

MATONGO v THE PEOPLE (1974) ZR 164 (SC)

SUPREME COURT

DOYLE CJ, BARON DCJ AND GARDNER JS

20th AUGUST 1974

SCZ Judgment No. 33 of 1974. 30

Flynote

Roads and Road Traffic - Causing death by dangerous driving - When fine appropriate - Circumstances under which custodial sentence is justified.

Headnote

The appellant was convicted of causing death by dangerous driving. 35 He drove on a rough and narrow gravel road at an excessive speed, so excessive that he lost control of the vehicle. He travelled for some five hundred feet before going off the road and turning upside down. The speed itself was not extraordinarily high but in the conditions of the road it was dangerous and it caused death. The appellant had admitted that he was in 40 a hurry because he was late.

1974 ZR p165

DOYLE CJ

Held:

- (i) In a case of causing death by dangerous driving a fine is appropriate where the driving was due to momentary inattention or misjudgment. A custodial sentence is justified where there has been recklessness or wilful disregard for the safety of other users. 5

Appellant in person.

S. Ponnambalam, State Advocate, for the respondent.

Judgment

Doyle CJ: delivered the judgment of the court: The appellant was convicted of causing death by dangerous driving and on the facts it is plain that the conviction cannot be interfered with. He drove on a 10 rough and narrow gravel road at an excessive speed, so excessive that he lost control of the vehicle. He travelled for some five hundred feet before going off the road and turning upside down. The speed itself was not extraordinarily high but in the conditions of the road it was dangerous and it caused death. Appellant admitted he was in a hurry because he 15 was late.

We do not consider that the facts of this case were such that one would normally have imposed a custodial sentence. In a case of causing death by dangerous driving a fine is appropriate where the driving was due to momentary inattention or misjudgment. A custodial sentence is 20 justified where there has been recklessness or wilful disregard for the safety of other users. As, however, the appellant has been in prison now for some six or seven months if we now impose a fine and do not apply the period he has served to that fine he will be doubly punished. The appellant has proposed that we merely reduce his term of imprisonment. Accordingly 25 we quash the sentence and substitute a sentence of three months' imprisonment with hard labour which will date from 12th January. This means that he will be immediately released.

Sentence reduced

1974 ZR p165