

HAPPINESS SAMURIWO
versus
The STATE

HIGH COURT OF ZIMBABWE
ZHOU J & CHIKOWERO JJ
HARARE, 25 September 2023

Criminal Appeal

G Chihuta, for the appellant
T Mapfuwa, for the respondent

ZHOU J: This is an appeal against conviction only. The appellant was convicted only. The appellant was convicted of culpable homicide as defined in S 49 of the Code. The culpable homicide charge emanated from a road traffic accident that took place at the intersection of Lobengula Road and the Harare - Mutare highway.

The appellant was driving south -ward along Lobengula Road in Ruwa. It is common cause that upon approaching the Harare- Mutare highway there is a “Stop” sign. The appellant went past the stop sign, resulting in a collision with the other party’s motor vehicle that was travelling westwards towards Harare. Appellant’s defence is that she was on the island that is on the centre of the Harare -Mutare Road when the collision took place. The evidence tendered on behalf of the state which the court *a quo* accepted, is that the collision took place inside the inner lane of the Harare bound traffic.

The particulars of negligence upon which the appellant was convicted are (a) that she failed to give way (b) that she failed to keep a proper look out of the road ahead, and (c) that she failed to stop or act reasonably when an accident seemed imminent.

Appellant relies on three grounds of appeal. The first ground of appeal refers to the inconsistencies on whether or not there was a truck behind which the other party to the accident was following. Nothing turns on the inconsistencies referred to, given the particulars of negligence alleged. Once it is common ground that the accident happened on the road after the appellant had gone past a stop sign her failure to give way is clearly established. The appellant seems to entertain the mistaken view that the stop sign applied only to one lane of the Harare-Mutare Highway, that once she had cleared herself about traffic approaching from her right-

hand side then she was entitled to get onto the road and land on what she calls an island notwithstanding the fact that there was traffic approaching from the left hand side in the lane for traffic facing the Harare City Centre. The stop sign regulates entrance into the entire road and not just a lane of that road. For these reasons, the appellant was properly found to have been negligent by failing to stop or to give way to traffic along the Harare- Mutare Road.

As correctly submitted by Mr Mapfuwa for the respondent once it is established that the appellant proceeded onto the highway in the face of a stop sign and caused the accident the failure to keep a proper look out and failure to stop or act reasonably are established.

This reasoning also disposes of the second ground of appeal which is meant to support the version that the point of impact was on the island. As pointed out the appellant was not supposed to be on the highway in the first place as long as there was traffic approaching from either side the road.

Equally, the third ground of appeal advances the same theory that the collision took place on the island of the Harare-Mutare Highway. This does not constitute a defence to the charge where the negligence alleged is a failure to give way in the face of a stop sign. For the same reasons adverted to earlier on, the other particulars of negligence were proved by the mere presence of the appellant's motor vehicle on the road in disregard of the traffic that was approaching from the Mutare direction.

In all the circumstances, the appeal is without merit.

In the result, the appeal is dismissed in its entirety.

CHIKOWERO J agrees.....

Gumbo & Associates, appellant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners