SKILANG IIARUO, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 264

Trial Division of the High Court

Palau District

May 27,1965

Appeal' from conviction in Palau District Court of reckless driving in violation of T.T.C., Sec. 815(b), as amended, in which accused, while driving motorcycle on highway, struck and injured child. On appeal, defendant contends that mere occurrence of accident, without ,showing of fault, does not infer reckless driving. The Trial Division of the High Court, Chief Justice E. P. Furber, held that some more serious fault than simple negligence must be shown to make one criminally liable for reckless driving, and that mere occurrence of accident does not raise inference of guilt.

Reversed and remanded.

1. Criminal Law-Admissions

   Apology to mother of victim of motorcycle accident does not indicate admission of blame or fault on part of one accused of reckless driving. (T.T.C., Sec. 815(b), as amended)

2. Criminal Law-Admissions

   Expressions of regret or apologies for another's injury are in public interest and should not be discouraged or held against accused in criminal proceedings as admission of anything not stated in them.

3. Reckless Driving-Fault

   Amendment to Trust Territory law defining reckless driving was not intended to make one criminally liable for crime simply for being involved in accident regardless entirely of question of blame. (T.T.C., Sec. 815(b), as amended)

4. Reckless Driving-Fault

   In amending Trust Territory law defining reckless driving, authorities intended to make clear that some more serious fault than simple negligence must be shown, and that violation is substantial misdemeanor warranting substantial sentence **if** guilt is shown. (T.T.C., Sec. 815(b), as amended)

5. Reckless Driving-Generally

   In construing legislation regarding crime of reckless driving, American precedents and theories must be considered and applied in Trust Territory. (T.T.C., Sec. 815(b), as amended)

6. Reckless Driving-Fault
   One is not to be held absolutely liable for any injuries caused by accidents in which he may become involved, but only for injuries caused by accidents for which he is to blame in some manner because of wilful wrong or negligence. (T.T.C., Sec. 815(b), as amended)

7. Reckless Driving-Fault
   Higher degree of blame is generally required for criminal liability than would be sufficient for civil liability.

8. Reckless Driving-Fault
   Elimination of words "so as to endanger" and retention of words "in such a manner as to be likely to endanger" in Trust Territory law defining reckless driving import legislative intention to require ·showing of substantial blame or fault. (T.T.C., Sec. 815(b), as amended)

9. Reckless Driving-"Likely to Endanger"
   Words "likely to endanger" as used in Trust Territory law defining reckless driving refer to conduct which it is naturally to be expected will cause danger. (T.T.C., Sec. 815(b), as amended)

10. Reckless Driving-"Likely to Endanger"
    Words "likely to endanger" as used in Trust Territory law defining reckless driving do not cover all conduct which may possibly result in danger, particularly if result is because of some circumstance one would not ordinarily anticipate. (T.T.C., Sec. 815(b), as amended)

11. Reckless Driving-Fault
    Mere fact accused in criminal prosecution was driver of vehicle involved in accident does not raise inference he is guilty of reckless driving nor of simple negligence as basis of civil liability. (T.T.C., Sec. 815(b), as amended)

12. Reckless Driving-Generally
    In order to find person guilty of reckless driving under Trust Territory law, trial court must be satisfied beyond reasonable doubt that accused has either wilfully or negligently driven so badly that there was good reason to expect he would injure persons or property which he know or should have known were in a position where they might be injured, or which he should have expected might properly be in such a position. T.T.C., Sec. 815(b), as amended)

13. Criminal Law-Burden of Proof-Reasonable Doubt
    Facts assumed by prosecution in criminal case which, if true, may show accused guilty of reckless driving, must be established by evidence beyond reasonable doubt. (T.T.C., Sec. 815(b), as amended)

14. Criminal Law-Burden of Proof-Reasonable Doubt
    Prosecution in criminal case involving reckless driving has duty to show beyond reasonable doubt that accused either did something he definitely

should not have done, or failed to do something which he definitely should have done. (T.T.C., Sec. 815(b), as amended)

15. Reckless Driving-Sentence

If accused in criminal prosecution is found guilty of offense of reckless driving in new trial after remand, sentence should be substantial and matter not treated lightly or as minor traffic violation. (T.T.C., Sec. 815(b), as amended)

FURBER, *Chief Justice*

This is an appeal from a conviction by the Palau District Court in its Criminal Case No. 2963 of reckless driving under Trust Territory Code Section 815 (b) as amended by Executive Order No. 93 of March 4, 1963. It is the first case in which this court has been called upon to determine the meaning of the change made in that section by Executive Order No. 93.

