

R v Naupoto

Supreme Court, Neiafu

10 Lewis CJ
Cr 465/97

12 & 3 December 1997

Criminal law - manslaughter by negligence - elements
Manslaughter by negligence - element

20 The accused was charged with manslaughter arising out of a fatal motor accident. The case is reported only as to the element of the offence and the standard of negligence to be proved if a prosecution is to succeed.

Held:

1. Intention to kill or cause harm or injury is not relevant.
2. Negligence means negligence arising by a failure of a driver to exercise the duty of care owed by him/her to other people using the road.
3. In order to secure a conviction the Crown must prove a very high degree of negligence.

30 Cases considered : R v Bateman [1925] All ER 43
Andrews v D.P.P. [1937] AC 576

Statutes considered : Criminal Offences Act ss 86, 92

Counsel for prosecution : Mr Cauchi
Counsel for accused : Mr Vaipulu

Judgment

The elements of the offence of manslaughter by negligent driving are, therefore, that the Prosecution must prove beyond any reasonable doubt that:-

- the accused
- on or about the 29 March 1997 on the road at Ha'alaufuli
- was the driver of a motor vehicle and driving it negligently
- and by reason of his negligent driving, that is by breaching the duty of care owed by him to other persons using the road
- directly caused the death of another person using the road.

Intention to kill is not a requisite element of the offence. Intention to cause harm or injury or death is not relevant to the proof of a charge under s86(1)(b).

The negligent driving means negligence arising by a failure of the driver to exercise the duty of care owed by him toward other people using the road. In order to secure a conviction the Crown must prove a very high degree of negligence.

In R v Bateman [1925] All ER 45, it was said, "... in order to establish criminal liability the facts must be such that, in the opinion of the Jury, the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment."

The degree of negligence is not necessarily the same as that which is required for proof of the offence of dangerous driving. On the one hand there are acts which are unlawful irrespective of the manner in which they have been performed, on the other hand there are acts such as driving a motor car which are only unlawful when they are performed in a particular manner, when they are performed negligently.

Andrews v Director of Public Prosecutions [1937] AC 576 HL establishes the proposition that where the act is of a class unlawful only when performed negligently then if a person dies as the result of the performance of such an act the question whether the accused has committed the crime of manslaughter shall be considered exclusively on the basis of the negligent manslaughter doctrine.

As Lord Atkin said in Andrews, "simple lack of care such as will constitute civil liability is not enough; for the purposes of the criminal law there are degrees of negligence: and a very high degree of negligence is required to be proved before the felony is established."