLUSION

38. The loss of a life caused by reckless driving contrary to section 38 of the *Road and Transport Act* [Cap 133] is a very serious offence albeit the fact that the maximum sentence is only 5 years imprisonment. This present case involved the use of alcohol and the defendant was intoxicated beyond the legally prescribed limit. He should not have driven the vehicle on that fateful day. I am not persuaded with the submissions by the defence counsel that because a substantial amount of cash had been paid to the deceased's family, an imprisonment of 1 year should be appropriate. Handing out an overly lenient sentence would defeat the very purpose of enacting the offence in the place, and as highlighted in the *Kaukui case* that the "utility of an appropriate sentence as a public deterrent cannot be understated."¹⁴ This case should be a demonstration that money cannot buy a person out of trouble easily. Life is very precious and irreplaceable and the trivialization of such an offence should be discouraged at all costs.
39. The taking of a life especially in an abrupt and brutal manner as revealed in this case is deplorable, shocking and traumatizing. The family of the deceased must have gone through the most painful period in their lives. They have lost a brother, son, parent, fellow kinsman, friend and more importantly a helper.
40. The defendant had, as alluded to above, risked the lives of so many people on that day especially in a crowded environment such as the *Corona* market. He could have caused more deaths and other serious injuries to the pedestrians who were on the road side at the said market. The fact that he veered off his lane to the opposite lane shows a poor judgment on his part and must have been the result of intoxication. In *Cheffers v Regina* [Criminal Case No. 11 of 1989-Unreported]¹⁵, his Lordship Ward CJ, stated as follows:

However, carefully he may attempt to drive, his reactions if confronted with an emergency will not be as effective as when he has taken no alcohol.

41. The passengers who were on the vehicle that the deceased drove on that day also sustained injuries as shown by the facts. This is an indication of the strong force exerted by the moving vehicle that the defendant was driving at the material time.

42. Having said that, and taking into account the loss of life, and further noting the sentencing principles such as punishment, deterrence and rehabilitation, I hereby sentence the defendant to 30 months (2 years and 6 months) imprisonment for the first count of causing death by reckless and dangerous driving and 5 months imprisonment for the second count of the

¹³ *Bade v Regiam* [1988] SBHC 10; [1988-1989] SILR 121 (21 December 1988)

¹⁴ *Regina v Kaukui* [2010] SBCA 2; CA-CRAC 11 of 2009 (26 March 2010);

¹⁵ *Cheffers v Regina* [Criminal Case No. 11 of 1989-Unreported],

presence of alcohol in a person's blood. Both sentences shall be served concurrently giving a total sentence of 30 months or 2 years and 6 months imprisonment.

43. I hope this will send a deterrent message to all the vehicle drivers to be more careful and vigilant, and to simply avoid driving a vehicle when one is under the influence of alcohol.

ORDERS

44. The defendant, Mr Ralph Saea, is sentenced as follows:

[1] Count 1: The defendant is sentenced to 30 months (2 years and 6 months) imprisonment for one count of Causing Death by Reckless and Dangerous Driving contrary to section 38 of the *Road and Transport Act* [Cap 131].

[2] Count 2: The defendant is sentenced to five (5) months imprisonment for one count of Presence of Alcohol in a person's blood contrary to section 43A (1) of the *Road and Transport Act* [Cap 131] (as amended by the *Police and Transport Legislation (Amendment)(Alcohol Testing) Act 2016*).

[3] The sentences shall be served concurrently and therefore total sentence 30 months or 2 years and 6 months (2 ½ years) imprisonment. Any time previously served in custody must be duly deducted as well.

[4] Consequent to the orders above, the defendant shall be disqualified to hold a driving licence for at least 3 years after the completion of his sentence.

[5] Right of Appeal within 14 days.

[6] I order accordingly.



PRINCIPAL MAGISTRATE MELIX HOLLISON