IN THE SENIOR MAGISTRATE'S COURT FOR C.D.1. AND SOUTH

Criminal Case no.464/86

PUBLIC PROSECUTOR -v- JULIE MORRALL

J U D G M E N T

I reserved my decision in this case because of a proposition advanced by the learned Prosecutor, Mr Dickinson. He submitted that any driver should be able to stop the motor vehicle which he is driving within the distance he is able to see. He gave as an example a person driving at night-time, and he contended as a matter of law that he should drive within the limits of his headlamps; otherwise his driving was negligent. As I pointed out during Counsels' addresses, such a proposition may well accord with rules set out in Highway Codes. In fact, Rule 34 of the Code applicable in UK bears this out, as it provides, "Never drive so fast that you cannot stop well within the distance you can see to be clear." Of course, some provisions of Highway Codes are virtually doctrines of perfection, and certainly are not rules of law.

The law on this point is to be found in Stone's Justice's Manual, 1974 Edition Vol.2 at p.2965, in which the following passage appears, "There is no rule of law that the driver of a vehicle must be able to pull up within the limits of his vision (See Morris -v- Luton Corporation (1946 1 AIIER 1 in which was crticised a passage of Scrutton, L.J. in Baker -v- E. Longhurst & Sons Ltd (1933) 2KB 461). Each case must depend objectively on its own facts whether there was exercised that degree of care and attention which a reasonable and prudent driver would exercise in the circumstances." A total of six English decisions are then cited in support of this general principle, one of them being Simpson -v- Peat (1952) 1 AIIER 447. In the editorial note appearing on p.2. of the report to Morris' case, the rule expressed by Scrutton, L.J. appears in these words. 'Either (the plaintiff) was going at a pace of which he could not stop within the limits of his vision, or if he could stop within the limits of his vision, he was not looking out. In either event he was guilty of negligence." Lord Greene, M.R., who gave the subsequent judgment of the appeal court, which was critical of that dictum, said." "I cannot help thinking that that observation turned out in the result to be a very unfortunate one because the question as has been so often pointed out, is a question of fact. There is sometimes a temptation for judges in dealing with these traffic cases to decide questions of fact in language which appears to lay down some rule which road users must observe."

I now turn to the facts of this case, which depend on what view is taken of the evidence, on which there is a total conflict between that given by the prosecution witnesses on the one part and by the defendant on the other part. In essence, the prosecution case rests on the testimony of two youths, who were undoubtedly walking in the direction of Vila when the Defendant's motor-car approached them in the same direction. At this point in time the two youths had reached a bend in the road near where the Prima beverage factory is situate. What each of them has testified is that PW.2, Loh Makum, was walking 1 metre ahead of his friend, Peter Kawasil, and both of them were using the coral strip and grass verge, which was on the right side of the sealed surface of the roadway. Another youth was also with them but he was walking on the other side of the road, likewise they

said off the sealed surface. This person complied with a summons to attend Court, but was not called as a witness.

PW.2's evidence was that he heard a car coming around the corner and it was going very fast. The car struck his back and he was thrown on top of a wire fence. PW.3 never saw the car until it came to a stop in a field on the other side of the road. He had only heard the tyres of a vehicle making a noise so he jumped to his right-side and the next thing he saw was PW.2 flying through the air. PW.2 was undoubtely injured by the barb-wire on the front of his body from below the neck on the right side down to the upper left breast. About his back, where he said the car struck him, he said it was sore and he was X-rayed in hospital but no surgery was carried out. There is one major discrepancy in PW.2's evidence in relation to other evidence adduced by the prosecution, and it is this. In XXM, he gave this answer, "I was about 1½ m. from bend in road when car hit me," and he then indicated that his understanding of a metre was about the length of the Court Registrar's table. But the same point was pursued in RE.XM and he gave almost the same reply, which was, "I was about 1½ m from corner when car struck me." Then if one looks at the very carefully drawn sketch plan, which is Ex C2, although no measurement is shown from the bend to the "First Point of Impact," it indicates a distance twice in excess of the width of the road, shown as 8.30 m. Although no evidence was led on the point, Ex C2 sets out what is stated to be "Car Damage" to the Defendant's motor vehicle, which is shown as follows:-

