

# IN THE HIGH COURT OF KIRIBATI

CRIMINAL CASE NO. 1 OF 2013

	[THE REPUBLIC	PROSECUTOR
	[	
BETWEEN	[AND	
	[	
	[KARARAU A MIKAERE	ACCUSED

Before: The Hon Mr Justice Vincent Zehurikize

6, 10, 17 & 27 October 2016

*Mr Taburuea Rubetaake* for the Prosecutor  
*Mr Aomoro Amten* for the Accused

## JUDGMENT

**Zehurikize, J:** The accused, Kararaua Mikaere, is charged with Dangerous Driving contrary to section 31(1) of the *Traffic (Amendment) Act 2005*.

The particulars of the offence are that on 12 September 2011 near Itoman Store at Bikenibeu, South Tarawa in the Republic of Kiribati, the accused drove a motor vehicle on a road, namely a truck in a manner dangerous to another person, which caused the death of a girl namely Nei Toana Farran.

At the trial, it came out that the motor vehicle involved in the accident is a truck registration No. KP 1588 belonging to KPC. The accused was

the driver. It was taking food to KPC youth. It was driven from Otan Maneaba in Bikenibeu to deliver the food at Antebuka and Bairiki.

According to the evidence of PW1 Bantara Kamauri, he was a passenger together with Nanikaai and both seated in the cabin together with the driver, the accused. The deceased was hit by the vehicle as the witness was trying to pick something down in the vehicle. He was however able to note that the victim was hit by the truck while she was running to cross the road. The truck was running at about 20-30 kmp. It was raining.

The other evidence which describes how the accident took place is that of the accused. The gist of his evidence is that the victim suddenly ran across the road and that it was impossible to avoid the accident.

The prosecution also relied on the accused's caution statement which was tendered by PW5 a Police officer, one Mweretaka Roobe in a bid to prove that the accused committed the offence as charged.

The other prosecution witnesses were PW2 a Police Constable who at the material time was driving behind the accused, but with a motorcycle in between. But it appears he did not witness what actually happened. However, he is the one who picked the deceased, put her in the Police vehicle he was driving and took her to Nawerewere hospital where she was pronounced dead.

PW3 is the Doctor who carried out the post mortem and in conclusion found that the cause of death was haemorrhage. PW4 is a Police Inspector of vehicles who found that the aforesaid truck had defective brake system.

At the closure of adducing evidence by both sides, Mr Rubetaake Counsel for the Republic and Mr Amten for the accused filed written submissions and also kindly treated me to oral clarifications.

The gist of Mr Rubetaake's submissions is that the accused drove the vehicle in a manner dangerous to another person – in this case the deceased for the following reasons:

- (I) He decided to drive the vehicle well knowing that it had defective braking system.
- (II) That he allowed food to be carried in the cabin thereby interfering with safe driving.
- (III) That the driver concentrated on the people who were walking on the road side instead of keeping proper look at and what was on the road.
- (IV) Counsel analysed a number of extracts from the accused's caution statement to impress it on the Court that the accused had actually admitted the commission of the offence by his own confession.

He concluded saying that the prosecution had proven the guilt of the accused in commission of the offence beyond reasonable doubt.

On the other hand Mr Amten for the accused contended that the accident was caused solely by the fault of the deceased when she appeared

suddenly from the other side of the road from amongst vehicles travelling to Bonriki and tried to cross the road.

Counsel further pointed out that the victim was a child of about 3 to 4 years. She was too small to be seen amongst the vehicles. That she was too young to understand her safety and the road rules. Thus she was a risk herself.

I have examined the evidence as adduced by both sides and considered the able submissions by both Counsel. Section 31(1) of the *Traffic (Amendment) Act 2005* provides:

**“A person must not cause the death of another person by driving a motor vehicle on a road or elsewhere at a speed or in a manner dangerous to another person or persons”.**

So the main issue in this case is whether the accused, in the instant case, drove the vehicle on the road at a speed or in a manner dangerous to the deceased.

Put in another way, if the prosecution is to secure a conviction, it must prove any of the following essential ingredients of the offence beyond reasonable doubt namely:

1. That the accused drove the vehicle at a speed dangerous to another person – the deceased or
2. That the accused drove the vehicle in a manner dangerous to another person – the deceased.

3. That the accused drove the vehicle at a speed and also in a manner dangerous to another person.

It is in light of the above that I will evaluate the evidence on record.

On the issue of speed, PW1 who was seated with the accused in the cabin told the Court that the accused was driving at a speed of 20-30 kilometres per hour. I do not find this speed to be high in the circumstances of this case as to have been dangerous to other road users including the deceased.

The other witness that could have been useful in regard to speed is PW2 who was driving behind the accused, although there was a motorcycle between them. This witness never told the Court that the accused was driving at a high speed or speed dangerous to any other person. As a person following the accused he must have been driving at the same speed as the accused. He was driving a Police vehicle.

The accused in his defence and in agreement with PW1 told the Court that he was driving at a speed of 20 to 30 kmp. That the accident happened when the deceased suddenly tried to cross the road from the lagoon side amidst many vehicles that it was too late to apply the brakes.

Considering the evidence as a whole I found that the cause of the accident was not due to overspeeding. There is no evidence that the accused drove at a speed dangerous to any other person including the deceased.

What remains is whether he drove the truck in a manner dangerous to any other person.

Mr Rubetaake for the Republic submitted that the accused decided to drive the truck when it had defective brakes. That he concentrated on people who were walking on the road side instead of keeping a proper look out on what was on the road.

Unfortunately the evidence adduced does not show that the accident happened due to failure to apply the brakes in time. It was the sudden crossing of the deceased that caused the accident. The accused explained that he had no time even to apply the brakes. There is no credible evidence that it was due to defective brakes that the accident took place.

There is no evidence to show that the accident occurred because the accused was not having proper look out for road users. Even bearing in mind people walking on the road side is a sign of good driving since in most cases there are the people who at any time may decide to enter the road in a bid to make a crossing. In fact he proved that he had a proper look out for all road users.

Counsel complained that the accused allowed food to be carried in the cabin thereby interfering with safe driving. Again I do not find any evidence that he was in any way obstructed by the food he was carrying in the cabin. The management of the food was the responsibility of PW1 and another who were seated in the cabin.

Lastly the extracts from the accused's caution statement were not confessions of guilt. They were in fact clear defences to the effect that

the accident happened because the deceased suddenly tried to cross the road. That her conduct surprised him so much so that he did not have time to step on the brakes.

In view of the above observation I find that there was no evidence to prove that the accused drove on the road in a manner dangerous to another person or persons including the deceased.

Consequently, in view of the above findings, it is clear to me that the prosecution has failed to prove the guilt of the accused on the required standard and for that matter I find him not guilty of the offence of Dangerous driving contrary to section 31(1) of the *Traffic (Amendment) Act 2005* and acquit him accordingly.

Mr Rubetaake prayed that in the alternative I should look at section 33A and convict the accused with any other offence under sections 31, 32 and 33 of the Act.

In order for a person to be convicted under sections 31(2) and (3) there must be proof of dangerous driving which I do not find in the instant case.

Section 32 of the Act defines dangerous driving, but does not in itself create offences upon which an accused can be convicted of.

Section 33 provides categories of offences of careless driving. In the instant case the evidence does not reveal any form of careless driving by the accused. Thus I am unable to find him guilty of any of these alternative offences which he was not charged with.

In the final result I do discharge and set the accused at liberty.

Dated the 10<sup>th</sup> day of November 2016

  
**THE HON MR JUSTICE VINCENT ZEHURIKIZE**  
Judge