

IN THE HIGH COURT OF LESOTHO

In the matter of

ABEL NKILO NHLAPHO

v

R E X

J U D G M E N T

Delivered by the Hon Acting Judge J L. Kheola on
the 4th day of June, 1984

The appellant was charged before the Magistrate of Butha-Buthe with a charge which reads

" In that upon or about the 1st June, 1983 and at or on Lipelaneng public road in Butha-Buthe district the said accused did wrongfully and unlawfully, recklessly or negligently drive motor vehicle B1145 on the said public road and as a result the said motor vehicle overturned.

The appellant pleaded guilty to the charge, and in terms of Section 240 1 (b) the public prosecutor outlined the facts of the case as disclosed by the evidence in his possession as follows

" On the 1st June, 1983 at about sunset accused drive motor vehicle B1145 on the public road leading to Leribe When he arrived at Lipelaneng the vehicle drove from side to side because it
/was .

was heavily loaded that is why it behaved like that Immediately the vehicle overturned the matter was reported to the police.

Police came to the scene There were no injuries accused was given a charge The vehicle belong to accused."

The Court found him guilty of negligent driving and sentenced him to pay a fine of R40.00 or, in default of payment to imprisonment for a month.

The main ground of appeal advanced by Mr. Kolisang on behalf of the Appellant is that the facts stated by the public prosecutor disclosed no negligence on the part of the Appellant. It has been held in many cases in this Court that if the statement of facts as accepted by the accused does not disclose that an offence was committed then the accused is entitled to an acquittal (Apell v Rex 1981(1) L L.R. 49, R. v Kofo Chali, Review Order 15/78 unreported and Jacob Dlamini and another v R CRI/A/ 46-47/78 unreported)

The facts in this case were that "the vehicle drove from side to side because it was heavily loaded " The mere fact that a vehicle is carrying a heavy load is not per se negligence, nor does it normally cause a motor vehicle to move in a zigzag. The Crown had to prove that the vehicle behaved like that because the accused was negligent If it were a case of Res Ipsa loquitur the Crown had to exclude mechanical failure by proving that the vehicle was in good working condition, that the condition of the road was also good and that there ..

there was nothing the appellant was trying to avoid when the vehicle started moving from side to side till it overturned (Rex v Koen 1937 A.D. 211 at p. 213).

For the reasons I have stated above I found that the Crown failed to prove beyond a reasonable doubt that the appellant was negligent. The appeal is allowed, the conviction, sentence and order that the driver's licence of the accused should be endorsed are set aside. The fine and appeal fee to be refunded to the appellant

J U D G E

4th June, 1984

For the Appellant Mr Kolisang

For the Respondent Miss Nku