It is clear that the accused, while driving a motorcycle on a highway, struck and injured a child. The Assistant District Prosecutor, as counsel for the appellee, argued that this alone was sufficient to show violation of the last phrase of Section 815 (b) as amended-that is, to show that the accused was driving "in such a manner as to be likely to endanger" the safety of persons or property. This counsel also argued that the fact the accused and his mother had apologized to the victim's mother constituted an acknowledgment of guilt.

Counsel for the appellant argued that the accused was driving at a normal speed, not in the vicinity of any school or recreation area, did not see the child in time to avoid the accident, and had not been shown to be at fault in any way. He cited 7 Am. Jur. 2d, Automobiles and Highway Traffic, § 264, to the effect that the mere occurrence of an accident does not give rise to an inference of reckless driving, and Section 448, note 13, and Section 450 of the same article, for the proposition that a motorist is not

chargeable with negligence simply because he strikes a child who suddenly and unexpectedly darts into the road.

No evidence, except the testimony of the accused himself, was introduced as to how the accident happened or the circumstances leading up to it. The government witnesses admitted that they did not see the accident and testified solely as to what happened after it, including the fact that the accused and his mother apologized to the victim's mother, as stressed by counsel for the appellee.

[1, 2] This court can find nothing in the apology to indicate an admission of any blame or fault on the part of the accused, although he did admit that he was driving the vehicle in question. He expressed regret for the child's injury, but this was a most human thing clearly required as a matter of good manners and good community relations under Palau custom. It appears to the court that such apologies are very much in the public interest and should not be discouraged or held against an accused as an admission of anything that is not stated in them. Certainly any ordinary person regrets very much to be involved in an accident causing personal injury, regardless of who may be at fault.

Section 815(b), before the amendment made by Executive Order No. 93, read as follows:

"Reckless driving. It shall be unlawful for any person to drive any vehicle upon a highway carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property."

Executive Order No. 93 eliminated the words "carelessly and heedlessly", the words "without due caution and circumspection and at a speed", and the words "so as to endanger", and changed the remainder of the section to read as follows:

"Reckless Driving.

"It shall be unlawful for any person to drive a vehicle upon a highway in such a manner as to indicate a wilful or a wanton disregard for the safety of persons or property or in such a manner as to be likely to endanger such safety."

[3, 4] If proper emphasis is not given to the word "likely", the removal of the words clearly referring to negligence or lack of due care, taken alone, might raise an inference that negligence is no longer of importance in connection with this offense. When the change is considered in view of the history of the offense and the use in the United States of the words in the section as amended, however, it is believed that the legislative authorities could not have intended, and did not intend, to make one criminally liable for reckless driving simply for being involved in an accident regardless entirely of the question of blame, but intended quite the reverse, namely to make clear that some more serious fault than simple negligence must be shown, and that this is a substantial misdemeanor, warranting a substantial sentence if guilt is shown.

The words describing the offense in Section 815(b) as it was before the amendment, are almost verbatim the same as those in Section 19 of the former "Uniform Act Regulating Traffic on Highways", which had been held in one jurisdiction to only require a showing of simple negligence for a conviction. As a result there was doubt for some time whether anything more was necessary for conviction in the Trust Territory, although this court did finally hold that ordinarily something more than mere negligence in the operation of an automobile was necessary to constitute the offense under the former wording of this *section.lteno Senip v. Trust Territory,* 2 T.T.R. 227. *John Day v. Trust Territory,* 2 T.T.R. 421. The court takes notice from its own experience in cases it has been re-

quested to review that the thought that simple negligence was sufficient to constitute reckless driving, and the very light penalties often given for it by District Courts in the Trust Territory, were important factors in bringing about recommendations that the section be amended.

[5-7] The court recognizes that there is a tendency among many Micronesians to think that a person is either absolutely liable, regardless of blame or fault, for any injury caused by a course of conduct he engages in, or else is only liable for intentional injury. See *Ychitaro v. Lotius*, 3 T.T.R. 3. The whole matter of the operation of motor vehicles, however, is so foreign to the traditional Micronesian way of life, and the legislation involved here is so clearly based on American precedents, that it is believed those precedents and theories must be considered and applied in construing the legislation. A basic policy of American law is, with very few exceptions, not to hold a person absolutely liable for any injuries caused by accidents in which he may become involved, but to hold him liable only for injuries caused by accidents for which he is to blame in some manner-either because of wilful wrong or because of negligence; and generally to require a higher degree of blame for criminal liability than would be sufficient for civil liability. 38 Am. Jur., Negligence, §§ 4, 11, 44. 7 Am. Jur. 2d., Automobiles and Highway Traffic, §§ 263–273, and § 283. *Ychitaro v. Lotius*, above. 26 Am. Jur., Homicide, § 210.

