



HIGH COURT OF KIRIBATI

Criminal Case No 1/2018

THE REPUBLIC

v

LI ZHAN HONG

*Pauline Beiatau, Director of Public Prosecutions, for the Republic
Mantaia Kaongotao for the accused*

FILE NOTE

- [1] By information filed on 15 February 2017 the prisoner was charged with careless driving causing death. A second information was filed 1 week later, charging dangerous driving causing death. On 24 April 2017 a third information was filed, charging dangerous driving causing death and dangerous driving causing grievous harm. On 20 December 2017 a fourth information was filed, adding a further count of dangerous driving *simpliciter*. The case was first mentioned by the court on 27 February 2018. On 30 May the accused was arraigned before the Chief Justice on the fourth information. He pleaded not guilty to all counts and the matter was listed for trial on 25 July. The Chief Justice ordered that the services of a Mandarin interpreter were to be secured for the trial.
- [2] The matter came before me for mention on 16 July. Counsel for the prosecution advised that a suitable interpreter had yet to be identified. Counsel for the prisoner said that he would be challenging the validity of the information, on the basis that it did not comply with section 70 of the *Criminal Procedure Code*. The trial date was vacated, and the matter re-listed for 3 December (subsequently moved to 4 December, to ensure availability of an interpreter). The defect in the information was not rectified by the Attorney-General until the first day of the trial, when a fresh information (signed by her) was filed. The new information reverted to a single count of careless driving causing death. The accused was re-arraigned and pleaded guilty.
- [3] Today, the accused has applied to withdraw his plea of guilty, after I pointed out that his explanation for the collision (*ie.* that it was caused by mechanical defects beyond his control) was inconsistent with his plea. Against the objection of counsel for the prosecution, I have granted the accused's application. His plea of guilty is vacated, and a plea of not guilty is recorded in its place.

- [4] Unfortunately the Mandarin interpreter was only available for 2 days. He will be returning to New Zealand tomorrow. The change of plea came too late to enable the trial to be concluded within the time remaining. A new trial date will need to be fixed, and arrangements will need to be made to secure the services of another interpreter.
- [5] Counsel for the prosecution asks that the accused's bail be revoked. I have been informed that, at the time of the alleged offence, the accused was a prohibited immigrant and unlawfully in Kiribati (his permit to enter and reside had expired on 19 October 2016, and a subsequent application for renewal was rejected). The Court retains the accused's passport, but it would be relatively straightforward for him to apply to the Chinese embassy in Fiji for a replacement, a process over which Kiribati would have no visibility. If convicted, the accused faces an almost certain custodial sentence. I consider that the accused poses an unacceptable flight risk. His bail is revoked, and he is remanded in custody until 14 December, at which time I should be able to fix a new date for his trial.
- [6] Counsel for the accused is at liberty to make a formal application for bail at any time. As I pointed out, such an application would need to include provision for measures to address my concerns about the accused being a flight risk. One option might be for the accused to put forward a sizeable surety, or for someone else to offer a surety on his behalf.
- [7] I have stressed to counsel for the prosecution that I consider that responsibility for securing the services of an appropriately qualified interpreter for the trial rests with the Attorney-General. It is for the State to ensure that the constitutional rights of the accused are safeguarded. I trust that there will be no difficulties in obtaining an interpreter for this matter in future.

Dated 5 December 2018.


Lambourne J
Judge of the High Court

