

TANZANIA / JUDGMENT

19850923 TZHC Mbeya

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TZHCDECIDED
23 September 1985

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/ IN T141' HIGH COU'IT OF jNZNIA fl - ,jjJLL_ A ZI-ELLZ-76 JUiISITION (Mbeya Registry) . CBThINJLJ1E.L Nc.38 OP 1981 O1UGINLL TRiFFIC CtlA NO. 275 OP 1980 OF TIU DIS1R1CT ODURT OF IRING. DITRI 02 AT IEINGA Beforez W. N. B. Kapaya, Resident Magistrate. TI[. D. P, 1 API:EIJLIJ.JT .VRStJS S1vf11iL S/o NYi3NT1LHE 1E-0NDENT CH.i.RGE: Causing death rhough dangerous driving c./ss. 40(1) snd 63(2) of the Road Traffic act No.30/73. JUDT MDNYPRA S. The •rp p.udent was charged with causing death through dangerous. dxivir4g, ,1 It was stated that he worked with TIihl DSA1ae. His dutieà entafled•.. considerable travelin4 In September, 1580 he had come to Iringa. On 1 9/9/6 0 he set off from Iringa retuthing b0 Bt Saiaan. He was driving a, Peugeot lick up TZ 49751. when he arrived at a village called Lugalo he knocked two pedestrians who cUed instantly.,. He vras charged accordingly In his defence he adnitted that he had seen pedestrians emerge from behind a stationary bus crossing to his left side of the road, As they ala this swiftly he coild not avoid kncking them. The tial mastrate upheld l*'s defence and acquitted him, The S-tate appealed against the arder of acquittal arguing that there was ample evidence to convict the respondent of the offence charged. Two witnesses, Aron Kibod,'a (IV.1) and Emilio M'bosa (Ivi.2) who were with the deceased said they s w the vehicle approach very fast.r They saw it at the distance of 400 - 300 metres. Some of the pedestrians managed. to cross the road before the vehicle arrivecL The first deceased, an elderly woman, was unable to leap quickly. She was hit. The vehicle di not stop. It went ahvad and. knocked another pedomtrion who was outside the road (on the carts left),, The sketch 1,1an, which the respondent did not depute shows that the car hit the first deceased at point A. She wassent flying to pci:.; D (in front) a distaace of 74 feet. This suggests that the impact was great and this could not be so i± the car Was at a slow speed. Again the plan zhowb that after he hit the £J't deèeased the car si -ie±ed to the left -tid went out Of the road and hit the (2) second deceasecla -b 34 feet from where he hit the first deased. The second deceased fell 7 feet away from where he was hit. Still the car did not stop. It proceeded and overturned at a distance of (34 + 7 + 3 +291). 365 feet from where it bit the first deceased. Obviously it was at a tremendous speed.. In his defence the respondent said he saw a stationary bus. 11 lorry had overtook that bus. He slowed down to avoid collision with the lorry. Suddenly he saw people from behind the bus (if faced opposite direction). He hooted and flashed his lights to warn them. But as it was all of a sudden he could not avoid kncking them. Now he admitted that he saw those people crossin the road. 1e did not say that he slowed dbwn I, but only that he hooted and scared them off by flashing the head lamps of his car. Had he slowed down he would have avoided, the accident. He was unable to do so because he was at a high speed. Had it been

that those people emerged from somewhere in the bush it could be argued that he could not have foreseen their appearance. But it was a village and many people were there embarking on and disembarking from the bus. , He was supposed to reduce his speed as he was passing through the village. Had the trial magistrate taken all these factors into account he would have convicted the respondent. I allow the appeal, set aside the order of acquittal and convict the respondent as charged. ((t At ivfoeya, l. 1{U1gE1, 2d .August, 1983 JUDGE.

- -- -.4a- - ---- - es 4 •* COUPT: Idy and Geiatlemen : e250rs, you have heard The Thcts and the relevant reports. It is for you. to o'whether you doubt the accused was insane di The time of •rtt:ckinc: The dcecsed.- 00G. bitcaga, 23/9/1985 1ST ASSESSOR: I agree th:t The rccuaed klllCd when he i:ca ins ne, 2ND ASSESSOR: I abree that the accused ki1Jd when he ear insane.- -- d0h. Tlltenga,
- dUDGE 23/9/1985 Special Finding under Section 168 (i) C.P.C. I find that -the Qccuued did ct3ack the deceased and This led to the deceased's death. However, Ini- satisfied tL.it ho was insane at The time. Accordingly by reason of The arid inaanir Ire is not guilty of The murder of Hakizimona s/s hinenid. / C .3. Mtonga, -JUDGE 23/9/1985 ORDER:In view of te PoyclaiE trists report on the occuoed 1 s mental state I order that he be eboolurely diochaxed in accordanc.e with Section 168 (2) (b) of the Criiainei Procedure Code. - C.3. Mtengr, JUDGE 23/9/1985 Assessors are thanked and disc9rgod. -7 .
- C.G. M1enga, JUDGE 23/9/1985 CGWEDN

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