

IN THE KIRIBATI COURT OF APPEAL ]  
CRIMINAL JURISDICTION ]  
HELD AT BETIO ]  
REPUBLIC OF KIRIBATI ]

Criminal Appeal No. 2 of 2014

---

BETWEEN REREINTETAAKE KANOOA APPELLANT

AND THE REPUBLIC RESPONDENT

Before: Paterson JA  
Blanchard JA  
Handley JA

Counsel: *Banuera Berina* for appellant  
*Tewia Tawita* for respondent

Date of Hearing: 12 August 2014

Date of Judgment: 15 August 2014

## JUDGMENT OF THE COURT

1. The appellant, Mr Kanooa, was sentenced by the Chief Justice to a term of imprisonment of 18 months and three years' disqualification from driving after pleading guilty to a charge of careless driving causing death. He appeals against the sentence of imprisonment.
2. The Summary of Facts on which he was sentenced, and which he did not seek to dispute at the time, recorded that between 7 am

and 8 am on the morning of 13 October 2011, accompanied by his wife, the appellant was driving his truck to his home in Ambo after a visit to their doctor. No other vehicles were on the road.

3. The Summary continues:

*“Upon arriving at the curved point further east from the House of Parliament, he suddenly hit a 13 year old girl namely Kabure Bozo whom she was running across the road to visit her friend at the other end of the road. The deceased was crossing the road to Bikenibeu direction as her friend was calling her from the other side (eastern side) of the road from Bikenibeu end.*

*The accused drove the truck in a speeding manner in that when he hit the girl, she was trapped underneath the truck and dragged along further to the right side of the road. He did not use the brake at any point before or at the place of contact because when the girl was dragged, she was brought a long way underneath the truck. The driver was also never gave horn at the moment before he hit the deceased.*

*The truck was happened to stop when it collided with the pandanus tree and a piece of log at the right side of the road. From the accident, the deceased suffered serious injuries which let her died immediately on that same day”.*

4. The Chief Justice had no doubt that this was a serious case. In his view, driving in a “speeding manner”, as submitted by the

prosecution, at a bend in the road was not only careless but also involved the risk of not having sufficient time to avoid accidents at that point in the road. In saying this the Chief Justice implicitly rejected the submission of Mr Berina that the defendant/appellant had not been exceeding the speed limit of 40 kph and that driving in a “speeding manner” in the Summary of Facts simply meant driving speedily within the speed limit. The same submission was made by counsel in this Court but we agree with the Chief Justice. If the appellant wished to make this assertion in the face of what we believe to be the plain and ordinary meaning of “speeding manner” in the Summary, he should have sought a hearing under s.269 of the *Criminal Procedure Code* to have that question determined by the sentencing Judge.

5. Returning to the Chief Justice’s sentencing notes, the Chief Justice considered whether there could be “a lenient sentence” including a fine. He referred to the appellant’s remorse, his apology to the deceased’s family, their forgiveness, his assistance with funeral expenses, his guilty plea at the earliest opportunity and his previous good character.
6. But the Chief Justice was of the view that the seriousness of the offence and the offending outweighed any consideration of a monetary penalty that might be seen as enabling a wealthy offender to buy his way out of trouble. It was, he said, an appropriate case for a custodial sentence, which would fall within the range of one to three years’ imprisonment. Allowing for the

early guilty plea, the Chief Justice arrived at a sentence of one year and six months' imprisonment (plus the disqualification which is not challenged).

7. On this appeal, made out of time but in respect of which we grant leave, Mr Berina criticised the comments of the Chief Justice in his rejection of the notion that there might be a fine rather than a custodial sentence (or resulting in a lesser custodial sentence). We consider, in agreement with the Chief Justice, that such an approach to sentencing in a matter of this seriousness would not have been adequate. A custodial sentence was inevitable and the task of the sentencing judge was to assess the degree of the appellant's carelessness leading to the death of the victim, balanced against the child's own neglect of her own safety, and to fix an appropriate term of imprisonment.
8. Mr Berina stressed that the Chief Justice had erred in saying that the carelessness of the appellant involved speeding on the bend in the road where he encountered the victim. He had seen the girl on the side of the road but had assumed that she would look in the direction of his truck and wait for it to pass. But, even if the fact that there was a bend is given no emphasis, the culpability of the appellant remains. Certainly the victim ran out onto the road from the left-hand side of the approaching truck, which she had not seen. But the appellant was either going at such a speed or was so unobservant that he had no time to put on his brakes or to sound his horn (or simply failed to do so) before the truck hit the girl and knocked her down. The speed of the impact is demonstrated by

the fact that the momentum of the truck ceased only when it came up against the pandanus tree and the log mentioned in the Summary.

9. The appellant admits that he saw the girl on the side of the road. Even when allowance is made for the girl running out on to the road, his substantial carelessness contributing in a major way to her death is quite obvious.
10. For these reasons the appeal against sentence must fail.
11. The appellant was granted bail pending a determination of his appeal and must now surrender himself to resume serving his sentence.



---

Paterson JA



---

Blanchard JA



---

Handley JA