

R v Taufa

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Supreme Court, Nuku'alofa
Hampton CJ
Cr No.1331/96

31 January, 1997

Criminal law - motor manslaughter - sentencing
Sentencing - motor manslaughter - disqualification

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The defendant (still a school boy) pleaded guilty to motor manslaughter. Driving recklessly he had lost control of his car, collided head on with another vehicle and killed one of his passengers.

Held:

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1. The driving was grossly negligent even if, immediately prior to impact, the right front tyre had burst as the defendant claimed.
2. The starting point for the sentence was 2 years imprisonment discounted by 6 months for the plea of guilty at the first available opportunity.
3. The sentence of 18 months imprisonment was suspended because of his age, the lack of previous offending, his own permanent injuries a broken necks, the delay of 18 months since the events - not his making.
4. On the conviction a maximum period of 12 months disqualification only was able to be imposed.

Statutes considered:

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Criminal Offences Act
Traffic Act

Counsel for prosecution : Mr Cauchi
Counsel for defendant : Mr Fakahua

Judgment

I have read with care the documents presented to me this morning by the prosecutor and had earlier re-read the summary of facts presented to me in Court when you pleaded guilty. I have considered the pre-sentence report from the Probation Officer and the separate report (the victim impact report) prepared by that officer in relation to the deceased boy's family. I have also seen and considered the medical report about you.

50 Still a school boy, you were the driver of a car on the 14th August 1995 involved in a fatal accident. Arising out of that accident, you were charged in this Court and appeared on 16th January this year on a charge of manslaughter by negligence.

You pleaded guilty to that charge and I note that was the first opportunity for you to do so in this Court where jurisdiction lay.

I should tell you at the outset so it is understood by you, and any one else, the seriousness of what you are appearing on, that manslaughter by negligence carries a maximum of 10 years imprisonment. That 10 year maximum is recognition by the legislature, by Parliament, that this is or can be serious offending, taking another person's life by gross negligence.

60 From all I have heard and read about this accident, for which you were the responsible driver, this was stupid and immature driving by you. Not only stupid and immature but dangerous, reckless and with fatal results. There was a load of 5 other school people, children, on board. I am sure you were showing off. And, in your showing off, you killed one young man and injured some 5 of 6 other people including yourself. That is what showing off in a vehicle leads to, it leads to death and to injury. With this loaded vehicle, and I have some concern about its state and its safety, you decided because you had been overtaken by a motor cycle to try and catch up with the motor cycle and overtake it yourself.

70 You were travelling at speed, you lost control, you went on to the wrong side of the road, and collided head on, with the other vehicle that did its best to avoid you, but you went straight into it.

There is a suggestion made by you in the interview, made by you to the Probation Officer, that at some stage immediately prior to the fatal impact, the right front tyre on the car burst. The prosecutor has nothing on his file, he tells me, that either substantiates or, more importantly, can eliminate that suggestion by you.

80 I take account of it but even with that there, the driving by you in these circumstances, particularly with your inexperience and without your ever having obtained a driver's licence, was grossly negligent, was reckless, in any event. Reading the accounts of what occurred, you are perhaps fortunate that only one person died. You were seriously injured yourself, you fractured your neck. Fortunately you did not sever your spinal cord, it would seem.

You had a long hospitalisation as a result of that and you still are at risk from future physical activities because of that injury. The affect of the death of this boy, on the boy's family, has been considerable. It concerns me, as it concerns that family, that there has been no attempt, certainly no proper or appropriate attempt, by you or on your behalf to express any apology and contrition about what has occurred.

90 I accept that some of that lack of appropriate apology may have come from the fact that you are, and have been for sometime, very much alone in Tongatapu. In relation to

the accident, I add that there is no suggestion that you were affected in any way by alcohol or any other substance.

It is my view that for an offence such as this imprisonment is not only justified, it must be the sentence that is looked at by this Court. It seems to me that the starting point here, having regard to the circumstances I have outlined, an appropriate starting point would be a term of 2 years imprisonment.

Given the guilty plea that you entered at the first available opportunity in this Court, I am justified, I believe, in discounting that 2 years somewhat, back to 18 months. That term, 18 months, is the term of imprisonment that I intend imposing on this conviction for manslaughter. It marks the seriousness of the taking of a life by you.

The question then, which is one which I have anxiously considered, is whether I would be justified and whether it would be appropriate, to consider suspending all or part of that sentence.

On balance I have decided in favour of suspending the whole of that prison term. I do so for these principle reasons:

- you were 17 years of age at the time of this accident, now 18;
- you were still a secondary school pupil at the time;
- you had not previously offended;
- you have been left with considerable physical and other reminders, seemingly permanent, of what occurred in this accident and which will restrict your future life to some extent;
- it has been something like 18 months now since the accident occurred, the delay has not been of your making, but the result is that this prosecution has been over you, has had its affect upon you, for some considerable time now.

I intend to suspend the 18 months imprisonment for the maximum time I can which is 3 years. Such a sentence is conditional on your not being convicted of any other offence punishable by imprisonment during that 3 year term. If you are convicted of any other offence in the next 3 years you go straight into prison to serve this 18 months term which I have just imposed on you. Do you understand that?

I do so act in this way, suspend the sentence, against to some extent my better judgment because of your age and your intent still to further your education. To send you to jail, to make you serve a term, might put an end to your educational hopes and to your future employment hopes. I want to avoid doing that to a young man. do you understand that? This is a chance that is being given to you, its a once only chance. I expect on behalf of the community, this country, that you are going to take and make something of this opportunity, and make something of your life, and give something back to this community from which you have taken a life.

Mr Cauchi, I am concerned that still I seem to be tied, my hands tied, as to the length of time I can disqualify a person from driving. It was something that I raised sometime ago now. I anticipated that it was going to be amended and soon, but it has not been i.e. the maximum disqualification in the Traffic Act. The Amendment Act No. 10 of 1991, it seems to me, constrains me from, or prevents me from, disqualifying a person in these circumstances for any longer than 12 months.

I have it in front of me, you can have a look at it if you like. If you can persuade me, that allows me to do anything else, that is the Amendment to the Traffic Act, I will be

content to hear the argument.

Mr Cauchi : I am surprised to hear that, Your Honour!

Court : Well, this is in the Traffic Act which deals with the ability of Court to disqualify. For certain offences of drunken driving causing death and reckless driving causing death it prescribes longer terms of disqualification. It seems to me that subsection 3 of section may have some effect.

Mr Cauchi : I think I have to go with Your Honour's interpretation.

150 Court : It seems extra-ordinary but that is the view I have reached Mr Cauchi and it is something that I draw to your attention as still needing some quick amendment?

Mr Cauchi : So, in other words, if I have read it correctly, the only way you can impose the lengthier disqualification, is only for those particular offences. And in any other case, the subsection 3 applies.

Court : It seems so to me Mr Cauchi and that's why I draw it to your attention. Perhaps you can make some inquiries where the Amendment Bill is, there was one around last year and I am not sure where it has got to?

160 Mr Cauchi : I'll do that Your Honour!

Court : Thank you.

If I had been able to do so, I would have disqualified you from driving for a very long time, but the law, it seems to me, prevents me doing any more than imposing a disqualification for a term of 1 year.