" (1) Right front door
(2) Right rear door
(3) Rear door Seals "

If no other damage was sustained, it is difficult to reconcile the prosecution evidence, because a glancing blow on the side of the car would be unlikely to catapult a person a distance of 11 m. Certainly, medical evidence would have been helpful in corroborating what PW.2 alone says that he was struck by the car, particularly as when the case was opened, the learned Prosecutor saw fit to emphasize that no-where in the Defendant's statement did she make any mention of her car striking the man in the middle of the road.

Her statements reads as follows:-

"I Julie Morrall was driving my motor vehicle along Mele Road, travelling towards Port Vila on the afternoon of 6th September, 1986 at 4.45 pm. As I drove around the corner I came upon this man standing in the middle of the road waving his arms around, I took evasive action and swerved my car to avoid the man. The car crossed the left hand side of the road, struck a tree and knocked down the fence, the car then came to a halt. Not realsing the full extent of the damages to the car or myself, I restarted the car and drove it around to face the road. I was then assisted to the hospital."

She was naturally cross examined at some length, and although insisting that her speed was about 60kmph, she could not give a distance when she first saw the man standing in the middle of the road. Her account of the accident was that it all happened very quickly; in particular, she was not able to recall whether she braked. Mr Coombe contends that the Defendant took a conscious decision when she swerved around the man instead of braking. Although he did not cite Simpson -v- Peat, he no doubt had in mind what was said by Lord Goddard, C.J. when a driver is confronted by an unexpected hazard:-

"Equally, because an accident does occur it does not follow that a particular person has driven either dangerously or without due care and attention. But if he has, it matters not why he did so. Suppose a driver is confronted with a sudden emergency through no fault of his own. In an endeavour to avert a collision he swerves to his right - it is shown that had he swerved to the left the accident would not have happened. That is being wise after the event, and, if the driver was, in fact, exercising the degree of care and attention which a reasonably prudent driver would exercise, he ought not to be convicted, even though another, and perhaps, more highly

skilled, driver would have acted differently."

But having visited the scene of the accident, I am satisfied that the Defendant was not faced with any sudden emergency. The corner or bend in the road is not a blind one; a driver travelling in the direction towards Vila has a view of at least 50 yds. ahead of him when approaching this section of road, and on the Defendant's own account if the pedestrian was standing in the middle of the road, the distance she should have been able to see ahead would have been greater.

The particular facts of this case show that either the Defendant was driving at a speed which was ... e unsafe and excessive or else she was not paying attention to her driving and not keeping a proper look out on the road ahead of her. I am satisfied that the charge of careless driving is proved beyond any reasonable doubt, and I would merely express surprise that on the case as adduced by the prosecution the Defendant was not charged with reckless driving under Section 12 B. However, I have accepted her version of what occured as I regard it as the more creditable of the two.

Accordingly, the Defendant is convicted on Count 1 and also on Count 2 on her own plea of guilty.

M.J.R. COAKLEY
.....
Senior Magistrate

12th March, 1987

12th March, 1987 As before.

Judgment delivered.

Antecedents,
NIL

Fros,
..pply for costs.

Mr Coombe,
Married - children. Requires car licence.
Modest fine appropriate.

SENTENCE,

Count 1. Fine of 8.000 VT or 8 weeks I.D.

Count 2. Fine of 12.000 VT or 12 weeks I.D.

Costs to the prosecution fixed at 4.000 VT.
Pay in two instalments of 12.000 VT each on 31 March, 1987 and 30 April, 1987.

Right of Appeal explained.

RECEIVED

M.J.R. COAKLEY