



HIGH COURT OF KIRIBATI

Criminal Case No 19/2017

THE REPUBLIC

v

RABUNA KOKORIA

*Pauline Beitau, Director of Public Prosecutions, for the Republic
Raweita Beniata for the accused*

Date of sentencing: 28 September 2018

SENTENCE

- [1] Rabuna Kokoria has pleaded guilty to 1 charge of careless driving causing death, contrary to section 33(1) of the *Traffic Act 2002*. The maximum penalty is imprisonment for 5 years, a fine of \$2000, or both.
- [2] An information was filed with this court by the prosecution on 11 August 2016, charging the prisoner with careless driving causing death. A second information (apparently in place of the first one) was filed on 11 January 2017, charging dangerous driving causing death. For reasons unclear, the case was not mentioned by the court until 3 August 2017, followed by a gap of over 6 months before the next mention. On 7 March 2018 the prisoner indicated a plea of not guilty to the charge of dangerous driving causing death, and the matter was listed for trial before the Chief Justice on 4 April. On that day the Director of Public Prosecutions advised that she would not be proceeding with the dangerous driving causing death charge, instead relying on the present charge. Counsel for the prisoner asked for time to seek instructions and, on 11 April, informed the court that the prisoner would be pleading not guilty to the lesser charge.
- [3] When the matter was mentioned before me on 16 July, the question was raised as to whether the information complied with section 70 of the *Criminal Procedure Code* (Cap.17). The Attorney-General rectified the defect by filing a fresh information (in the same terms), dated 20 July and signed by her. On 3 August counsel for the prisoner confirmed that his client would be pleading not guilty and the matter was fixed for trial.
- [4] It was only on 25 September – what was to be the first day of the trial – that the prisoner advised he would be changing his plea. Following a minor amendment to

the information (to correct the year of the *Traffic Act*), the prisoner was arraigned and pleaded guilty.

- [5] The incident giving rise to this charge occurred between 3:00pm and 4:00pm on 27 January 2016. The prisoner was driving a truck that had been hired to transport a group of people. In Bikenibeu, the prisoner had stopped the truck to allow some of his passengers to get off. As he drove away, Bureieta Tenanoa, a 9-year-old girl, emerged from bushes at the side of the road and went to cross to the other side. The speed of the truck at that time was no more than 20 kilometres per hour. The prisoner attempted to avoid the girl, but she was struck by the truck and fell to the road. Bureieta was taken to hospital, where she was found to have a skull fracture and severe traumatic brain injury. She died a short time later.
- [6] The prisoner, through his lawyer, acknowledges that he failed to apply the brakes of the truck when a collision with Bureieta was imminent. Instead, his first instinct had been to slow the truck, which had been in third gear, by changing to second gear. The prisoner accepts that, had he applied the brakes immediately, the truck would not have struck Nei Bureieta. The prisoner therefore fell below the standard required of drivers on our roads. The lack of care was momentary, but the consequences were tragic.
- [7] Counsel for the prisoner suggested in his written submissions that the collision was 'unavoidable'. I pointed out that a truly unavoidable accident would not ordinarily incur any criminal liability, and that such a submission was inconsistent with his client's plea of guilty. The contention was not pursued.
- [8] Counsel for the prosecution accepts that neither speed nor alcohol were factors in this case. The weather was fine at the time, and a subsequent inspection of the truck revealed no mechanical defects that might have contributed to the incident. The prisoner held the appropriate class of licence for the truck. The prisoner's only recorded previous conviction is for driving an unregistered vehicle about 1 year before the incident, in respect of which a small fine was imposed. Counsel for the prosecution submits the offence warrants imposition of a custodial sentence, as well as cancellation of the prisoner's licence and a lengthy disqualification period.
- [9] The prisoner is 32 years of age. He is married with 3 young children, aged between 1 and 7 years. He is employed by Hokisan (formerly Wishing Star) as a warehouse supervisor and, in the course of his duties, is occasionally required to drive. The prisoner is the sole provider for his family. He has made a personal apology to the parents of Nei Bureieta. It was only after her death that the prisoner became aware that he was related to Bureieta, and the 2 families have become quite close in the years since. Bureieta's parents have provided quite remarkable letters to the court, conveying their forgiveness of the prisoner.
- [10] The prisoner acknowledged the previous conviction referred to by the prosecution and volunteered that he had also been convicted of speeding offences 2 or 3 times since the date of the matter before me. He was of course under no obligation to disclose the speeding convictions.

