CRI/APN/102/91

IN THE HIGH COURT OF LESOTHO

In the Application of :

TSELISO TSEKA

v

DIRECTOR OF PUBLIC PROSECUTIONS

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 7th day of June, 1991

In this matter the appellant Tseliso Tseka was charged with and convicted in the Subordinate Court first of Culpable Homicide - that is in Count 1; and next in Count 2 of contravention of the Traffic Act 1981 Section 88. He pleaded not guilty to both charges and the trial was conducted by the learned Magistrate evidence having been heard from both sides. The court below having convicted the accused now appellant in respect of Count 1 sentenced him to three years' imprisonment; and in respect of Count 2 to two years' imprisonment.

In my view what appears to be the central issue in the appeal or in this case is an unanswered question why it would appear that when the vehicle that the appellant was driving passed over a chain that was lying on the ground ~~the vehicle~~ it passed with its front wheels and there wasn't any accident when this happened. Yet the accident happened to occur only when the rear wheels were passing over this chain.

The Crown in the court below did not explore through questions either led on behalf of the Crown or in cross examination of the appellant that when this vehicle came and approached the chain that was lying on the ground there was any person near

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the chain or in front of this vehicle. So the driver in his evidence showed that when the front wheels of his vehicle passed over this chain there was nothing, i.e. there was nobody in front of him - and of course the Crown witnesses refer not to what happened at the time when the front wheels passed over the chain - they only refer to an incident that occurred when the rear wheels happened to get entangled in the chain and in the process dragged the deceased who was hanging on to this chain.

In my mind one thing becomes clear, namely, that at the time that the front wheels passed over the chain there was nothing to obstruct the driver from going ahead except perhaps the pleas or admonitions that he had heard a couple of yards before approaching this chain that the premises were not to be used as a thoroughfare and that the accused should make a U-turn and take a round about way back from where he had come.

It appears to me that at the time that the rear wheels were about to pass over this chain the deceased, no doubt, moved by the displeasure that he knew his master would display and had in fact expressed a number of times about vehicles which were using his private property as a thoroughfare raised and picked up the chain from where it was lying and in the process it dragged him; and that is, ... in my view, what is accountable for his regrettable death.

In order for anybody to be convicted of Culpable Homicide there has got to be proof of negligence. I don't find that there has been any negligence in this case. In order for anybody to be held liable for a homicide of the nature that I am confronted with here there has to be proof that the accused foresaw that an accident would occur but notwithstanding his having foreseen this possibility / did nonetheless forge ahead. It stands to reason therefore that if when the front wheels went over this chain which was lying on the ground there was nothing in the form of human obstruction

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standing ahead of him there is no way the accused could have been held liable for what happened behind his back in such circumstances therefore.

As far as Count 1 is concerned I find that the appellant is not guilty of Culpable Homicide. With respect to Count 2 I find that this count is so intricately linked with Count 1 in the sense that if the accused had heard a thud or had realised that he had caused an accident then he was obliged under Count 2 to have stopped. But in my view it appears that in the circumstances of this case when he realised that there was nothing that was likely to result in an accident at the time that the front wheels of his vehicle went over the chain he was at large to assume that nobody would be so rash as to pull up the chain before rear wheels moved over it, thus in the process get pulled by them and knocked to the ground. I don't think it would make any sense to say that when the accident resulted and he failed either to report it or in fact "decided to run away from it" this was proof that he had been aware of having caused any such accident. It is most unlikely that the appellant could have been aware of what the Crown witnesses themselves show happened outside the range of his vision and in any case behind him. It would have been otherwise if the accident was caused by his vehicle's front wheels as it was moving forward for then he would be accountable as a careful driver to ensure that he does not cause an accident because he would not be heard to say that he didn't see what lies ahead of his moving vehicle.

The Crown was obliged to have shown that the appellant actually was aware that the accident had occurred and that because he realised that the accident had occurred he decided to run away from it. Therefore in my view in the absence of proof that the accused realised that he had caused an accident there is no way that Count 2 can stand. I therefore set aside the conviction secured and the sentence imposed in the court below in respect of both the Counts referred to.

J U D G E
7th June, 1991

For Crown : Miss Moruthane
For Appellant : Mr. Mathe