



IN THE DISTRICT COURT OF NAURU

CRIMINAL JURISDICTION

Criminal Case No 18 of 2019

THE REPUBLIC

-v-

CHRISHILDA AKUBO

JUDGMENT

Before: RM P. R. Lomaloma
For the Prosecution: Filimoni Lacanivalu
For the Defendant: Sevuloni Valenitabua
Trial: 21, 28 January, 4 February 2020
Judgment: 14 February 2020

Catchword: *Recklessness, section 17 of the Crimes Act 2017; Dangerous Driving; Reckless about causing damage and Reckless about causing harm the test to be applied; harm. Section 10 of the Crimes Act—the purpose of Part 3 of the Crimes Act is to codify, not replace the general principles of criminal responsibility in the common law.*

Introduction

1. On 25th June 2019, the defendant was under the influence of alcohol and drove a vehicle in a clockwise direction towards the Ron Hospital at Denig. She came from Nibok.
2. Eileen Hiram was driving her black van to work in the same direction as the defendant between 2-3 pm. Eileen was in front of the Stardonna Store in Nibok when her vehicle was hit from behind by the vehicle driven by the defendant. Eileen tried to control her vehicle but was hit from behind again by the defendant, forcing her vehicle off the road where it collided with a shipping container and a trailer on the side of the road. As a result of the collision, she lost consciousness and suffered injuries. Eileen's car was damaged in the accident.
3. The defendant continued driving in a clockwise direction towards the Martin Shop.
4. Blackie Ephraim was inside his vehicle stopped in front of the Martin Shop. He heard a loud bang. He looked at the road in front of the shop and saw a car overtaking another car. The overtaking car was travelling in an anticlockwise direction. It collided with another car going in the opposite direction. After the collision, the overtaking car swerved and accelerated towards the Martin shop where it collided with the vehicle in

- which Blackie was sitting. As a result of the collision, Blackie's vehicle was thrown about 15 meters to the other side of the road from where he was stopped. The car that collided with his vehicle had ended up with its front striking the Martin shop, causing damage to it. As a result of the collision, Blackie Ephraim blacked out and the pain from a previous injury caused in an earlier accident returned. He suffered pains to his lower back to this day as a result of collision. The car which had collided with his vehicle was the same vehicle driven by the defendant which had just collided with Eileen's vehicle.
5. The medical report of Eileen Hiram, tendered as part of the agreed facts shows that she suffered headaches and neck pain as a result of the collision. Ephraim Blackie's medical report shows that he suffered lacerations to his right leg.
 6. As a result of this chain of events, the defendant was charged on 26th June 2019. Later, the charges were amended and she faced 6 charges as follows:-
 - (a) One count of dangerous driving contrary to section 67(1) of the Motor Traffic Act of 2014 to which she has pleaded guilty;
 - (b) Count 2: Damaging property contrary to section 201 of the Crimes Act 2016 for the damage caused to Martin Store;
 - (c) Count 3: Recklessly causing harm contrary to section 75(a)(b)(c) and (ii) of the Crimes Act for the injuries caused to Eileen Hiram;
 - (d) Count 4: Damaging property contrary to section 201 of the Crimes Act 2016 for the damage done to Eileen Hiram's vehicle;
 - (e) Count 5: Recklessly causing harm contrary to section 75(a)(b)(c) and (ii) of the Crimes Act for the injuries caused to Blackie Ephraim; and
 - (f) Count 6: Damaging property contrary to section 201 of the Crimes Act for the damage done to Blackie Ephraim's car.
 7. The facts above is compiled from agreed facts and the evidence of Blackie Ephraim (PW1), Scott Kam (PW2) and Eileen Hiram (PW3) who testified on 21 January for the prosecution.
 8. At the end of the prosecution case, counsel for the defendant made an application for no case to answer. I ruled on 28 January 2020 that she had a case to answer and put her to her defence. She opted to give an unsworn statement.

Unsworn Statement of the Defendant

9. The defendant said that she is 40 years old and lives in Yaren. She recalls that on the 25th June 2019, she went to drop some children off at Kayser College at about 8:00 a.m. She then went to Civic and withdrew \$250 from the bank. She then went to Capelle's and bought a bottle of vodka. She then went to a Chinese shop and bought 2 small bottles of water. She then got into her car and drove to Anibare to David Angimea's residence. There she mixed 2 drinks and drank them. She then went to Nibok to Aloysia's place. They spoke and the conversation became heated so she returned to Yaren where Caruso lives. Caruso told her to return to her father's residence and sort out the matters that they had been arguing about. When they reached there, Caruso told her to remain in the car as she was too drunk. Caruso told her he will report her to the police if she refused. From there she went to a friend's place where the Babylon store is and they were telling stories. She does not remember anything after that.

