

IN THE SUPREME COURT)
OF THE TERRITORY OF)
PAPUA AND NEW GUINEA.)

CORAM : OLLERENSHAW, J.

Friday, 25th February, 1966.

50376

THE QUEEN

v.

KELE - YAMOTO

REASONS FOR SENTENCE

The offender has pleaded guilty to, and has been convicted of the crime of unlawfully doing grievous bodily harm to one Patricia Noack for which the Code provides a maximum punishment of imprisonment with hard labour for seven years.

He is thirty six years of age and comes from Buketelm Village near Madang but has been employed in Port Moresby as a driver by successive employers for many years. I am told by his Counsel that he is now again employed as a driver, having obtained this fresh employment while on bail without disclosing this charge.

At the time of the offence he was employed as a driver by Morobe Constructions Limited of Six-Mile, Port Moresby, and had finished his work for the day.

It appears that in the evening he had a quarrel with his wife and asked his European superiors for permission to take a truck to look for her. This was refused for reasons which included that he was drunk and he was advised: "You had better go to sleep now and your wife is sure to be back tomorrow morning", to which he replied: "All right, I will go to bed and sleep with an axe and if my wife comes back I will kill her."

Nevertheless, he took the large Bedford Tipper Truck and drove it along the Hubert Murray Highway. When near the shops on this main road at Four-Mile he drove it from his correct side, across his incorrect side and on to and along the gravel shoulder for some distance until it came into a head-on collision with a Toyota Sedan Car which was

parked on the shoulder about four feet from the bitumen. The course of the truck and the locality are shown in the sketch.

It was about a quarter to eight at night. The driving lights of the car facing him were on low beam and its handbrake was on. The area was well lit. The truck pushed the car back for a distance of about seventy five feet and they finished up locked together opposite the Arcadia Theatre, as shown in the photographs.

Mrs. Noack was the driver of the car and she was sitting at the driving wheel waiting at the time for her husband who had gone to a shop. She suffered a gashed knee and a compound fracture of her left patella with the knee joint opened, the injury piercing into the joint. The lower end of the left thigh bone was damaged to a minor degree and there was a superficial laceration below the right knee. Her patella was removed in accordance with the usual and proper medical treatment. It is said that she will suffer permanent disability but this, apparently, is no more than the usual disability of a person of twenty seven years who has lost a patella. The matters stressed by Mr. Croft upon this aspect are details more fitting for a civil action.

However, it is the offender's conduct, for which there is his own explanation, that I must regard seriously. When spoken to by a Police Officer shortly after the collision he showed obvious signs of intoxication. When it was indicated to him that his vehicle was on its incorrect side of the road he replied: "I am on the correct side, they are on the wrong side." After refusing to allow a doctor to test him for sobriety he said to the Police Officer: "I want to tell you something", and after being cautioned he said: "That's all right. Tonight my wife left me with six children. The youngest is eight months and tonight I wanted to drive and just kill someone on the road."

The course he took to hit the car supports taking that explanation literally as meaning what it says and supports the conclusion that he deliberately drove out of his way to drive into the car. He had the advantage of being in a large truck and it seems to me that he drove at a considerable speed. He may not have seen the driver at the wheel but he certainly had a good long view of the car, parked as it was with its driving lights on at the side of this straight stretch of road. Even if he didn't hope that there was someone in it he showed a wanton disregard of whether it was occupied or not.

In response to the allocutus he said: "I was coming down the road and the car was parked close to the edge of the road and the lights of the car were on. As I came down the road a utility came out and as the utility came out I hit the woman and the police came and got me and I told them. The police came about ten or fifteen minutes after

it happened and said to me: "Did you break the law" and I said: "Yes it is true I came alongside the woman." That's all."

This is the first mention of another vehicle that he has ever made. None of the other witnesses saw or heard of it. I have no doubt that it is a recent after-thought. He has never disputed, nor has it been questioned on his behalf that he saw the car with its driving lights on. His course in driving across his incorrect side of the road and on to the gravel shoulder and continuing along there for quite a distance coming towards the car without ever putting his brakes on and in the circumstances I have mentioned point to his having deliberately driven against the car expecting it to be occupied or, at least, not caring whether it was occupied or not.

Mr. Hogan has asked for mercy, stressing his war service, the absence of any prior convictions and his large family. I do not overlook these matters for consideration and would wish to be as merciful as I feel I can be, particularly because of his children.

However, considering his conduct on this night, consistent with the explanation he gave for it at the time, I must take a serious view. As Mr. Croft says he might well have been upon a much graver charge. It is fair to say that but for the quarrel with his wife this would not have happened but the roads are dangerous enough without a menace of this type.

I impose a sentence of imprisonment with hard labour for four years.

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