

IN THE CENTRAL MAGISTRATE'S COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)

Criminal Case No. 173 of 2016

REGINA
-v-
JAMES LUVENA



Prosecution: Ms. Olivia Ratu Manu of ODPP
Defence: Mr. Steven Weago of PSO
Trial: November 1-3, 2016, June 1 and 8, 2017
Judgment: June 15, 2017
Sentence: August 2, 2022

SENTENCE

1. This is a brief sentence for the defendant, James Luvena, who was convicted after trial, of one count of causing death by reckless and dangerous driving, contrary to section 38 of the *Road Transport Act*. For this incident, he caused the death of the deceased, Allen Ramolelea, on April 21, 2011 along the Kukum Highway road in Honiara. The brevity of this sentence is warranted since this matter is still pending an appeal hearing at the High Court.
2. Following the conviction of the defendant on June 15, 2017, a notice of appeal was filed by the Public Solicitors Office against the conviction. The matter was adjourned generally pending the outcome of the appeal. The appeal is yet to be heard. The High Court preferred the defendant to be sentenced by the trial Court before hearing of his appeal.

This direction was issued towards the end of 2021. It took few months for summoning of the defendant. He finally appeared on June 23, 2022 and the matter was finally progressed for sentencing submissions and verdict on sentence.

3. The facts found by the court uncovered that immediately before the accident, the deceased was standing at the roadside outside his office at Maromaro area - Prince Philip Highway. He was standing with his other workmates, waiting to be picked up by their colleague in their office vehicle. While they were waiting along the pavement of the western bound lane, he decided to walk across to the other side of the traffic close to the seaside.
4. As he walked and almost reached the island, he was struck by a bus driven by the defendant. The impact was horrific. His body was thrown backwards and landed on the tarmac, closer to the outer lane. As a result, his head was severely lacerated; his right arm twisted to his back and his right leg was fractured that even his bones were protruding out of the skin. He was taken to the National Referral Hospital but died before arrival.
5. The offence of which the defendant was convicted carries a maximum penalty of 5 years imprisonment. For this present case, I find the defendant was driving at a very high speed when he fatally struck the deceased. That is a selfish and bad piece of driving that disregarded the safety of others. Because of that, an elderly man has lost his life. I did not find the death of the deceased as an aggravating factor because that is part of the offence itself.
6. To his favour, I consider the defendant is a diabetic patient and has already reformed his character after the accident. He is an elderly and important member of his home church as evidenced by a letter written by Fr. Thompson Chipa of the St. Paul Pro-Cathedral Parish in the North East Guadalcanal region.
7. I also consider a compensation payment of \$20,000, 1 pig, 1 tafuliae and a chupu, been given by the defendant to the family of the deceased. This is one of the beauties of our

Solomon Island's culture to mend any hostility between the concerned parties. In *R v Asuana* [1990] SBHC 52, the High Court acknowledged that customary reconciliation is one of the mechanisms used for restoration of peace and harmony between the parties and must be taken into account in mitigation:

"It should always be remembered that compensation is an important means of restoring peace and harmony in the communities. Thus the courts should always give some credit for such payment and encourage it in an appropriate case."

8. I accept this as a genuine customary compensation payment and I am satisfied that the relationship between the parties has already been normalized following this reconciliation. With this lapse of 11 years, both families have already moved on with their respective lives. I also consider the delay this case has taken for the prosecution and eventually, for the Court to pass his sentence.
9. The issue for me to consider is what should be the appropriate sentence for the defendant. In the Court of Appeal case of *Regina v Kaukui* [2010] SBCA 2, the Court recommended the range of sentence between 3 to 4 years imprisonment for this offence. This takes into account no matters of mitigation of an accused person.
10. In that case, *Kaukui*, the deceased and another person were returning home at about 9.30am after attending church. They were walking along the footpath at Mendana Avenue when they were struck by a vehicle driven by the respondent. The deceased was struck from behind, thrown into the air and landed on the vehicle. She was carried on the vehicle for some time before she was thrown alongside a tree at the western end of NPF Plaza. The person walking with the deceased jumped to her left when the vehicle approached and was thrown into a flower bed. The vehicle continued along the footpath until it returned to the road and stopped close to the National Museum. At the scene, the respondent was observed to have indicia of intoxication and appeared very tired.

11. The respondent/defendant was sentenced to 18 months imprisonment but suspended for 2 years for the offence of dangerous driving causing death. On appeal against the leniency of the sentence, the Court of Appeal quashed the suspended sentence and substituted it with 3 years custodial sentence. Despite it is a guilty plea matter, in my view, in this *Kaukui's* case, the culpability of the offender is far more serious than the present case and one that can be placed at the top end of the seriousness of the offence under section 38 of the *Road Transport Act*.
12. Counsels did not assist the Court with any sentence for this offence that follows a trial. In light of this binding precedent, it is my view that a custodial sentence is the appropriate sentence for this case. I therefore imposed a starting point of 3 years imprisonment for this case. I then increased this term to 3 ½ years to reflect the aggravating factor. However, this term is reduced by 12 months to reflect his mitigating factors and personal factors.
13. But this is not the end of the matter. I understand this incident occurred on April 21, 2011. Police had attended the scene on the day the incident occurred. For reasons unknown, the defendant was not charged until November 25, 2015. This was almost 4 years after the accident. It then took almost another 2 years for the prosecution and the court to deliver verdict following the trial. Then, as earlier mentioned, the notice of appeal was filed by the Public Solicitor against the conviction. The matter was adjourned generally pending the outcome of the appeal until to the date of this sentence, which is more than 5 years after the judgement. In total, the delay for this case takes 11 years. This delay in my view is inexcusable and inordinate. The benefit of this delay must be tilted in favour of the defendant (see: *Patterson Runikera v Director of Public Prosecutions* (Unrep. Criminal Appeal Case No. 14 of 1987 and *Regina v Maelisu'u* HCSI-CRC 75 of 2010).
14. In light of this delay, I therefore reduced this 2 ½ years imprisonment by 50% by adopting the approach and precedent set in *Regina v Maelisu'u* HCSI-CRC 75 of 2010.

15. The final sentence is that the defendant is sentenced to 15 months imprisonment. Time spent in custody is to be deducted from this term. Consequent to this, he is disqualified from driving for a period of 2 years from this date.
16. Order accordingly.

Orders of the Court

1. The defendant, James Luvena, is sentenced to 15 months imprisonment.
2. Time spent in custody is to be deducted from this term.
3. Defendant has the right to apply for bail pending appeal at the High Court pursuant to section 290 of the *Criminal Procedure Code*.

