

IN THE HIGH COURT OF KIRIBATI)
CIVIL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

High Court Criminal Case 21 of 2000

THE REPUBLIC
vs
TIARE KAONO

FOR THE REPUBLIC: MR TION NABAU
FOR THE ACCUSED: MR NEIL ALLEN

DATE OF HEARING: 4 & 5 JUNE 2001

J U D G M E N T

The accused has been charged with manslaughter and in the alternative reckless driving causing death. The particulars of each:-

Manslaughter Tiare Kaono on or about Friday 11 February 2000, having control of a moving vehicle registration number BTC 5030, failed to manage the vehicle and take reasonable precaution, by failing to keep a proper lookout, and by failing to slow the vehicle to a speed appropriate for the circumstances, and as a result, he collided with and caused the death of Kakianako Ioota on the Betio town road at Betio.

Reckless driving causing death Tiare Kaono on 11 February 2000, drove a motor vehicle, registration number BTC 5030 on a road, namely Betio town road, recklessly, and he collided with and caused the death of Kakianako Ioota.

It happened in the early hours of a Friday. The accused, with his 3 year old son sitting next to him in the front seat (but not wearing his seat belt) was driving his white saloon car

BTC 5030 towards his house at Takoronga. His speed was 40 kmh. In the vicinity of the Autaakena Bar and BKL he saw a car coming towards him: the light dazzled him. When the car had passed he saw, seven to eight metres ahead, a body (it turned out to be a man) lying across the road but mainly on the lagoon side, the accused's left side, with his head towards the centre. The accused braked and swerved to his right to avoid the body, passed within two feet of it, but did not make contact. The child rolled round in the car: the accused used one hand to steady him, the other on the steering wheel. He did not stop: he drove on. That is his evidence.

He did not stop to help the man lying on the road because of the distress of the little boy and because he himself was a bit scared: maybe the man had friends in the area. It was suggested that the Autaakena Bar is rough. It did not occur to the accused to notify the police or anyone else so that the man could be helped out of danger.

When the man was found he was still alive but with most serious wounds to the lower part of his face. Dr Taketiau Beriki who examined him at Nawerewere hospital made a report:-

Seen at OPD 0410 hrs. Serious head and facial injuries with fracture of lower jaw. Nostrils and nasal bridge loose and hanging. Incised wound above upper jaw extending to right cheek where skin and tissue are loose from bone. Split skin above right orbit exposing bone. Eyes intact.

The man was dead within hours.

He had been found lying in blood. In and around the blood were pieces of plastic number plate. Constable Marou Angabure collected some pieces: Ritang leete who came by the scene twice at an interval of about half an hour, collected other pieces and took them to the police. Together the pieces formed most of an O. The police began a search at Betio looking for a car with a broken number plate. They found the accused's car, not at his own house but parked near the house of his uncle, Naabi Kaitabo. The front number plate was broken. Both the pieces and the broken number plate are

exhibits. I have fitted them all together: there is no doubt that the pieces and broken number plate belong to each other.

The police went to the accused's house: with difficulty the accused was woken up and arrested. By then it was getting on for 6 o'clock in the morning. Both police officers who gave evidence said that the accused was drunk. Naabi could not "really say if he was sober or drunk": Naabi did, however drive the accused's car, with the accused as passenger, when they went looking for the accused's wife at the old St Bauro's Church and afterwards. The accused, whilst admitting that he had had four to five cans of beer between 5 o'clock and 7 or 8 o'clock the previous evening, denied that he was affected by the alcohol when he was driving. On that evidence I could not find that the accused was affected by alcohol at the time he passed the body.

The police took possession of the accused's car and had it examined by Corporal Natibu Taurua, a police mechanic. Corporal Taurua noted that the front number plate (which was in the middle of the front of the car) hung down by a screw, the front left headlight was not working on low beam (but it was working on high), the windscreen on the left side was cracked, the front bumper bar at the left end was bent. In cross examination the bend in the bumper was described as a dent: Natibu could not say if it were recent or not.

At the close of the prosecution case Mr Allen made the submission that his client had no case to answer. I did not accept the submission. The prosecution evidence pointed to the accused having seen the man lying on the road, swerving to his right but the front left corner of his car hitting the man as he passed. This called for an explanation.

I have already mentioned some of the accused's evidence. He also said that when he had called on his cousin earlier in the night, the cousin had pointed out to him that his front number plate was hanging down: the accused had said that he would fix it later. That cousin is now dead. The number plate, the accused said, must have been broken by the violence of his swerve.

Apart from the cousin's widow, the accused was the only defence witness.

On the face of it, there is a strong case against the accused.

Mr Allen in addressing made two points. The first is that there was no evidence of recklessness. The accused put his speed at 40 kph which is moderate: even if he did hit the man, he had not been driving recklessly: that he did not stop afterwards is not of itself evidence of recklessness.

The second point is that if the number plate were broken by contact with the man, the front left wheel of the car must have passed over the man's body: there would have been other injuries: yet Dr Beriki described only injuries extending from below eye level to the jaw.

Both points raise sufficient doubts for me not to be able to find the prosecution case proved beyond reasonable doubt.

Maybe the accused was so dreadfully injured by someone else. After all Dr Beriki described it as "a strong impact with a blunt instrument": that need not necessarily have been the left front of the accused's car. Maybe the victim was assaulted in the Bar and staggered out or was dragged out on to the road.

All these are possibilities which raise sufficient reasonable doubt in my mind not to allow me to find the accused guilty on either count.

There is one final matter. The accused was charged with manslaughter. I could not, even if I had no doubt that the accused caused the injuries from which the victim died and was guilty of reckless driving, have found him guilty of manslaughter. I said in the *Republic vs Uriam Bureka* (High Court Criminal Case 30/00) and I say again that to prove a person guilty of manslaughter prosecution must show a very high degree of recklessness as for example high speed, lack of look out, utter disregard in driving for the safety of others. It was not so in Uriam's case nor is it so here.

I find the accused not guilty either of manslaughter or of reckless driving causing death.

Dated the 8th day of June 2001

Robin Millhouse

THE HON ROBIN MILLHOUSE QC
CHIEF JUSTICE