

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MOKHACHANE MOSHOESHOE

Appellant

v

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Acting Chief Justice,
Mr. Justice M.P. Mofokeng on 17th October 1983

The appellant (who will be referred to as the accused in this judgment in order to maintain the nomenclature in the Court a quo) was charged before the Subordinate Court Maseru with contravention of section 90(1) of the Road Traffic Act No.8 of 1981 in that he operated a motor vehicle recklessly or negligently as a consequence of which a collision occurred with another vehicle belonging to the complainant. He pleaded not guilty but after a lengthy trial he was found guilty or was sentenced to pay a fine of M100 (hundred maluti only) and in default of payment to undergo imprisonment for a period of five(5) months. He now appeals against that judgment.

The facts, in the bearest outline, are that the accused's motor vehicle was parked near the Government Garage - complainant was at that moment driving his motor vehicle along the main road in the direction of East to West. When he was near or passing the Traffic Department offices and was approaching the place where the accused's motor vehicle was parked, and was now almost close to where it was, the accused's motor vehicle joined the road on which the complainant's motor vehicle was travelling. As it entered the

/road,

road, it took a U-turn. A collision occurred.

At the close of the Crown's case the law is that unless the court considers that there is no evidence that the accused committed the offence charged in the charge or any other offence of which he might be convicted thereon, the Court shall ask the accused whether he intends to adduce evidence in his defence and if he answers in the affirmative, he may then proceed to address the Court for the specific purpose of outlining the nature of the defence evidence and he shall then examine his witnesses and put in and read any documentary evidence which is admissible (s.175(3) and (4) of the Criminal Procedure and Evidence Act 1981). There is no endorsement as to whether the accused was asked the initial question, but I have no doubt it was done. It will be realised that according to our law there seems to be no written law which provides the order in which the witnesses for the defence shall be called. For an example, the law in England was and still is as it obtains in this country and yet in practice it has been decreed by the Courts (and it has become law) that the accused shall give evidence first before he calls any of his witnesses. (Rex v Manamolela & Others, 1982(1) LLR in which the English decisions have been followed). In fact the English position was quite clear as early as 1911 in the case of R. v Morrison, where Lord Alverston, C.J. is reported as having said :

"That observation was interposed in the course of argument and was obiter, but it is an authoritative statement which this court reiterates and endorses as correctly stating the law."

(R. v Smith(Joan), 1968(2) All E.R. 115 at 116.

By interpretation that is also part of our law (see Lesotho Electricity Corporation v Forrester(2), 1978(1) LLR 100 at pp 112-113). However, for a contrary approach which is now embodied in the law of the country per se that accused must first adduce evidence before his witnesses is found in the Republic of South Africa (s.151(b)(i) of C.P.A., see also Van der Merwe, Paizes and St.Q Keen · EVIDENCE, 1983 Ed p.322).

The time of the collision was between 4.30 p.m. and

5 p.m.. That is during the time when Government offices close and civil servants go home. It is common knowledge that Maseru is a big town with a heavy vehicular population. The traffic at that particular time in the afternoon is at its highest peak. A person who, therefore, joins a busy road, such as Moshoeshoe road, and takes a U-turn is at the least guilty of error of judgment. This is putting it at its mildest. The various versions of what happened were as many as the witnesses. However, there was an honest witness (Mr. Mohapelo) for the defence who candidly said he never saw the two motor vehicles before the collision. When he came out the collision had occurred. The other witnesses were too ashamed to do the same. The learned magistrate saw all the witnesses. She observed them. She, on legal grounds accepted the complainant's version and rejected that of the witnesses on behalf of the accused. (Takalimane v Rex, CRI/A/35/83 dated 13th August 1983 at page 11). I find myself unable to disturb such a finding.

Coming back to the act of the accused in not only joining the road along which the complainant's vehicle was travelling but at the same time making or taking a U-turn was an act of the highest irresponsibility. He might have been in a great hurry to go and convey fee-paying passengers. I don't know. Certainly he was in a hurry. As a result he just pulled out where he had parked his car and without looking properly as to the state of the traffic, he literally leaped into the road without any warning to other users of the road.

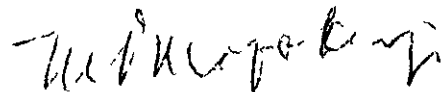
Negligent driving has been defined simply as failure to exercise reasonable care in driving a vehicle. (Cooper & Bamford: South African Motor Law, (1965 Ed) p. 314). That is what the accused did on the day in question putting it at its mildest. Perhaps what was irksome was the fact that the accused was unrepresented (although of quite sufficient intelligent). Speaking for myself, he is extremely lucky in that the learned magistrate took such a lenient view of the case.

The penalty prescribed by law for an accused convicted

of negligent driving is "M1000 AND 1 year imprisonment (s.90(4)(b)). It makes one almost jump out of ones skin. However, s.57(2) of the Interpretation Act says that the word "AND", where more than one penalty is prescribed for an offence, shall mean that the penalties may be inflicted Alternatively or Cumulatively. (My underlining).

The sentence is quite adequate and again the learned magistrate was too lenient. The rate at which accidents occur in Maseru has reached alarming proportions. Stringent sentences are now expected by the general public from the Courts where it is fitting. The Courts have issued too many unheeded warnings.

The appeal is dismissed.



ACTING CHIEF JUSTICE

17th October 1983

For Appellant : In Person
For Respondent: Mrs. Bosiu