

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

ROSSOUW ANDRIS JOHANNES

Appellant

V

R E X

Respondent

JUDGMENT

Delivered by the Hon. Mr. Justice M.P. Mofokeng
on 23rd day of May, 1983.

This is an appeal from the magistrate Court of Maseru. Appellant was charged with culpable Homicide it being alleged that he killed Mpho Moloi by knocking him down with his vehicle. He pleaded not guilty but was convicted and sentenced to pay a fine of M200 or to serve 200 days imprisonment. He has now appealed to this Court against conviction only.

On the 19th July 1982 the deceased and another were proceeding to their home on the outskirts of Maseru. At one point they had to cross a very busy main road referred to in the Court a quo as Maeru T.Y. They stopped on the edge of the road and prepared themselves to cross. They waited for a vehicle to pass and when they thought the road was clear or safe they began to cross. The deceased was walking ahead. His friend, on seeing a car travelling in the direction of T.Y. stopped on the dotted lines, i.e. middle of the road at about the same time there was a car travelling in a "high speed" as he later told the Court in the direction of Maseru. He saw a

cloud of dust and later, at a distance (later measured at 22 paces from the point of impact) saw the body of the deceased. The evidence of this witness was corroborated by that of another crown witness who was, so to speak, an independent observer. To a large measure the appellant's version in broad outline did not differ much from the crown's version, except at the crucial stage.

The appellant gave evidence. He saw the two pedestrians when he was at a distance of 400 yds away. He blew his hooter. They had not yet entered the road. But thereafter the pedestrians began to cross the road. They were following each other. There was a vehicle also coming from the opposite direction. He saw them stop when they reached the broken white lines. He was now about 8 metres from them and the other car was also fast approaching. In his own words :

"I was satisfied that the people would not cross the road and I therefore proceeded on. All of a sudden one of the persons with a red blanket suddenly proceeded to cross the road and ran fast towards my vehicle and at this time I was very near towards where they were standing. I had the impression that she wanted to beat the car and cross the road before the car could reach the place".

All he did was to do swerve but the collision had occurred. About the collision he says :

"To me it seemed unbelievable that any person in a broad day light could walk towards a moving vehicle."

He stopped 150 yds away from the point of impact.

The appellant called one Tully as his witness. He told the Court what he saw but under cross-examination he conceded

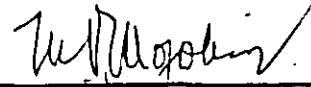
that "there was a car in front of us leading to T.Y." and this was an answer to the question why he could not see the two pedestrians before they stepped into the road. He further had to concede that he "thought" the deceased had walked into the appellant's vehicle.

The crux of this appeal is whether the 'crown' had established beyond reasonable doubt that the appellant was negligent at the relevant time.

The appellant saw the pedestrians when he was at a distance of 400 yds. He saw them enter the road to cross. They did not run. They walked. He does not say he reduced his speed of between 90 - 100 Km. He sounded his hooter once and they were then walking along the outside of the road. When he saw them enter to cross he did not warn them. Moreover, he saw a vehicle moving in the opposite direction. His vehicle and this other were going to pass each other at a point where the two pedestrians were standing according to the evidence. It was then that one of them suddenly moved on and he says he could not believe it. Such occurrences have been the subject of argument before the Courts. In the case of Rex v Clark, 1924 N.P.D. 343 at 350 it was held that it is the duty of the driver to be on his guard against a sudden movement or change of direction or sudden stop on the part of a pedestrian crossing the road. (See also Maama Letsie v Rex, CRI/A/54/77; Rex v Bakker, 1949(2) S.A. 113 at 114(N)). According to the evidence before Court nothing impeded the vision of the appellant. He just drove on at the speed he says he is used to despite the fact that his own witness said there was a

village nearby. I am satisfied that he was rightly convicted.

The appeal is dismissed. It is ordered that the appellant forfeits his appeal deposit.



J U D G E .
23rd May. 1983.

For the Appellant : Mr. Radebe.

For the Respondent : Miss Moruthane.