IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

CRIMINAL CASE No. 9 of 1999

(Criminal Jurisdiction)

PUBLIC PROSECUTOR -v- JOHN MALON TALEO

Coram: Chief Justice Lunabek Vincent

Mrs. Heather Leo, the Public Prosecutor
Mr. Hillary Toa for the Defendant

RESERVED JUDGMENT

This is an appeal from the Public Prosecutor against the decision of the Magistrate's Court sitting at Port-Vila on 8 July, 1999.

Magistrate Steven Felix who presided over the trial, acquitted the defendant on a charge of Careless Driving, contrary to Section 14 of the Road Traffic (Control) Act [CAP 29].

On 13 September 2000, upon reading and considering the learned counsels respective written submissions, I came to the conclusion that the appeal must be allowed and directed that the judgment of the learned Magistrate of 8 July 1999 be quashed and the accused be retried before a Magistrate's Court differently composed. I reserved the reasons of the judgment.

I set out below the reasons of that decision.

Section 14 of the Road Traffic (Control) Act provides:

> *"A person who drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road shall be guilty*

of an offence and liable on conviction to a fine not exceeding an amount of Vatu 50,000 or to imprisonment for a term not exceeding 6 months or to both."

The learned Magistrate acquitted the defendant on the following basis:

- *"We have no prove of carelessness. What we have is an accident. We have undisputed evidence of damages on the vehicle in question, but we cannot say that, because there is an accident it must automatically be the result or consequences of the driver's carelessness. If that is the Prosecution's assumption then this Court will not accept. There is no proof that there was no danger or obstacle that would force the drive to go on the other side of the road and that the accident is a direct end result of the driver's pure carelessness."* [See judgment under Appeal at p.3].

Two considerations ought to be made which constituted the substance of this appeal.

The first point for consideration is the criminal standard of proof of beyond reasonable doubt.

It transpires from the judgment under the appeal that the Learned Magistrate's statement and conclusion of law reflected upon his understanding and approach of the criminal standard of proof, which is as follows:

"Based upon the evidences adduced by the Prosecution, it shall be the duty of this Court to weight those facts and if the Court is satisfied that the elements of the charge are made out beyond reasonable doubt then the Court shall convict but if there exist some even small amount of doubt the Court shall acquit the defendant." [See judgment under Appeal at p.1].

His worship correctly directed that it is the duty of the Court to weigh the facts and if the Court is satisfied that the elements of the charge are made out beyond reasonable doubt then the Court shall convict the defendant.

The learned Magistrate, however, erred in law and principle in directing that "...if there exist some even small amount of doubt the defendant shall be acquitted."

The doubt must not be a fanciful or frivolous one. The doubt, if any, must be a reasonable doubt in the mind of the trial Magistrate warranting the acquittal of the accused in a trial. In a situation where an accused person gives no evidence nor calls a witness to give evidence in his defense, the Magistrate is entitled to draw inferences from the proven facts and if he/she is satisfied on the required criminal standard of proof, then, he/she can convict the accused.

In criminal trials, the law is that the prosecution has a duty to prove each and all the elements of the offence against an accused person beyond a reasonable doubt. This is a very high standard of proof. The prosecution is not required to prove its case on the basis of an absolute proof or proof beyond the shadow of any doubt. As Lord Denning put it in Miller v. Minister of Pensions (1947) 2 All ER (at p.372):

"It would not reach certainty but it must carry a high degree of probability".

If the prosecution is required to prove its case beyond the shadow of any doubt or to reach certainty in proving its case against an accused, then, convictions will be difficult or impossible. As a result, the enforcement of the criminal law will be meaningless. The criminal justice system will be of no relevance. The society, governments, leaders and the people will be at the will and mercy of those who carry laws in their own hands because it will be impossible for the prosecution to secure their convictions. This can lead to a progressive destruction of the orderly society under the rule of law.

