KORO NGIRASMAU, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 279

Trial Division of the High Court

Palau District

March 31, 1966

Appeal from conviction in Palau District Court of reckless driving in violation of T.T.C., Sec. 815(b), as amended, in which defendant contends there was no showing of fault and that accident was caused by negligence of second automobile. The Trial Division of the High Court, Chief Justice E. P. Furber, held that trial court was justified in finding accused was driving in such a manner as to be likely to endanger pedestrians on highway.

Affirmed.

1. Reckless Driving-Actual Injury

Trial court may find accused was driving in such a manner as to be likely to endanger pedestrian, within meaning of Trust Territory law defining reckless driving, even though pedestrian was not actually injured. (T.T.C., Sec. 815(b), as amended)

2. Torts--Negligence-Contributory Negligence

Motorist cannot escape responsibility for his own negligence just because some third person was also negligent at same time and contributed toward dangerous situation.

3. Reckless Driving-Mutual Fault

In accident between two automobiles, both drivers may be guilty of reckless driving. (T.T.C., Sec. 815(b), as amended)

Assessor:	JUDGE RUBASCH FRITZ
Interpreter:	SYLVESTER F. ALONZ
Counsel for Appellant:	FRANCISCO ARMALUUK
Counsel for Appellee:	BENJAMIN N. OITERONG

FURBER, *Chief Justice*

This is an appeal from a conviction of Reckless Driving under Trust Territory Code, Section 815(b), as amended by Executive Order No. 93 of March 4, 1963.

Counsel for the appellant argued that the incident giving rise to a Reckless Driving charge against this accused was caused by the negligence of the operator of an automobile which backed out into the road in front of the accused and stopped diagonally across the road facing him so that he had no chance to pass, that there was no evidence of drunkenness or recklessness, that the accused had done his best to avoid an accident and avoid a pedestrian who was standing at the side of the road. Repointed out the accused was not driving fast and that it was hard to believe the evidence introduced by the government to the effect that there was plenty of room for the accused to have passed on his right hand side of the automobile in question which had backed out in front of him, and further, that the accused had just scraped the right rear of that automobile and had not injured the pedestrian who was standing on the road at all. In further extenuation of the accused's acts, he pointed out that the accused was driving a fairly heavy motorcycle and carrying a drunken passenger which made it difficult for the accused.

Counsel for the appellee pointed out that the District Court had gone into this case very thoroughly, that there was substantial evidence that there was plenty of room for the accused to have passed to the right of the automobile in question, and that the pedestrian had had to jump off the road into the grass in order to avoid being hit, while the accused didn't even try to stop before reaching the point where the pedestrian was, who was on his left hand edge of the road with his back to the accused facing traffic as he should have. Re also called attention to the fact that in a criminal appeal, the court must consider the evidence in the light most favorable to the government.

OPINION

This case is governed almost entirely by the principles discussed in the opinion of this court in *Basilius Mesechol v. Trust Territory*, 3 T.T.R. 136.

[1] In this case, there is no indication that the accused was going at an excessive rate of speed at the time the automobile he complains of backed out in front of him, nor is there any indication that he was intoxicated. There was substantial evidence, however, from which the trial court was justified in finding that the accused, while driving a motorcycle on which he was carrying a drunken passenger, endeavored to pass to his left of the automobile he complains about which had backed out into the road when the accused was a substantial distance away, and was facing diagonally toward him, leaving ample room for him to have passed to his right of the automobile, and when there was a pedestrian properly on the accused's left hand edge of the highway some feet beyond the automobile in question. The evidence clearly shows that the automobile was so far to the accused's left of the road that there was very little space to pass between it and his left hand side of the road, that the accused struck against the right side of the automobile near the rear and then without trying to stop at all, proceeded directly toward the pedestrian who had had his back to the accused and was facing traffic as pedestrians are expected to, but had his attention called to the accused by noise just in time to jump off the road into the grass to avoid being hit by the accused's motorcycle. It is true that the pedestrian was not injured and that the auto in question was only slightly damaged, but the evidence as to the imminence of danger to the pedestrian is most convincing. This court, therefore, feels that the trial court was clearly and fully justified in finding that the

accused was driving "in such a manner as to be likely to endanger" the pedestrian within the meaning of Trust Territory Code, Section 815(b), as amended.

[2] Even assuming, without deciding, that the accused's theory of the incident is correct and that the driver of the auto in question negligently backed out when the accused was only a short distance away and did not leave enough room for the accused to pass on his right of the automobile, this negligence would not excuse the accused for going clear to the left hand side of the road and endangering a pedestrian properly there on the road. Under the general principles of negligence, a motorist cannot escape responsibility for his own negligence just because some third person was also negligent at the same time and contributed toward the dangerous situation. 7 Am. Jur. 2d, Automobiles and Highway Traffic, § 399.

[3] Conceivably, there could be an accident between two automobiles in which the drivers of both were guilty of reckless driving.

Apparently, the accused had no accurate appreciation of his obligation to use diligence and caution to avoid endangering a pedestrian who is properly using the highway. The court realizes that it might have been inconvenient for the accused to stop his motorcycle suddenly with a drunken passenger on it, but the fact that he had a drunken passenger should have induced him to go slowly enough so that, if necessary, he could stop or slow down enough to avoid the pedestrian here in question without requiring the pedestrian to go to such extreme exertion for his own safety as is here indicated.

JUDGMENT

The finding and sentence of the Palau District Court in its Criminal Case No. 4449 are affirmed.