

SAKASKY MARKUNGAEL, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Case No. 325
Trial Division of the High Court
Palau District
November 7, 1969

Appeal from conviction upon a charge of reckless driving. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that evidence in the case, although circumstantial, was sufficient to sustain the verdict.

Conviction affirmed.

1. Criminal Law-Appeals-Scope of Review

All the appellate court is obliged to do when an appeal is taken upon the grounds of the insufficiency of the evidence is to determine whether or not there is any reasonable evidence to support the verdict of guilty.

2. Reckless Driving-Burden of Proof

Under the reckless driving statute it is the obligation of the prosecution to prove how the accident occurred in order to sustain proof beyond a reasonable doubt. (T.T.C., Sec. 815)

3. Reckless Driving-Burden of Proof

Proof as to the cause of the accident, i.e., that it was due to recklessness, must be drawn from the circumstance surrounding the event, in the absence of an eye-witness willing to testify as to the facts leading up to the accident. (T.T.C., Sec. 815)

4. Reckless Driving-Burden of Proof

The circumstantial evidence of the case created inferences of fact, excessive speed on a dangerously rough road, sufficient to warrant a conclusion the vehicle was operated in wanton disregard of the lives and safety of the public, and the mere fact that the evidence in support of the trial court's verdict was circumstantial did not warrant a finding there was insufficient evidence to sustain the verdict. (T.T.C., Sec. 815)

Assessor:

Interpreter:

Counsel for Appellant:

Counsel for Appellee:

JUDGE HARUO I. REMELIIK

KAZUMOTO H. RENGULBAI

F. ARMALUUK

E. TERMETEET

TURNER, *Associate Justice*

This is an appeal from a conviction in District Court of the appellant upon a charge of reckless driving. The appeal is made on the grounds of the insufficiency of the evidence.

[1] All the appellate court is obliged to do when an appeal is taken on this ground is to determine whether or not there is any reasonable evidence to support the verdict of guilty.

Adelbai v. Ngirchoteot, 3 T.T.R. 619 at 623:-

"An appellate court does not weigh conflicting evidence and if there is reasonable evidence in support of the trial court's findings and conclusions they will not be disturbed." (Citing cases.)

Appellant argued it was the obligation of the prosecution to prove how the accident occurred in order to sustain proof "beyond a reasonable doubt". This was required, appellant said, because the mere occurrence of an accident is not sufficient to sustain conviction. 7 Am. Jur. 2d, Automobiles and Highway Traffic, § 264.

[2] Appellant is correct in his theory as to requirements of proof under our reckless driving statute, Section 815 (b) (2), Trust Territory Code, which defines the offense as driving a vehicle

"recklessly or with gross wilful or wanton disregard of the lives or safety of the public."

[3] Although appellant's theory is sound, its application to the record here is inappropriate. Proof as to the cause of the accident-Le., that it was due to recklessness-must be drawn from the circumstance surrounding the event, in the absence of an eye-witness willing to testify as to the facts leading up to the accident.

Without reliance upon circumstantial evidence there would be few, if any, criminal convictions. Crimes are seldom committed in the presence of witnesses.

[4] In this case, the circumstantial evidence creates inferences of fact-excessive speed on a dangerously rough road-sufficient to warrant a conclusion the vehicle was operated in wanton disregard of the lives and safety of the public. The mere fact the evidence in support of the trial court's verdict was circumstantial does not warrant a finding there was insufficient evidence to sustain the verdict.

The fact there were witnesses who were able to testify as to the manner of driving by the accused distinguish this case from *Nedlec v. Trust Territory*, 4 T.T.R. 222.

The judgment of the District Court finding appellant guilty of reckless driving is affirmed.

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

MARTIN SOKAD

Criminal Case No. 326

Trial Division of the High Court

Palau District

November 7, 1969

Prosecution on a charge of assault with a dangerous weapon. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that accused's confession after knowing and intelligent waiver of right to counsel is admissible, however, any statement made after an accused changes his mind or requests counsel, is not admissible unless made after consultation with counsel.

1. Criminal Law-Rights of Accused-Counsel

Situations to which *Miranda* applies are governed not by the general test of voluntariness but rather by the more precise test of whether the constitutionally required warning was given and, if given, whether the rights set out by that warning were knowingly, intelligently, and voluntarily waived. (T.T.C., Sec. 464(d)(2)»