

THE STATE  
versus  
SHARLYNN CHIMANDA

HIGH COURT OF ZIMBABWE  
TSANGA J  
HARARE, -----February 2014

### **Criminal Review**

TSANGA J: The accused was convicted of contravening s 52(2) of the Road Traffic Act [*Cap* 13:1], more specifically ‘negligent driving’. She was sentenced to \$300 or in default of payment 3 months imprisonment. In addition 6 months was wholly suspended for five years on the appropriate conditions.

Nothing turns on the conviction and sentence. However, the Regional Magistrate raised a query with the trial magistrate as to whether it was appropriate for the charge sheet to contain particulars of the negligence. She further enquired from her whether it would not have been more prudent for the trial magistrate to ask the prosecution to see to it that the charge sheet was drafted correctly without the particulars of negligence since in her view these should have been put in the state outline.

The trial’s Magistrate’s response was that in such cases involving negligent driving, the particulars of negligence should form part of the charge. Her reasoning was that a charge sheet which does not contain such particulars would be too vague to allow for a proper plea from the accused.

The Regional Magistrate submitted the record for review and guidance on the basis of her opinion on this issues which she stated as follows:

“I am of the view that particulars of negligence should be contained in the State outline and not in the charge sheet. The charge sheet should contain the charge and sufficient detail to establish the essential elements and the charge, only enough to make the accused understand as to what he or she has to answer to”.

The Charge Sheet reads as follows:

“In that on the 4<sup>th</sup> of June 2013 and at the intersection of Fourth Street and R. Mugabe Road, Harare Sharlynn Tendai Chimanda negligently drove a Nissan Skyline registration numbers ACS 7216 and caused an accident.....

Particulars of negligence

- a) Failing to keep a proper look out
- b) Failing to keep in correct traffic lanes at intersection
- c) Failing to stop or act reasonably when collision was imminent”

The State outline on the other hand reads as follows:

- “1 The accused in this case is Sharlynn Tendai Chimanda, a female adult of 2108, Area D Westgate, Harare, and is a holder of a Zimbabwean licence
2. The complainant in this case is the State.
3. On the 4<sup>th</sup> of June 2013, at about 09.40 hours the accused person Sharlynn Tendai Chimanda was driving a Nissan Skyline on (*sic*) registration numbers ACS 7216 and was occupying the outer turning lane along Fourth Street and wanted to turn right into R. Mugabe Road.
4. On the right of the accused person and occupying a right turning lane, was James Nenhunzi, who was driving a bus namely a Volvo B7, registration numbers AAS C525. The traffic light (robot) turned green and the accused person took off and narrowed her turn thereby encroaching into the bus path of the taking off bus and caused an accident.
5. The Volvo bus had its grill broken and then a formal report was then made.”

The relevant aspects of s 70 of the Constitution of Zimbabwe Amendment (No.20) Act 2013, which is pertinent to the issue raised states as follows with regards the rights of an accused person:

- (1) Any person accused of an offence has the following rights –
  - a) .....
  - b) *To be informed promptly of the charge, in sufficient detail to enable them to answer it.***
  - c) *To be given adequate time and facilities to prepare a defence***
  - d) .....

These rights constitute fundamental human rights in the Constitution and are not negotiable. Law enforcement officers whose task it is to frame the charges, have to ensure that the charge sheet meets this criteria as set out in the constitution. It is the charge sheet which informs an accused person of what it is that they are facing. As such, it is expected to contain the nature of the charge in its legal sense as well as sufficient particulars that enable the accused to ascertain how his or her actions fall within the ambit of the offence that they

are alleged to have committed. A defective charge sheet would therefore be one that fails to properly inform an accused person of what it is that they are charged with within the ambit of the law. It would also be one which does not sufficiently incorporate at least some of the factual elements of the conduct in the charge. What is sufficient detail is a value judgment which will depend on the facts of each particular case in light of the charge the accused may be facing.

While indeed it is generally in the State outline that flesh is put on the skeleton fact wise, it is equally the case that sufficient details of such facts must also emerge in the articulation of the charge. A useful yardstick in assessing whether a charge sheet is not properly crafted is whether it is likely to leave an accused in a situation where he or she can only fully connect the dots of their offence at the end of the trial. If that is the case, then it would generally be too late for an accused to formulate a proper defence. Moreover it would not be not in consonance with the letter and spirit of s 70 of the Constitution.

The reason for informing an accused promptly of the charge they are facing is to provide them with an ample opportunity to prepare whatever defence they may have to the charge. An accused should not have to grope in the dark in terms of how the state perceives his conduct to have constituted the unlawful act he is charged with. Stating the offence whilst at the same time providing sufficient details as to how and in what manner certain conduct constitutes that offence are two essential ingredients to ensuring that an accused person has a good foundation for preparing his defence. Such information also enables the accused to obtain a clear picture of what he is accused of and what he may indeed be convicted of.

In our situation where the formal legal system is alien to most court users, and where most people cannot afford to hire legal counsel, ensuring a proper balance between the statement of the offence and the details of that offence assumes even greater significance.

Turning to the charge sheet in question in light of the above expectations, I did not form the impression that the charge sheet was poorly drafted simply because it contained extra details deemed to belong to the subject matter of a state outline. In addition to formulating the charge, the particulars of negligence on the charge sheet informed the accused that she had failed to keep a proper look out; that she had failed to be in the correct lane; and that she had failed to stop or act reasonably when the collision was imminent. In my view these allegations of how the accused acted negligently in relation to the charge were pertinent to an informed understanding of the charge levelled against her.

Indeed cases involving negligent driving can present problems where the details of the alleged negligence are not sufficiently put to the accused as the trial may come to an end without the accused appreciating how he was in fact deemed to have been negligent. See *S v Mapeka & Anor* 2001(2) ZLR 90 (H). The expected standards discussed above in terms of meeting the constitutional standard apply to all cases. Cases involving negligent driving are not the only ones that call for this careful balancing of law and fact in the charge sheet so as to enable the accused to prepare his or her defence.

There can be no miscarriage of justice that arises from the inclusion in a charge sheet of some of the factual details constituting the offence provided that this is done within a reasonable framework of providing the necessary information to allow the accused to plead. *In casu* I do not think the details provided exceeded what might be deemed as sufficient.

Accordingly, both conviction and sentence are confirmed.