Dangerous Driving.

10. The defendant pleaded guilty to this offence on 30th October 2019. The summary of facts state that on the 25th of June 2019, the police received a report at about 2:29 p.m. that the defendant was driving a motor vehicle on a public road from Nibok to Denig District in a manner that was reckless. She was reckless in her driving and as a result, she crashed into 2 vehicles at Denig District before crashing into Martin Store. Police officers who were near the scene heard and witnessed the defendant crashing into one of the vehicles and Martin store. The police officers rushed to her car and managed to get her out. They carried her to a safe place and noticed that she was fully drunk. An ambulance arrived and took her to the RON Hospital nearby. The defendant on the above date drove a motor vehicle on a public highway recklessly in a manner dangerous to the public.
11. She agreed to these facts.

Analysis

12. I am satisfied that from the evidence above, the prosecution has proved beyond reasonable doubt all of these elements of the offence for counts where applicable:
- (a) That the defendant was driving a vehicle on the date in question;
 - (b) That she collided with Eileen Hiram's vehicle causing damage to it and injuries to Eileen (counts 3 & 4);
 - (c) That she collided with Martin store causing damage to it (count 2); and
 - (d) That she collided with the vehicle of Ephraim Blackie causing damage to it and injuries to him (counts 5 & 6).
13. The only issues left are the injuries and whether the defendant was reckless about causing harm or the damage.

Causing Harm

14. Harm is defined in section 8 of the Crimes Act to include physical and mental harm. In R v Lee [2001]¹ Crispin J of the Supreme Court of the ACT cited with approval, the following definition of bodily harm:

*"actual bodily harm" means no more than some bodily injury, which need be neither permanent nor serious. A small bruise, abrasion, scratch or even causing a "hysterical and nervous condition" is sufficient.*²

15. I am satisfied that the evidence reveals that Eileen Hiram and Ephraim Blackie suffered harm as a result of the accidents for the purposes of the counts above.
16. The offence of dangerous driving is defined in section 67(1)(a)(b)(c) of the Motor Traffic Act 2014 as:

67 Dangerous driving

¹ ACTSC 133 (21 December 2001)

² . See R v Miller [1954] 2 QB 282; R v Chan-Fook [1993] EWCA Crim 1; (1994) 99 Cr App R 147.

(1) Any person who drives a motor vehicle upon a public highway negligently, furiously, recklessly, or at a speed or in a manner dangerous to the public commits an offence and is liable upon conviction to the suspension of his or her driver's licence for a period of one year and is subject also to any of the following:

(a) a fine of \$1000; or

(b) imprisonment for six months; or

(c) both a fine and imprisonment.

(2) In considering whether an offence has been committed under this section, the Court shall have regard to all the circumstances of the case, including:

(a) the nature, condition, and use of the public highway upon which the offence is alleged to have been committed, and

(b) to the amount of traffic which was, or might reasonably have been expected to have been, upon that public highway at the time.

Dangerous Driving

17. In *R v Gozney*³ Lord Justice Megaw, writing the judgement of the Court of Criminal Appeal said:-

We would state briefly what in our judgment the law was and is on the question of fault in the offence of driving in a dangerous manner. It is not an absolute offence. In order to justify a conviction, there must be, not only a situation which, viewed objectively, was dangerous, but there also must have been some fault on the part of the driver, causing that situation. "Fault" certainly does not necessarily involve deliberate misconduct recklessness or intention to drive in a manner inconsistent with proper standards of driving. Nor does fault necessarily involve moral blame. Thus there is fault if an inexperienced or naturally poor driver, while straining every nerve to do the right thing, falls below the standard of an experienced driver, in relation to the manner of driving and to the relevant circumstances of the case. A fault in that sense, even though it might be slight, even though it might be a momentary lapse, even though normally no danger would have arisen from it, is sufficient. The fault need not be the sole cause of the dangerous situation. It is enough if it is, looked at sensibly, a cause. Such a fault will often be proved as an inference from the very facts of the situation.

18. The circumstances of the case have been set out in the summary of facts: the road was a public highway; the time was about 2:30 pm and it was being used by other motorists; The defendant was drunk and she drove from Nibok to Denig District. This portion of

³ [1971]3 All ER 220 at 224,

the road is not straight and the defendant managed to steer her vehicle around the bends and other road users until she hit the vehicles at Denig District and the Martin store.

