

REGINA v. TOMMY SAIDU

[Criminal Appeal 23/61]

Ames Ag.P.
Benka-Coker
C.J.
Dove-Edwin
J.A.

Criminal Law—Manslaughter—Causing death by dangerous driving—Whether sufficient evidence to support conviction.

Appellant was driving a lorry laden with goods and passengers along the Motorgu-Rotifunk road when, at a point near a bridge approach, the lorry left the road and turned over, causing the death of one Anthony Alie. Appellant was charged with manslaughter. A vehicle examiner who testified for the prosecution said that in his opinion the lorry was travelling between 35 and 40 m.p.h. at the time of the accident. He also testified that the road was "a good road" and "a little used road." He gave it as his opinion that the accident was caused by appellant's driving without due care and attention. A witness who was a passenger on the lorry said that it was travelling "very fast," and another witness testified that it was going "so fast that I had to shut my eyes." According to a statement by appellant, the accident was caused by the condition of the road.

The trial judge found appellant guilty of causing death by dangerous driving and sentenced him to 18 months' imprisonment. He appealed on the ground "that the verdict was unreasonable and having regard to the evidence, particularly that of speed, and the actual and potential traffic, could not be supported."

Held, allowing the appeal that there was no evidence on which a verdict of causing death by dangerous driving could be supported.

Berthan Macaulay for the appellant.

John H. Smythe for the respondent.

DOVE-EDWIN J.A. The appellant was charged with manslaughter and the particulars of offence were "that [he] on or about July 17, 1961, at Motorgu-Rotifunk motor road in the Bumpah Chiefdom in the Moyamba Judicial District in the Southern Province of Sierra Leone being the driver of lorry PR.2842 unlawfully killed Anthony Alie."

The facts shortly put were these. Appellant was, on July 17, 1961, the driver of a Bedford lorry No. PR.2842 which was fully laden with goods and passengers. He was driving along the Motorgu-Rotifunk road and at a point on the road near a bridge approach the lorry was found lying on its body on its nearside and on the left-hand side of the road. It was said by a vehicle examiner, the first witness for the prosecution, that the lorry had been travelling on the nearside edge of the road for some distance before rolling into the stream on the bank approach.

The lorry had several defects, such as defective steering, worn-out ball joints, that would cause excessive play in the steering wheel. The U-bolts on both front springs were found to be loose and a securing nut on each of the front springs was found to be missing. The kingpin on the stub axle was worn out and the propeller shaft flange holes were loose. The lorry had been in this condition prior to the accident. Not one of these defects caused the accident, according to the vehicle examiner, who also gave the speed at which the lorry was travelling as at between 35-40 m.p.h. In his opinion, the

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appellant was driving without due care and attention and that in his view was the cause of the accident.

Other witnesses who were passengers on the lorry gave their views as to the speed at which the lorry was travelling as being "very fast that one would hardly see the leaves on trees," and another, "so fast that I had to shut my eyes."

The road was a fairly good road and free of traffic, it not being a busy road.

The appellant did not give evidence but his statement was in evidence and according to it the accident was directly caused by the state of the road.

At the close of the case for the prosecution a case of manslaughter was clearly not proved and after both counsel for the Crown and appellant had addressed the court and the learned judge had summed up, the two assessors found the appellant guilty of manslaughter but the learned judge felt that the appellant was not guilty of manslaughter but was guilty of causing the death of the deceased by dangerous driving and sentenced him to 18 months' imprisonment. Against this conviction and sentence appellant has appealed to this court on two grounds.

The first ground of appeal dealt with by learned counsel for appellant was "that the verdict was unreasonable and having regard to the evidence, particularly that of speed, and the actual and potential traffic, could not be supported."

Were the facts in this case as proved by the prosecution such as to support a verdict of guilty of dangerous driving?

On the evidence it is clear that the particular road in question was not a busy road and one in fairly good condition. The vehicle examiner said, "it is a little used road." "It is a good road." "One does not expect to find much traffic on that road."

In view of this a lorry travelling at 35-40 m.p.h. on that road could not be said to be driving dangerously.

Only one witness, the vehicle examiner, could assist the court as to speed. The other witnesses could not be said to put the rate of speed at anything higher than that of the vehicle examiner.

In coming to the conclusion that appellant was driving dangerously the learned judge must have been misled by what he thought was said but which in point of fact does not appear in the evidence, for he said to the assessors in his summing-up: "At about five miles to Rotifunk the lorry hit the nearside bank of a bridge approach—fell into a stream on its nearside." There was no evidence of this. The lorry did not hit anything.

Even the vehicle examiner could not put appellant's driving at any more than that he was driving without due care and attention.

In my view, there was no evidence whatsoever on which a verdict of either manslaughter or dangerous driving could be supported and on this ground alone the verdict of the learned trial judge should be set aside and the appeal allowed.