- [11] In determining the appropriate sentence for the prisoner, I am mindful of the approach to sentencing recommended by the Court of Appeal in *Kaere Tekaei v The Republic*.¹
- [12] In *Rereintetaake Kanooa v The Republic*², the Court of Appeal agreed with a statement from the Chief Justice that a sentence within the range of 1 to 3 years' imprisonment was appropriate for offending of this nature. In that case, the Court refused to interfere with a sentence of 18 months' imprisonment. The facts were broadly similar to those before me, save that speed was a factor in the offending. The appellant had entered a timely plea of guilty.
- [13] I am aware of 3 other cases of careless driving causing death coming before the High Court since the offence was created in 2005.³ In each case the offender was sentenced to imprisonment for 18 months following a plea of guilty. In each case the offending, or the consequences of the offending, was more serious than in the case before me today. The careless driving of Maunga Mereke resulted in the deaths of 2 people and 2 others sustaining serious injuries. Naewanako Barataake caused the death of 1 person and serious injuries to another. Excessive speed was a factor in the case of Teingoa Tominiko.
- [14] I am satisfied that the offending in this case falls at the lower end of the spectrum. His lapse of judgment was brief, albeit with serious consequences. The prisoner is a young man with a young family to support. Despite the absence of an early plea of guilty, the prisoner is clearly remorseful, and Nei Bureieta's parents have forgiven him.
- [15] The prisoner does not have an unblemished record. The speeding convictions subsequent to the offending for which he is to be punished today do not reflect well on him.
- [16] It is relevant that there has been an unacceptable delay in the prosecution of this case, although not as bad as we have seen in other cases. It has been 2 years and 8 months since the commission of the offence. Only some of that period can be attributed to the prisoner's initial desire to go to trial. For the reasons discussed by the Court of Appeal in *Attorney-General v Li Jian Pei*⁴, the prisoner is entitled to a modest reduction in sentence, to compensate him for the breach of his constitutional right to be afforded a fair hearing within a reasonable time.
- [17] The prisoner has spent 2 days in custody awaiting sentence.
- [18] Taking all of these matters into account, I am of the view that an appropriate sentence in this case is one of imprisonment for a period of 9 months.

¹ Court of Appeal Criminal Appeal 1/2016, at [10].

² Court of Appeal Criminal Appeal 2/2014, at [6]-[7].

³ *Republic v Maunga Mereke*, High Court Criminal Case 27/2011; *Republic v Naewanako Barataake*, High Court Criminal Case 3/2012; *Republic v Teingoa Tominiko*, High Court Criminal Case 21/2013.

⁴ Court of Appeal Criminal Appeal 5/2015.

- [19] Counsel for the prisoner has submitted that the prisoner's sentence should be suspended. Against that, counsel for the prosecution argues that only imposition of an immediate custodial sentence would have the desired general deterrent effect. I reminded counsel for the prosecution that the court's sentencing decisions can only have value by way of general deterrence if the public is kept informed of the court's decisions. In my time in Kiribati, the media have shown a decided lack of interest in the criminal cases that come before the courts. I do not know why that is so but, until the situation changes, it is going to continue to be difficult for a prosecutor to argue strongly for the general deterrent effect of a sentence to be given significant emphasis.
- [20] After some hesitation, I have reached the conclusion that the personal circumstances of the prisoner outweigh the other considerations calling for imposition of an immediate custodial sentence. In the end, the extraordinary compassion shown towards the prisoner by the parents of Nei Bureieta have convinced me to extend a degree of mercy as well. The sentence will be suspended.
- [21] I therefore order, under section 44(1) of the *Penal Code* (Cap.67), that the sentence of 9 months' imprisonment referred to above is not to take effect unless, within the period of 18 months from today's date, the prisoner commits another offence punishable by imprisonment.
- [22] The only matter remaining to be dealt with is the cancellation of the prisoner's driver licence and the period of disqualification that will apply. As careless driving causing death is a serious traffic offence for the purposes of the *Traffic Act*, I am obliged by section 56(3) to cancel the prisoner's driver licence. I am also required to disqualify the prisoner from holding a driver licence for a period of at least 1 year. Under section 56(2)(b), the maximum period of disqualification is 5 years.
- [23] The prisoner's driver licence (#1521/16, issued on 14 December 2017) is therefore cancelled. The prisoner is disqualified from holding a driver licence for 3 years. The Highway Authority, as the licensing authority under the *Traffic Act*, is to be informed of the cancellation of the prisoner's licence and his disqualification.


Lambourne J
Judge of the High Court