[8-10] Considered in the light of the foregoing, the elimination of the words "so as to endanger", and the retention of the words "in such a manner as to be likely to endanger", appear to this court to import a legislative intention to require that substantial blame or fault be shown. Webster's New International Dictionary of the English Language, 2nd Edition, Unabridged, 1958, gives as its first definition of "likely". "Of such a nature or so

circumstanced as to render something probable;" and then goes on toward the end of the definition to distinguish between the synonyms "likely" and "probable" as follows:-

"That is likely (the stronger word) which there is good reason to expect or believe; that is probable which there is more reason to expect or believe than not; as, he is likely to come soon, the report is likely to be true; his coming is possible and even probable, the probable origin of the rumor."

Thus the words "likely to endanger", as used in the section in question, refer to conduct which it is naturally to be expected will cause danger, but they do not cover all conduct which may possibly result in danger-particularly if this result is because of some circumstance which one would not ordinarily anticipate.

[11] Once the need of showing the accused's blame or fault is clearly understood, it should be apparent that the mere fact that he was the driver of a vehicle involved in an accident does not, in and of itself, raise any inference that he is guilty of this offense. 7 Am. Jur. 2nd, Automobiles and Highway Traffic, § 264, n. 9. It does not even imply simple negligence which might be the basis of civil liability. 38 Am. Jur., Negligence, § 290.

An accident may be caused by a number of things, not involving any blame or fault on the part of a particular driver. It may for instance be due to some one else's wilful or negligent wrong, to some freak of nature, to a defect in a highway, or to some mechanical failure not reasonably to be expected. See: *!teno Senip v. Trust Territory*, above, and *John Day v. Trust Territory*, above, each involving an accident caused by sudden, unexpected, mechanical failure.

[12] The court therefore holds that in order to find a person guilty of reckless driving under the last phrase in Trust Territory Code Section 815 (b), as amended by Exec-

utive Order No. 93-that is, for driving a vehicle "in such a manner as to be likely to endanger" the safety of persons or property-the trial court must be satisfied beyond a reasonable doubt that the accused has either wilfully or negligently driven so badly that there was good reason to expect he would injure persons or property which he knew or should have known were in a position where they might be injured, or which he should have expected might properly be in such a position.

[13] In his argument on this appeal, counsel for the appellee assumed a number of facts that are neither shown in the evidence nor fairly to be inferred from the evidence. If those facts are true the accused may well have been guilty of reckless driving; but before he can properly be found guilty of that, those facts would have to be established by evidence beyond a reasonable doubt. It does appear from the evidence that the accused may have been guilty of violation of Section 814(h) for not stopping and giving his name and other information, required by that section, after the accident, but he was not charged with that.

Counsel for the appellant in his argument assumed other facts not shown by the evidence. It was of course proper to consider the possibility of such facts existing, as part of his argument to show the insufficiency of the proof, but in the absence of evidence of them, they cannot fairly be considered as anything more than possibilities. If counsel for the accused wanted these considered as facts in this case and felt that the prosecution had established a prima facie case, he should have introduced evidence of them as part of the defense.

[14, 15] Apparently because of misapprehension by all concerned as to the seriousness of the offense charged and its essential elements, neither the extent, if any, to which the accused was to blame for the accident nor the

details of how the accident happened were inquired into at all thoroughly. It is the firm belief of this court that in such cases the prosecution has a duty to show beyond a reasonable doubt that the accused either did something that he definitely should not have done, or failed to do something which he definitely should have done. To do this fairly where an accident is involved, the details of how the accident happened and the circumstances leading up to it should be carefully investigated, covered by testimony, and not left to inference any further than necessary. Then if the accused is found guilty of this offense as herein explained, he should be given a substantial sentence. The matter should not be treated lightly or as merely a minor traffic violation,

The finding and sentence of the Palau District Court in its Criminal Case No. 2963 have therefore been set aside and the case remanded to the District Court for a new trial or other proceedings not inconsistent with the holding set forth above.