19. In AG's Reference (No. 2 of 1992[1993])⁴ Lord Taylor of Gosforth CJ delivered the judgment of the English Court of Criminal Appeal on a case where automatism in a driving situation was considered by the Court. His Lordship referred to Broome v Perkins [1987] RTR 321 where it was said:

*If during a part or parts of the journey they were satisfied that his actions were voluntary and not automatic, at those times he was driving.... When driving a motor vehicle, the driver's conscious mind receives signals from eyes and ears, decides on the appropriate course of action as a result of those signals and gives directions to the limbs to control the vehicle. When a person's actions are involuntary and automatic his mind is not controlling or directing his limbs.*⁵

20. The facts show that the defendant drove her vehicle for some distance from Nibok District to Denig District. . The defendant's vehicle hit Eileen's car. She did not stop. She hit it again forcing it off the road. She then continued to drive and hit another car stopped next to the Martin Store and then hit Martin store.
21. She had to have been conscious at the time of the signals she was receiving from her eyes and her ears to maneuver her car through traffic and safely within her lane in the road until she bumped Eileen's vehicle. She then continued to maneuver her car till she hit the vehicle near Martin Store. A conscious mind must have been in control of the vehicle until it finally hit the vehicle outside Martin store. The fact that she cannot now remember what she did is irrelevant. People often forget things after the accident. In this case, because she was intoxicated, she could have suffered a "blackout," or the trauma of the accident could cause memory loss, or she could be lying. Forgetting what happened is not the issue when dealing with the fault element of an offence. The issue as I have held above is her fault element, or mental element at the time of the offending.
22. I conclude from this that the defendant was conscious and in control of her senses and limbs and drove the vehicle while she was drunk. Self-induced intoxication is not defence.⁶ She hit two vehicles and then the Martin store. Colliding with another vehicle is dangerous. The test for dangerous driving set out in R v Gozny above, requires that we ask two questions, namely, (1) did her standard of driving fall below the standard of a careful and competent driver? And (2) can her fault be inferred from the fact situation itself? The answer to both these questions is yes. A competent and careful driver, knowing that she is drunk will not drive on a public highway in the afternoon because there are bound to be other road users, including pedestrians on the side of the road. A

⁴ 4 All ER 683

⁵ Ibid at 688

⁶⁶ Section 43(2) of the Crimes Act 2016

competent and prudent driver would have realized that there was a real risk of her hitting another vehicle again or another person if she continued driving. That was a dangerous situation but she continued to drive. Knowing the substantial risk she posed, she decided to keep driving. She was therefore reckless and her standard of driving fell below the standard of a competent and prudent driver. On this basis, her driving was dangerous.

23. I find further that the defendant, by admitting to her recklessness in the summary of facts is guilty as charged. As discussed later herein, recklessness is to be given its common English meaning and she is capable of admitting that her driving was reckless.

Conclusion on Dangerous Driving

24. I find the defendant guilty of dangerous driving.

Counts 2 to 6—Recklessly Causing Damage and Recklessly Causing Harm

25. I turn now to the other offences in counts 2 to 6 of the charge. From the facts, there is no doubt that she caused damage to the vehicle owned by Eileen Hiram(count 4), to Martin Store(count 2) and to Blackie Ephraim's vehicle(count 6). All these counts have recklessness as the fault element of the offence.
26. There is no doubt also that she caused injuries to Eileen Hiram(count 3) and Blackie Hiram(count 5).

Damaging Property

27. Damaging Property is defined in section 201 of the Crimes Act:-

201 Damaging property

A person (the 'defendant') commits an offence if the person:

(a) causes damage to property belonging to another person, or to the defendant and another person; and

*(b) is **reckless** about causing damage to the property.*

Penalty: 5 years imprisonment

28. Recklessly causing harm is defined in section 75(a)(b)(c)(ii) of the Crimes Act as:-

75 Recklessly causing harm

A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct causes harm to another person without the person's consent; and

(c) the person is **reckless** about causing harm to that or any other person by the conduct.

Penalty:

(i) if aggravating circumstances apply—7 years imprisonment; or

(ii) in any other case—5 years imprisonment.

(emphasis mine)

Recklessness

29. Both the offences have recklessness as the fault element. Recklessness is defined in section 19 of the Crimes Act as:-

19 Recklessness

(1) A person is 'reckless' about a matter if:

(a) **the person is aware of a substantial risk that:**

(i) in the case of a circumstance—the circumstance exists or will exist; and

(ii) in the case of a result—the result will occur; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

30. Mr. Valenitabua referred the court to the requirement in section 19 (1)(a) highlighted above, and submitted that the prosecution must prove that the defendant must be aware that there is a substantial risk that a dangerous situation will exist or that an accident can result from her actions. He submits that this is a departure from the common law and he asks, how can we find out what the defendant knew if she cannot remember what happened at all?

31. Part 3 of the Crimes Act 2016 deals with criminal responsibility and is comprised of 43 sections (10-53). Section 21, dealing with recklessness is part of Part 3 of the Act. Section 10, the first section of Part 3 states the purpose of Part 3 is the codification of the general principles of criminal responsibility in Nauru:

10 Purpose of this Part

The purpose of this Part is to codify the general principles of criminal responsibility under laws of Nauru.

