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**IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY**

CR 181 of 2021

BETWEEN : REX

- Prosecution

AND : SIUTA TAUFA

- Accused

BEFORE HON. JUSTICE NIU

Counsel : Mr Joe Fifita for the Crown

Mr Siuta Taufu for himself, accused

Trial : 29 November and 1 December 2021

Submissions : 1 December 2021

Verdict : 17 December 2021

VERDICT

Brief facts

- [1] At about 11:30pm on the night of 3 July 2021, the accused, who had been drinking alcohol and taking methamphetamine, Siuta Taufu, drove his car, with Uikilifi Lapu'aho sitting in the left front passenger seat, from Vaini to Tatakamotonga where Uikilifi bought a bottle of liquor which they mixed and which they were drinking from whilst they were returning to Vaini.
- [2] It was close to midnight by then and the accused drove very fast to try and get home before the lock-down curfew at 12 midnight occurred.

05 JAN 2022


- [3] When they got to the fork in the road, that is, of Taufā'ahau Road on which they were travelling, and Tuku'aho Road, at the end of the village of Malapo towards Vaini, the accused lost control of the car and the car swerved to the right side of Taufā'ahau Rd and hit a power pole on that side of the road with its left side, where Kilifi Lapu'aho was sitting at the front passenger seat, and then bounced off it and rested about 2 meters from the post.
- [4] The sound of the crash was heard by a prison warden at Hu'atolitoli prison across the road some 200 meters away and he went over and found both occupants of the car unconscious. He called the Vaini police on his phone and they came.
- [5] Both the accused and Kilifi were taken to Vaiola Hospital arriving there at 42 minutes after midnight. Despite the efforts of the doctors at the hospital, Kilifi died at 2:00 AM that same night, that is, 1 hour 18 minutes after his arrival there.
- [6] The doctor, Dr Elisa Ma'u, confirmed that Kilifi died as a result of severe internal head injury, and the fracturing of 10 ribs on his left chest which punctured his left lung causing blood and air to fill up his left chest and the left side of his neck where his left clavicle was also fractured.
- [7] He said that the injuries of Kilifi were consistent with a massive sudden shaking of the skull causing the brain to move and damage its blood vessels so that they bled and the blood squeezed the brain to stop it functioning, as was shown by the pupil of Kilifi not responding to light at all. He said that the injuries were caused by the high velocity at which the vehicle in which the patient was, was travelling.
- [8] The police found in the boot of the car of the accused a black plastic bag wrapped in some fabric and inside the plastic bag was a see-through plastic bag and inside that bag were \$1776 in cash, 47 empty packs and a bottle in which were 2 packs of methamphetamine.

The Charges

- [9] The accused is charged with 2 offences:
- (a) Dangerous driving causing death contrary to S.27(5) of the Traffic Act in that he drove motor vehicle C11666 on 3 July 2021 at Vaini heading west on Taufa'ahau Road at a speed and in a manner which having regard to all the circumstances might be dangerous to the public when he was driving the vehicle at a speed and whilst affected by alcohol and methamphetamine he lost control causing the motor vehicle to hit an electric pole while Sione Uikilifi Lapu'aho was inside, which caused injuries that caused his death.
 - (b) Possession of illicit drugs contrary to S.4(1)(a)(iii) of the Illicit Drugs Control Act in that on 3 July 2021 at Vaini he knowingly without lawful excuse possessed a class A drug when he has in his possession 0.08 gram of methamphetamine.
- [10] The accused pleaded not guilty to both charges on arraignment but before this trial resumed on its second day, the accused changed his plea to the second charge, that is, to the charge of possessing the 0.08 gram of methamphetamine, to that of guilty and I convicted him of that charge.

The Defence

- [11] The accused chose to give evidence in his defence and he said that when they came to the fork of the road, the car jumped upon hitting a raised part of the road, and he saw a ghost which was a woman who was standing in the middle of the road, and his sight went black and the car swerved and he could not control it and they hit the power pole.
- [12] **When questioned** by Mr Fifita for the Crown, he said that the speed of the car when it hit the raised part of the road was 80 to 100 kilometers per hour. He said he tried to swerve because of the woman. He said that his mind was not thinking properly as they were travelling fast. He said that they were drinking while they were travelling back but that he was not drunk.

- [13] He said that he did not tell the police about the woman he saw because his thinking was not right at the time. He said he had drunk 6 cans of Woodstock alcohol and took methamphetamine 3 times previously whilst he had been in town that day but that he felt he was alright to drive.
- [14] **I asked him** to look at photograph no.6 of the photographs exhibited no.2 which showed him pointing at a spot on the road and asked him what it was that he was pointing at, and he said that it was the spot where the car was when it jumped up. I said to him that that spot was on the right-hand side of the road as he was travelling west along that road and he said yes. I then said to him that if that was the spot where the car jumped up then he was travelling then on the right side of the road which was the wrong side for him to travel. He then said that what he had said was wrong. He said it was not the spot where the car jumped but the spot where he was when he saw the woman. I asked him to mark on the photograph the spot where the woman was when he saw her and he marked it at a spot which was quite some distance away but on the right side of the road as well.
- [15] I asked him and he said that he told police officer Tu'itavuki, who was taking the photograph, that the spot to which he was pointing (in that same photograph no.6) was where his car was when it began to swerve out of control. He said that he did not tell the officer that that was where he was when he saw the woman.
- [16] I asked him why he did not tell the officer that, and he said that it was because he was in difficulty to tell him and that he just wanted to wait and come and tell it to this Court.
- [17] I asked him why was it that he came, or his vehicle came, to be on that spot he was pointing at on the right side of the road and he said that he did not want to answer that question.

