CHRIS MESEPITU-V-REGINA

HIGH COURT OF SOLOMON ISLANDS
(Mwanesalua, J.)

Criminal Case No.601 of 2005

Hearing: 8th February 2006
Judgment: *15th February 2006*

W.H. Rano for the Appellant
H. Kausimae for the Respondent

JUDGMENT

Mwanesalua, J: The Appellant, Chris Mesepitu 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.

On 12th December 2005, he appealed to this court against sentence on the following grounds:

1. that the sentence imposed on him in all the circumstances of the case was too severe.

2. that the sentence imposed on him in all the circumstance of the case was manifestly excessive.

Facts

The Appellant lived at Naha I in August 2004. On the night of 13th August 2004, he consumed beer with two other men at his house. These men were his friends. About 2030 hours they left the house and drove to Point Cruz in vehicle Reg. No. AB534 to buy more beer. They bought twenty-four bottles of beer at the Kings Taxi base. They then drove westly direction to Town Ground where they turned eastly direction along the Mendana Avenue. They turned left into Commonwealth Street and parked the vehicle opposite ANZ Bank and Y. Sato Store to watch the Magicland Show.

At about 2300 hours the Appellant and his two friends invited the deceased Joyce Tito and four other girls to have some beer with them. The five girls boarded the vehicle and they all went eastly direction to Henderson to drink.

They finished drinking about 0200 hours on 14th August 2004. They all boarded the vehicle and the Appellant drove westly direction back into Honiara City.

During their journey westly direction the Appellant drove the vehicle onto King George VI School field. One of the girls went out of the vehicle. As she was about to jump back onto the vehicle the Appellant drove off at high speed.

The two men and the four girls who sat at the back of the vehicle tried to stop the Appellant but he kept on driving away. The girl was left behind at the field. He continued to drive at high speed when he got to the high way. He then lost control of the vehicle. The vehicle swayed from side to side of the highway and it turned over about fifty metres from the Panatina bus stop. This caused the two men and the four girls at the back of the vehicle to be thrown off onto the road. They all sustained injuries. The deceased was seriously injured and died shortly after she was taken to the hospital after the accident.

Case for the Respondent

The Respondent opposed the appeal. It was contended that the sentence imposed on the Appellant was appropriate. It was within the sentencing range for the offence.

1. SEVERITY OF SENTENCE:

Hardship to Others

The Custodial sentence of two years and six months imposed on the Appellant did have direct impact on his wife and two children. It virtually deprived him of his work from which he was paid a salary to support his wife and children. But, the lose of financial support and comfort are the usual consequences of the imprisonment of a spouse. Also, the imposition of a non custodial sentence on the Appellant, in view of the seriousness of his offence, would defeat the appearance of justice.

Custom Compensation

The Appellant paid ten thousand dollars and two red money (tafuliae) to the family and relatives of the deceased. This is significant in custom as it restored peace and harmony between the parties. It was a big compensation which reflected the degree of contrition on the part of the Appellant. Such compensation did afford the Appellant some mitigation. However, it should not be viewed as the Appellant buying

his way out from his offence. That offence was committed against the state and for which the Appellant was liable to be punished.

No Previous Conviction

The Appellant was represent by same Counsel in the court below and before this court. He also prepared and filed the Appellant's petition of appeal. He did not mention to the Learned Magistrate that the Appellant did not have previous conviction. He did not tell this court the reason for not doing so. Counsel for the Respondent was silent on this point. I thus do not know whether the Appellant had no previous conviction.

Guilty Plea

This is an important mitigating factor in this case. It saved time and money for all parties in the court below. The Learned Magistrate emphasized the importance of this mitigating factor in his sentence. He also took into account the Appellant's family obligations, payment of compensation, contributions to his local church and the post he held with his employer before passing the custodial sentence on him. The Learned Magistrate gave weight to the mitigating factors advanced on behalf of the Appellant. His sentence was reduced by six months to reflect the mitigating factors advance on his behalf by his Counsel.

2. SENTENCE MANIFESTLY EXCESSIVE:

Sentence imposed on Appellant different from those imposed on other person for same offence

The Appellant was sentence to thirty months imprisonment. His Counsel contended that the sentence imposed Appellant on the sentence was manifestly excessive because it was different from the sentences imposed on other persons for the same offence. He cited the cases of ***R-v-Foimua – CRC 1324/2003*** and another Magistrate's court case - ***R-v-Chottu – decided in 2003*** to support his contention.

In those cases *Foimua* and *Chottu* were sentenced to fifteen and six months imprisonment respectively. My view is that the kinds of penalties and the level of custodial sentences, are bound to be different in each case. This is because the factual basis on which sentence is assessed for each case will be different and not the same.

Starting point to consider Sentence

Counsel for the Appellant seemed to suggest that the starting point to decide the sentence to be imposed on the Appellant should have been six months. He said that would reflect the current trend for sentencing offenders for the offence and also because the facts of the cases which came before the courts previously were different.

I reject this suggestion. The starting point for deciding the appropriate sentence for an offence is done in this way. The judge or the Magistrate for that matter will allocate the offence to the appropriate sentencing range. There will be a normal bracket of terms of years within which the sentence for an offence will be assessed. These terms of years are derived from the decisions of magistrates' Courts in appropriate cases, the High Court and the court of Appeal. It is this bracket which forms the starting point for deciding the appropriate sentence to be imposed on a convicted offender.

Disparity of Sentence

Counsel for the Appellant contended that the sentence imposed on his client was different from sentences imposed on other prisoners convicted of the same offence. It would appear that he had in mind the sentences of fifteen months imposed on *Foimua* and six months imposed on *Chottu* referred to above. But Counsel for the Appellant also cited the case of ***R-v-Walekwate – CRC 275 of 2003*** to the Learned Magistrate.

In that case, *Walekwate* was sentenced to three years and six months imprisonment for the same offence. It would appear therefore that the sentence passed on the Appellant was not significantly different from the pattern for sentences for that offence. I do not think that there was general disparity between the sentence imposed on the Appellant and the sentences imposed on other prisoners.

The Learned Magistrate did consider the facts of the cases cited to him by Counsel for the Appellant. He referred to the starting points, months discounted to reflect mitigating factors and the final custodial sentences imposed on the prisoners in those cases. There were aggravating factors in the Appellant's offence. These were consumption of alcohol and dangerous driving. A life had been lost in the accident which followed. I do not consider that the sentence of two years and six months imposed on the Appellant was too severe and manifestly excessive. The appeal by the Appellant against sentenced is dismissed.

Orders of the Court

1. Appeal against sentence dismissed.

2. The sentence of two years and six months passed by the Magistrates' Court on 30th November 2005 confirmed.

Francis Mwanesalua
Puisne Judge