32. This means that the purpose of Part 3 (sections 10-53) of the Act is to reduce to writing and codify the principles of criminal responsibility developed by the common law up to the time the Crimes Act came into force. The sections are not intended to replace the common law but merely to codify it.

33. The question for this court then is what is the meaning of the term “is reckless about causing damage to the property” contained in section 201(b) of the Crimes Act 2016?
34. This was the question for the House of Lords in R v Caldwell.⁷ The facts are that Caldwell had been working for an hotelier with whom he had become aggrieved. One night he got very drunk and early next morning, he set fire to the hotel which was occupied at the time. Luckily, the fire was put out before anyone was hurt. There was damage to parts of the hotel. He was charged under the Criminal Damage Act 1971. The said Act replaced the old statutes and one of the issues that came up was the meaning of “reckless as to whether or not any property would be destroyed or damaged.” Some cases before Caldwell said the test was objective and some, applying the new Act said it was subjective. This is the same situation Mr. Valenitabua wishes the court to determine as the Crimes Act had replaced the Criminal Code of Queensland 1899 in 2016.
35. The decision of the majority in R v Caldwell⁸ was written by Lord Diplock who said:
- “Reckless as used in the new statutory definition of the mens rea of these offences is an ordinary English word. It had not by 1971 become a term of legal art with some more limited esoteric meaning than that which it bore in ordinary speech, a meaning which surely includes not only deciding to ignore a risk of harmful consequences resulting from one’s act that one has recognized as existing, but also failing to give any thought to whether or not there is any such risk in circumstances where, if any thought were given to the matter, it would be obvious that there was.*
36. His Lordship then went on to say:
- In my opinion, a person charged with an offence under s1(1) of the 1971 Act is “reckless as to whether or not any property would be destroyed or damaged” if (1) he does an act which in fact creates an obvious risk that the property will be destroyed or damaged and (2) when he does the act he either has not given any thought to the possibility of there being such risk or has recognized that there was some risk involved and has nonetheless gone on to do it. That would be a proper direction to the jury; cases in the Court of Appeal which held otherwise should be regarded as overruled.⁹*
37. Later in his judgment, Lord Diplock¹⁰ dealt with the issue of self-induced intoxication and referred with approval to the speech of Lord Elwyn-Jones LC in Director of Public Prosecutions v Majewski¹¹ on the issue:

⁷ [1981] 1 All ER 963.

⁸ Ibid at 967

⁹ R v Caldwell [1981] 1 All ER 963 at 967

¹⁰ Ibid

¹¹ [1976] 2 All ER 142

"When recklessness establishes an element of the offence, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial."

So in the instant case, the fact that the respondent was unaware of the risk of endangering the lives of residents in the hotel owing to his self-induced intoxication, would be no defense if that risk would have been obvious to him if he had been sober.

38. The Caldwell test for recklessness is an objective test and was applied in R v G and Another [2002]¹² which Mr. Valenitabua relied on.

Application of the Law to the Facts

39. The act of the defendant which forms the physical part of the offence of damaging property is driving. Whilst driving, he hit the rear of the car driven by Eileen. The defendant was drunk and the reasonable person could see that driving or continuing to drive after she hit Eileen's vehicle creates a substantial risk of being involved in an accident that could result in damage to property or injury to people. Secondly, being aware of the risk, she nevertheless decided to take it by continuing to drive. She was therefore reckless.
40. In R v Lawrence [1981] 1 All ER 974, the same House of Lords dealt with the offence of causing death by reckless driving and delivered a decision on the same day as R v Caldwell. Lord Diplock again delivered the decision of the majority and said about recklessness in driving:

In my view, the my view, an appropriate instruction to the jury on what is meant by driving recklessly is that they must be satisfied of two things: first that the defendant was in fact driving the vehicle in a manner so as to create an obvious and serious risk of causing physical injury to some other person who might happen to be using the road or of doing substantial damage to property; and second, that in driving in that manner the defendant did so without having given any thought to the possibility of there being any risk, or having recognized that there was some risk involved, had nonetheless gone on to take it.

Conclusion

41. I find from the evidence and the analysis above that the defendant was reckless about causing damage to the property for the purposes of counts 2, 4, and 6 of and reckless about causing harm in counts 3 and 5. I had already found the defendant guilty after she pleaded guilty to count 1 for dangerous driving.

¹² EWCA Crim 1992 [2003] 3 All ER 206

42. For the reasons given, I find the defendant guilty of all counts charged.


Penijamini R Lomaloma
Resident Magistrate

