

MULIZWA v THE PEOPLE (1974) ZR 165 (SC)

SUPREME COURT 30

DOYLE CJ, BARON DCJ AND GARDNER JS

20th AUGUST 1974

SCZ Judgment No.34 of 1974.

Flynote

Roads and Road Traffic - Causing death by reckless or dangerous driving - Identity 35 of driver - No evidence other than accused's own statements - Statements not containing direct admission - Necessity of taking into account entire contents.

Roads and Road Traffic - Causing death by dangerous driving - Nature of offence - Possibility of amounting to manslaughter. 40

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Sentence - Driving with utter recklessness - Not caring for safety of others - Desirability of custodial sentence.

Criminal Law - Defence based on subornation of perjury - Effect.

Headnote

On the 26th February, 1972, a number of people had been travelling 5 in a car near Kabwe. This car had been on the left - hand side of the road and travelling at a slow or moderate rate of speed. The car alleged to have been driven by the accused had come from the opposite direction at a very high speed, crossed the road and smashed into the other car, killing three people inside and causing extensive damage.

The 10 only real question that arose for decision was whether the accused was the driver of the car or, as he alleged, a passenger.

Held:

- (i) Where a person is charged with the offence of causing death by dangerous driving and the only evidence that he was driving the 15 motor vehicle arose from statements made by him at different times which do not directly point to the fact that he was the driver, everything that was said at the various times must be taken into account in deciding this question.
- (ii) The offence of causing death by dangerous driving may be quite a 20 moderate offence, and it may be a severe offence. It may be merely a matter of careless driving, a momentary carelessness which turns out to be dangerous and which causes death or, on the other hand, range almost up to manslaughter.
- (iii) Where a man drives with utter recklessness caring not for the 25 safety of other persons on the road a prison sentence is deserved.
- (iv) While a defence based on subornation of perjury cannot entitle the sentence to be increased it certainly prevents an accused from claiming that he is a man of good character and obtaining such leniency as may flow from that circumstance.

R M A Chongwe, Mwisya, Chongwe & Co., for the appellant. 30

G L Patel, State Advocate, for the respondent.

Judgment

Doyle CJ: delivered the judgment of the court: The appellant was charged with the offence of causing death by dangerous driving. The facts are that on the 26th February, 1972, a number of people were 35 travelling in a car near Kabwe. They were on the left - hand side of the road travelling at a slow or moderate rate of speed. Another car, EL 177, came from the opposite direction at a very high rate of speed, crossed the road and smashed into their car, killing three people inside and causing very extensive damage. Beside the road approaching the scene there 40 were three signposts which should have been seen by the oncoming car, which read: SLOW DOWN, SLIPPERY ROAD, ACCIDENT BLACK SPOT. Despite all this the oncoming car continued travelling at such a speed that it could not be controlled and caused the accident as described.

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The defence was that in fact this car, EL 177, never left its correct side but that it was run into on its own side. That defence was disbelieved and obviously correctly disbelieved. The evidence of the two witnesses who saw the accident at the time and who said that the car was coming at a high rate of speed and smashed into them on their side of the road was 5 completely corroborated by the subsequent positions of the vehicles and the damage done.

The only real question in this case is the identity of the driver of this other car. At the trial the appellant who had been injured and who was in hospital prior to the trial had given various statements. The first one was 10 when he was seen at the hospital when he was semi-conscious. He was asked, was he driving and was his name Mulizwa. He merely waved a card with his name and occupation on it. That clearly was quite inconclusive as to what had happened. However, two days later a policeman saw him. This time he made a statement in which he said he was driving from 15 Lusaka to the Copperbelt. He said he was driving a Wolseley which was his own car. That was in answer to a question, "Where were you driving from and where were you driving to?" Mr Chongwe, counsel for the appellant, submitted that this was not an admission that he was the driver in the light of the form of the question asked. One must, however, 20 take into account everything that was said. When the appellant later on was charged and cautioned in relation to the offence his reply was, "I think that is enough. I did not cause the death of other people. No one died in my car." Now that coupled with the other statement seems to us to show a clear inference that he was not denying he was the driver. 25 He was denying that he had caused the deaths with his car and that no one had died in his car. At the trial, however, he put forward the case that a man named John Sibanda was the driver of the car. Three of the passengers in appellant's car were called who also said John Sibanda was the driver. Two of these witnesses were called by the prosecution. But these two 30 witnesses had given statements to the police which said the contrary, and it is plain that they were deliberately committing perjury. Their suggestion that they were unconscious when they gave their original statements is preposterous. The alleged driver Sibanda was never seen again and appellant was unable to give any information as to his whereabouts. 35 Appellant's story says that out of a salary of K200 per month he employed Sibanda at K72 per month is hardly credible. We are satisfied the evidence fully warranted the learned trial judge in coming to the conclusion that the appellant was the driver of this car. Upon that conclusion we can see nothing he could do but to convict the appellant of causing death by 40 dangerous driving.

The offence of causing death by dangerous driving may be quite moderate offence, and it may be a severe offence. It may be merely a matter of careless driving, a momentary carelessness which turns out to be dangerous and which causes death. It may on the other hand range almost 45 up to manslaughter. In our view this is a case which if it was not manslaughter was certainly bordering on manslaughter. This was a clear case of utter recklessness on a road which had in the past shown itself to be

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dangerous and was signposted as such. That a man should drive in this way recklessly caring not for the safety of other persons on the road and should kill three is deserving of a prison sentence and, in our view, the sentence of twelve months' imprisonment in this case was by no means 5 too much.

If the facts had disposed us to leniency as distinct from untempered justice we would not in any event have gone to any great pains to accord leniency in a case where clearly the defence was based on subornation of perjury. While that fact cannot entitle the sentence to be increased, it 10 certainly prevents the appellant from claiming that he is a man of good character and obtaining such leniency as may flow from that circumstance. The appeal is dismissed.

Appeal dismissed

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