

**THE PEOPLE v PHIRI (1967) ZR 51 (HC)**

HIGH COURT 30

RAMSAY J

14th MARCH 1967

**Flynote and Headnote**

**[1] Evidence - Break in the chain of - Expert account proving death of person - Whether medical evidence is necessary. 35**

When the witness who identified the body to the Medical Officer who conducted the autopsy is not at the trial, the account of autopsy loses its value as evidence, but when there is other satisfactory evidence proving the fact of death, the break in the chain of evidence does no harm because expert evidence is not required. 40

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**[2] Road traffic and roads - Causing death by dangerous driving - Falling asleep as defence - Roads and Road Traffic Ordinance, section 210 (1).**

Falling asleep at the wheel is not a defence to a charge of dangerous driving. 5

**[3] Criminal law - Automatism - Falling asleep at wheel not included.**

See [2] above.

Cases cited:

(1) *Nkumbula v R* 1961 R & N 589.

(2) *Hill v Baxter* [1958] 1 All ER 193 [1958] 1 QB 277. 10

Statutes construed:

Roads and Road Traffic Ordinance (1963, Cap. 173), s. 210 (1).

Criminal Procedure Code (1965, Cap. 7), s. 260A.

**State Advocate, for the people.**

*Accused in person.*

**Judgment**

**Ramsay 15 J:** The accused, Galeson Phiri, is before the court on an information charging him with causing death by dangerous driving contrary to section 210 (1) of the Roads and Road Traffic Ordinance. The particulars averred are that on or about the 5th day of October, 1966, at or near Kafue in the Lusaka District . . . he caused the death of Andson 20 Mwale by driving a

motor vehicle, namely a Thames Trader motor vehicle, registration number P8381, on a road, namely, the Great North Road at a point about three miles north of Kafue, in a manner which was dangerous to the public having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of 25 traffic which was actually at the time or which might reasonably have been expected to be on the said road.

[1] The deposition of Dr Gore was read, in terms of section 260A of the Criminal Procedure Code, but as the witness who identified the body to him was not available at the trial there is a break in the chain of 30 evidence and his account of the post - mortem examination is valueless.

In this connection I should mention that at an inquest the coroner is required to make a finding as to who the deceased was, but in a trial the court is not normally concerned with the identity of the deceased. What it does require is evidence connecting the deceased with the 35 incident which is the subject matter of the trial. It is therefore advisable in all cases that a police officer who saw the body at the scene should identify it to the medical officer who conducts the autopsy as being the body he found. In this particular case, no harm has been done as there is other satisfactory evidence that Andson Mwale was dead, and expert evidence 40 as to this is not required. (*Vie Nkumbula v R* [1].)

A Mr Juda Nkombo gave evidence. He said that he was a lorry boy and that on 5th October last year, he went with the accused to Kafue on a Thames Trader P8381. The accused was driving. He was sitting next to him and also in the cab was a Mr Muganya. They started off at about 45 10 a.m. and when they had passed Chipongwe, Muganya drew his attention to the fact that the accused was asleep. He (Nkombo) looked at the

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accused and saw his eyes were closed, and he shouted, "Driver, driver, why are you sleeping while you are driving? Look, the lorry is about to go into the bush." The driver said, "I am all right now." He (Nkombo) offered to drive as he feared the passengers would be hurt if there was an accident, and the accused said he would let him do so after passing Kafue. 5 However, before they got there, they came on some PWD labourers who were painting a white line on the road. They went about 100 yards past them and suddenly the lorry left the road, went into the bush and turned over. As it was leaving the road he looked at the accused and saw he was asleep. He shouted to him. The lorry overturned. Andson Mwale was 10 killed in the accident. The lorry was on top of him. He (Nkombo) saw the police take him out from under the lorry. The body was crushed from the head to the chest, and was dead.

The evidence is corroborated by that of Mr Muganya, who said that the accused dozed off twice before the final accident, and that on the 15 second time the accused said: "It is true, I did not have a sleep last night." Mr Nkombo warned him that he had a lot of passengers and might kill them and suggested that he should take over the driving, but the accused said he was all right and that he would let Mr Nkombo drive after they had passed the Kafue police station. 20

Mr Elder testified that he was following behind the lorry and that he saw it go off the road for no apparent reason. There was a drop at the side of the road and when the front wheel hit a cement culvert, the back end of the lorry went right up and over the front and landed in the ditch.

Assistant Inspector Chisasape gave evidence that he arrived on the 25 scene and that he noticed a dead body under the vehicle and that the head had been crushed and the skull bones appeared broken.

The accused's defence is that the accident was caused by Mr Nkombo, who grabbed the steering wheel and caused him to lose control. The 30 accused, however, did not give evidence or make a statement in his defence. He claimed that he mentioned it in two statements made to the police, and I held a trial within a trial in respect of each to ascertain whether the police had concocted the statements they said the accused had made to them. I decided that the statements were not concocted, and I admitted them in evidence. However, the testimony of Mr Nkombo and 35 Mr Muganya is so convincing that there is no need to refer to the statements.

I am satisfied beyond reasonable doubt that the evidence of the prosecution witnesses is true, that the accident was caused by the accused falling asleep at the wheel and that Andson Mwale was killed in the 40 accident.

[2] [3] In *Hill v Baxter* [2] Lord Goddard referred to the defence of automatism raised in that case and said (at page 195):

"That is quite consistent with being overcome by sleep or at least drowsiness. That drivers do fall asleep is not uncommon cause of 45

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serious road accidents and it would be impossible as well as disastrous to hold that falling asleep at the wheel was any defence to a charge of dangerous driving. If a driver finds that he is getting sleepy he must stop." 5

I am satisfied beyond reasonable doubt that, in view of his being overcome by sleep, the accused drove in a manner which was dangerous to the public and that he thereby caused the death of the deceased.

I convict him as charged.

*Accused convicted* 10