

Hala v R

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Court of Appeal
Ward CJ and Roper and Ryan, JJ

23 March, 1992

Criminal law - manslaughter by negligence - sentence
Sentence - criminal law - manslaughter by negligence

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Appellant appealed against a term of 2 years imprisonment imposed on a charge of manslaughter by negligence, arising out of a motor accident, when the appellant driving an unsafe vehicle at excessive speed, struck and killed an elderly pedestrian. It was argued for him that the appellant had made peace with the deceased's family and that the deceased may have been contributorily negligent.

HELD:

Sentence quashed and in lieu a sentence of 12 months imprisonment should be imposed.

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Counsel for the appellant : Mr Vaipulu
Counsel for the respondent : Mr Williams

Judgment

This is an appeal against a sentence of 2 years imprisonment on a charge of manslaughter by negligence pursuant to s.92 of the Criminal Offences Act.

The Appellant, who is 22, drove an unsafe vehicle at an excessive speed and killed an elderly man, who was crossing the road, having just got off a bus.

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Mr Williams for the Crown described it as a bad case of its kind and that is fair comment.

The Appellant was driving a vehicle which was not fit to be on the road in that it had defective brakes. The Appellant claimed that he had not driven the vehicle before and was unaware of its condition but that was not supported by the evidence.

His speed was such that a passenger was frightened and had asked him to slow down on three occasions. One eye witness put his speed at 60-80 mph in a 40 kph zone. In passing sentence the trial Judge referred to the prevalence of the offence but according to Counsel there have only been two such cases in Vava'u, where the present accident occurred, in the last 10 years.

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Mr Vaipulu for the Appellant referred to certain matters in support of the appeal

which he submitted had been given insufficient weight by the trial Judge as follows:

The Appellant is a first offender and a married man with a young child. He has helped the victim's family financially and made his peace with them; and in fact it seems that the family did not wish the case to go to a hearing.

There was a suggestion that the deceased who was 84 years of age may himself have been negligent to some extent.

We are of opinion that in all the circumstances the sentence of 2 years was manifestly excessive.

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We therefore allow the appeal, quash the sentence of 2 years and in lieu sentence the Appellant to 12 months imprisonment.