Record of interview

[18] In his record of interview, which was taken some 5 days after the incident, the accused was asked questions and he made his answers as follows:

“Q69. How was your speed when you were returning on the road?

A Our speed was too fast because we were hurrying to get back before the lockdown occurred.

Q70 Then what happened?

A We got to the fork at Malapo and the car swerved out of control and I could not control the steering wheel and the car skidded and went and hit the power pole on the right-hand side of the road.

Q71 Which side of the car hit the pole?

A The car skidded along then turned and hit its left side where Kilifi was sitting on the power pole.

Q72 When the car hit the power pole what happened?

A I did not know what happened after that.

Q73 When was it that you did know what was happening?

A I only came to again while I was lying in hospital.

Q74 Did you know then what happened?

A I was told by the nurses that Kilifi had died.”

The accused did not question or challenge any of his answers to those questions when the officer, Viliami Tu’avao, read and produced that record of interview as exhibit.

The notice of prosecution

[19] After the interview of the accused as stated above was completed, the officer then wrote out the charge with which the accused would be prosecuted, that is, the charge of reckless driving causing death contrary to S.27 (5) of the Traffic Act, and asked the accused if he wanted to say anything about that charge. The accused then wrote on the form below the charge as follows, in Tongan:

“Yes, this charge against me is true.”

and he signed.

Statement

[20] He then wrote his own statement as follows in Tongan:

“How I feel about this charge I feel really repentant at what has happened. And I feel sorry for the one who has died. Because I did not intend that anything like that would happen.”

and he signed it.

The law

[21] The law that provides for the offence to which the accused has pleaded not guilty and which is the subject of this trial, is S.27 (5) of the Traffic Act, and it provides as follows:

“27. Reckless driving

...

(5) Every person who drives a motor vehicle on a road recklessly, or at a speed and in a manner which, having regard to all the circumstances, is or might be dangerous to the public, and who causes death to any person whilst so driving, commits the offence of reckless driving causing death and is liable on conviction to imprisonment for not

more than 15 years and the Court may order that the convicted person be permanently disqualified from holding or obtaining a driver's licence."

[22] That provision provides for 2 separate offences: the first is for a person who drives recklessly and causes death to another person, and the second is for a person who drives dangerously and causes death to another person.

[23] The accused is charged in this case with the second offence, dangerous driving causing death. That offence requires that the Crown must prove that the circumstances at the time were such that the speed and manner of driving of the accused was dangerous and that it caused the death of Uikilifi Lapu'aho.

Speed and manner of driving

[24] That means that the Crown must prove that both the speed and the manner of driving of the accused were, in the circumstances, dangerous (and that they caused the death).

[25] I have no doubt that the speed of 80 to 100 kmph, which the accused said he was driving when they came to the fork in the road was dangerous. Even the accused said that their speed was excessive ("na'e fu'u vave"). But was the manner of driving dangerous? What was the manner of his driving? Is there any evidence of the manner of driving of the accused?

[26] The manner of driving of a person may be said to be the way he holds the steering wheel, it be with two hands or with one hand only, smoking whilst driving, listening to loud music whilst driving, weaving from side to side of the road, speeding and overtaking other vehicles, etc. It may also include drinking alcohol whilst driving and smoking drugs whilst driving because he does that without causing any accident. But whilst he is affected by alcohol which he has been drinking and by illicit drug like methamphetamine he has been taking whilst driving, such as the accused and been doing, and he drives at an excessive speed, such as the accused said he was driving when they were coming to the fork in the road, his manner of driving together with the speed

he was travelling, in the circumstances, namely the curve of the road at the fork, was dangerous to the public, which included his passenger sitting beside him.

[27] I am satisfied, on the evidence given and produced by the witnesses for the Crown in this case that the accused drove at a speed and in a manner which in the circumstances was dangerous.

[28] I do not believe the evidence of the accused that he saw a ghost and that it caused the death of the deceased passenger at all.

Conclusion

[29] I have therefore come to the conclusion that I am satisfied beyond reasonable doubt that the accused drove his car at a speed and in a manner which in the circumstances were dangerous to the public and that it caused the death of the passenger in the car, Uikilifi Lapu'aho.

Verdicts

[30] Accordingly, I find that the accused, Siuta Taufu, is guilty of the offence of dangerous driving causing death with which he is charged in count 1 of his indictment and I convict him of that.

[31] I also confirm that I have convicted the accused, Siuta Taufu, of the offence of possessing 0.08 gram of methamphetamine, with which he is charged in count 2 of his indictment.

Nuku'alofa: 17 December 2021

