

Mr. Justice Laine

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IN THE SUPREME COURT }  
OF PAPUA NEW GUINEA )

CORAM: WILSON, A.J.  
Wednesday,  
26th September 1973.

REG. v. KOMBORA RABURA

Sentence

1973

Sep 26

MINJ

Wilson  
AJ

Kombora Rabura of Dupel, you have been convicted on your own confession of "dangerous driving causing death". Your crime is a serious one. Section 328A of the Criminal Code (Queensland, as adopted), under which you have been convicted, makes this crime punishable by imprisonment of up to five years.

The circumstances of your crime are disturbing. On 4th May 1973, when you committed this serious crime of negligence, you acted quite irresponsibly. Even though your conduct was out of character for you, it was inexcusable. The man David Pui needlessly died because of your criminal negligence. On 4th May you had been drinking beer at the Airport Hotel.

At about 7 p.m. you left the hotel and, because your two companions were too drunk to drive, you agreed to drive to Mount Hagen. You were under the influence of liquor but probably not as drunk as your companions. As you were driving along Wahgi Parade, a main road in Mount Hagen at a very fast speed you ran down the deceased who was a pedestrian walking on the dirt verge of the road. Your vehicle must have left the bitumen shortly before the impact. The accident occurred in the near vicinity of a pedestrian crossing. Not only did you fail to see the deceased at all before he was struck by your vehicle but also you failed to observe and/or take heed of a sign visible to traffic approaching from the direction from which you were approaching reading "Pedestrian crossing ahead". You had previously failed to take heed of a signal by the driver of an oncoming vehicle to stop.

The vehicle you were driving at the time, a Toyota Land Cruiser, was seen earlier that evening on the Highlands Highway near the junction with the road to Kagamuga Airport being driven erratically and fast. It is clear to me that you were so much under the influence of liquor that you could not adequately control your vehicle. You were not in full possession of your faculties, and so drove dangerously. Besides driving fast and

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erratically you failed to keep or were unable to keep a proper look-out.

I take into account in your favour the following circumstances: -

1. You have pleaded guilty to this charge and have thereby saved considerable public expense and saved witnesses from the ordeal of having to give evidence.
2. You are 35 years of age, a family man of good character, and you are of such standing in your community that an officer working for the Land Titles Commission was prepared to come to court and give character evidence on your behalf. It appears that you bear a good reputation as a driver, family man and citizen.
3. You have an excellent work record, having worked initially as a Mission teacher and later as a driver for Kagamuga Motors, and for the last eight years as a driver for the Administration. You are likely to lose your job with the Administration as a result of your conviction for this offence.
4. You are a first offender.
5. There was no aspect of pre-meditation or deliberation about the crime you committed. In fact you did not even know you had knocked the unsuspecting victim to the ground.
6. You are penitent and are unlikely to offend again.

I note that you have had a good education and that you have had a considerable amount of contact with Mission and Administration people. You are in no sense a primitive man. You have established for yourself some standing in the community and you have acquired for yourself both income and assets. You have not received any punishment for your crime independent of this Court, except about 2 days in custody following your initial arrest plus the worry, shame, and fear associated with apprehension, arrest and appearance in Court consequent upon your wrong-doing. I note that traditional compensation has not been sought, and it may not ever be sought. However, I see that you are willing to pay compensation if necessary. Drink is not a problem in your life, although it certainly precipitated lots of trouble on this occasion.

I adopt in my approach to the task of sentencing you, an approach similar to that adopted by me in the

case of Req. v. Jim Kaupa (1). The main factual distinction between your case and that case is that you in no sense had an excuse for mixing drinking and driving on the day in question. You were not under strong pressure from anyone else to drive on the evening in question. You drove apparently willingly. The special and unusual circumstances that existed in Req. v. Jim Kaupa (2) (supra) do not exist in your case.

The fact that the victim was a young policeman who had chosen a fine vocation and who was serving his community in the sphere of law enforcement and crime control is a fact which I should not take into account either in aggravation or in mitigation of penalty. I should approach my sentencing task upon the basis that your conduct caused the death of an innocent man. It matters nothing so far as the crime itself is concerned or so far as your level of culpability is concerned who the innocent victim was, what his occupation was, or what his character and popularity was.

I must not, and do not, approach the task of sentencing you with any feelings of emotion. Decisions that are made in an atmosphere of emotion, anger, disgust, revulsion or hysteria are generally bad decisions. I refrain from imposing an exemplary punishment.

I have been referred by Mr. L. Roberts-Smith for the Crown to a case of R. v. Wooler (3). That case is a decision of Campbell J. in the Supreme Court of Queensland. The decision is in the nature of a practice direction. Whilst that decision was not cited to me because of the facts of that case and was cited for other purposes, I point out, lest it should be misunderstood, that that case has no relevance to the question of sentencing in the present case. The learned judge in that case adopted with approval a passage from Archbold (37th Ed.) para 2818 - "It would seem that this offence is not intended to be used as an alternative and second charge to manslaughter, but is intended to be used as a substitute for it, and that charges of manslaughter arising from the driving of a motor vehicle should now be preferred only in the most serious cases where the offence approximates murder, e.g. where a policeman is knocked down by the reckless driving of a stolen car."

Whilst I do not disagree with the principle alluded to by the author of that text-book, as approved by Campbell J., the present case is in no way similar to the example of a

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(1) Unreported judgment No. 765 of September 1973.  
(2) Unreported judgment No. 765 of September 1973.  
(3) (1971) Q.L.R. No. 10

"most serious" case. There is no similarity between the example given and the instant case except in so far a policeman is the victim in each instance. The point of the example quoted is unquestionably the inference to be drawn from the description given that the car-thief well-knowing that it is a policeman standing between him and escape deliberately knocks the policeman down; indeed a situation approximating murder. In the instant case there is no evidence that the defendant saw the pedestrian at all, let alone knew that he was a policeman.

I was also referred by counsel for the Crown to a case of R. v. Buchanan (4). That case was one of manslaughter and there is nothing in the report to indicate what principles the sentencing judge follows in arriving at a sentence of 3 years or what factors if any in the defendant's antecedence the sentencing judge relied upon. I therefore find that decision of little assistance to me.

I was urged by counsel for the defendant to consider imposing a fine. Whilst I found his argument attractive, I consider that this is neither the case nor the time to consider such a penalty. For me to fine this defendant would be for me to depart substantially from a practice and sentencing policy that this Court has adopted over many years - one which I am not prepared to depart from on this occasion.

My duty regrettably requires me to impose a term of imprisonment. I am always reluctant to imprison a man who is a first offender, especially when his antecedence is good. However, this was a serious breach of the law. Little can be said in the defendant's favour so far as the facts are concerned.

Kombora Rabura, the sentence of the Court is that you be imprisoned with hard labour for eight calendar months.

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Solicitor for the Crown : P.J. Clay, Crown Solicitor  
Solicitor for the Accused : G.R. Keenan, Acting Public  
Solicitor