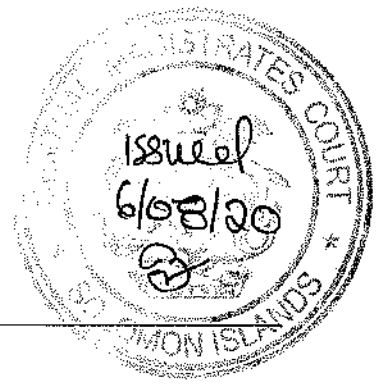


**IN THE SOLOMON ISLANDS MAGISTRATES' COURT
AT HONIARA**
Criminal Case No. 1039 of 2018



**REGINA
V
ROBERT KOUNI**

Before: Principal Magistrate Ms. Fatimah Taeburi
Mr. Steward Tonowane and Ms. Francesca Luza (DPP) for the Crown
Mr. Sholto Rodney Manebosa for the Defendant

Date of Trial: 24th to 28th February 2020
Date of Closing Submissions: 25th March 2020
Date of Judgment: 17th July 2020
Date of Sentence: 6th August 2020

SENTENCE

1. This is truly a heartbreaking case because a 3 year old innocent child was robbed of his precious and priceless life by the dangerous driving of the prisoner.
2. This prisoner was found guilty after a trial on one count of causing death by dangerous or reckless driving.
3. He admitted to drinking alcohol whilst driving and pleaded guilty to one count of presence of alcohol in person's blood. I convict him on his guilty plea.
4. In sentencing the prisoner, I consider the life of Henly Naima the victim in this matter. The remarks and comments in this ruling are meant to put value on his precious life.
5. I consider the loss, the pain and the sorrow suffered by the family of Naima.
6. These are the aggravating factors in this case;
7. The prisoner has been consuming alcohol hours before the accident. He was driving at a very high speed. It was estimated that he drove at about 80km/hr along

the Komabulu Road. The road was crowded with pedestrians. He was warned several times to slow down. He was informed that there were children walking along the road ahead. He disregarded all the caution and continued to drive at high speed.

8. At one point when told to slow down and when told that there were children along the road, the prisoner responded, "iu no tok lo mifala, mifala na garem licence lo road". Clearly he is a show-off who thinks that he knows more than everyone else just because of the fact that he can drive a vehicle. The cost of his arrogance was the life of an innocent child. That is not something to be proud of.
9. During the trial, he tried to put the blame on Naima. A portion of his case was that the child contributed to the accident. He raised that Naima and the other children were playing and pushing each other whilst walking along the side of the road. He said that he did not hit anyone and that somehow the poor child got underneath his left back tyre. He showed no remorse at all. What's even worse, is that he tried to blame the accident on the poor child that he had killed. He is rubbing salt into wounds that will never heal.
10. After he hit Naima on the road, he did not do anything to assist the poor child. He said that he stopped for a few seconds but then he took off. He went straight to the police station and turned himself in. He said in court that he was concerned about his own safety. It is quite astounding that he tried to run away from what he has done. His actions are truly cowardice.
11. In mitigation, I consider that he has no previous conviction. He is married and has two children.
12. I also consider that he has reconciled with Naima's family. He paid a substantial amount of compensation in custom. I am satisfied that reconciliation and customary compensation has the potential of repairing the relationship between parties. I hope that the reconciliation provides some comfort and healing to the parents and the family of child.
13. The sentence passed in this case must send a message to other drivers in this country that drunken drivers who kill innocent victims will be severely punished by the courts.
14. The maximum penalty for causing death by dangerous or reckless driving is 5 years imprisonment.¹ The maximum penalty for presence of alcohol in person's blood is 10,000 penalty units or imprisonment for 12 months or both.²

¹ Road and Transport Act [Cap 131]

15. I accept that all cases must be judged on their own facts and merits. I refer to other sentences passed in other courts for guideline and to ensure uniformity.
16. In the Court of Appeal case of *Regina v Kaukui*,³ the Court stated that in a case of causing death by dangerous driving, the sentences would range from 3 – 4 years imprisonment. Kaukui pleaded guilty to three counts traffic offences including one count of causing death by dangerous or reckless driving. He was initially sentenced to 18 months imprisonment suspended for 2 years. The DPP appealed against the sentence. The COA upheld the appeal, set aside the sentence and imposed a sentence of 3 years imprisonment.
17. In the case of *Regina v Meseptu* the accused pleaded guilty to causing death by dangerous or reckless driving. He was sentenced to 2 years and 6 months imprisonment.⁴
18. In both these case, the defendants were driving under the influence of alcohol.
19. In my view the appropriate sentence in this case is as follows;
20. Count 1 – Causing death by dangerous or reckless driving – 3 ½ years imprisonment.
21. Count 2 – Presence of Alcohol in person's blood – 3 months imprisonment.
22. Both sentences are to be served concurrently. In total the prisoner is sentenced to 3 ½ years imprisonment. The time he spent in custody is included in this imprisonment term.
23. I make an additional order that after the imprisonment sentence is expired, his driver's licence is to be suspended for a period of 1 year.

² Road Transport Act [Cap 131] as amended by the Police and Transport Legislation (Amendment) Alcohol Testing Act 2016

³ [2010] SBCA 2; CA-CRAC 11 of 2009

⁴ [2006] SBHC 15; HCSI-CRC 601 of 2005 (15 February 2006)

24. **Orders:**

- i. Convicted on one count of causing death by dangerous or reckless driving contrary to section 38 of the Road Transport Act [Cap 131];
- ii. Convicted on one count of presence of alcohol in person's blood contrary to section 43A(1)(a) of the Road Transport Act [Cap 131] as amended by the Police and Transport Legislation (Amendment) Alcohol Testing Act 2016;
- iii. Sentence to 3 ½ years imprisonment on causing death by dangerous or reckless driving;
- iv. Sentence to 3 months imprisonment on presence of alcohol in person's blood;
- v. Sentences to be served concurrently;
- vi. In total sentenced to 3 ½ years imprisonment;
- vii. Time spent in custody included;
- viii. Driver's license to be suspended for 1 year;
- ix. Order (viii) to be effective on expiration of imprisonment sentence.

25. Right to appeal within 14 days.



Ms. Fatimah Me'ere Taeburi
Principal Magistrate

Dated this 6th day of August 2020.