The above statement is made bearing in mind of the fundamental duty of a Judge/Magistrate to conduct fair hearings, act impartially and decide independently by applying the law to the facts as found in the particular case before him/her.

The second point for consideration under this appeal, is in respect of Section 14 of the Road Traffic (Control) Act [CAP 29].

> *"A person who drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road shall be guilty of an offence and liable on conviction to a fine not exceeding an amount of Vatu 50, 000 or to imprisonment for a term not exceeding 6 months or to both."* [Emphasis added].

Section 14 of the Road Traffic (Control) Act creates two separate offences or situations but the same penalty. The two separate offences are as follows:

(a) driving without due care and attention; or
(b) driving without reasonable consideration for other persons using the road.

The defendant was charged with the offence of "Driving without due care and attention", contrary to Section 14. The elements of that offence are:

(i) a person who is the driver
(ii) a vehicle
(iii) a driver driving vehicle on the road
(iv) a driver driving without due care and attention.

It is clear from the Judgment under the appeal that the Learned Magistrate erred in law in defining what constitute '*driving without due care and attention'* under Section 14 of the Act.

The Learned Magistrate was quite right when he says:

"...we cannot say that, because there is an accident it must automatically be the result or consequences of the driver's careless. If that is the prosecution's assumption, then this Court will not accept..." (at p.3 of the judgment).

However, the decision depends on the particular circumstances of the individual case at hand.

The offence under Section 14 of the Road Traffic (Control) Act [CAP29], can be committed although no accident takes place; equally because an accident does occur it does not follow that a particular person has driven either without due care and attention or driving without reasonable consideration for other persons using the road, but if he has, it matters not why he did so.

The question for the magistrate is: was the defendant exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances? If he was not, the Magistrate should convict; if, on the other hand, the circumstances show that his conduct was not inconsistent with that of the reasonably prudent driver, the case has not been proved.

On the facts stated, there is evidence that the defendant was seen driving Police vehicle POL 05 on February 27, 1999 along seaside road – No.2 road at high speed. He went off the road and hit a gate and, then, got stuck in the hibiscus hedges on the roadside. He had been seen driving the vehicle since 1.30 am early morning. The defendant did not give evidence. He had exercised his right of silence. He should not and must not be criticised of doing so. However, it was not found that the driver was confronted with a sudden emergency through no fault of his own. The circumstances of this case seem to show, on the contrary, that the conduct of the Defendant, was inconsistent with that of a reasonably prudent driver.

In these circumstances, it was appropriate in law to direct that the learned Magistrate erred in law in:

(i) discharging the defendant of careless driving;

(ii) deciding there is no prove of careless driving without applying the correct test and/or applying the law to facts as found;

(iii) defining what constitutes careless driving in accordance with Section 14 of the Act;

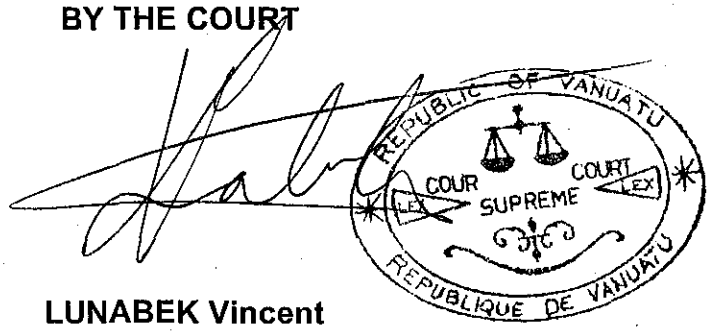
(iv) acquitting the defendant on reasons outlined in his decision dated July 8, 1999.

Decision

The appeal is allowed. The judgment of the Learned Magistrate of 8 July, 1999 is quashed and the defendant, John Malon Taleo, is to be retried before a Magistrate's Court differently composed.

DATED at PORT-VILA, this 19 DAY of FEBRUARY, 2001

BY THE COURT



LUNABEK Vincent
Chief Justice