

SAINT LUCIA

EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
[CRIMINAL]

CASE NO. 69 of 2003

THE QUEEN

V

GIRILL CALDERON

Appearances:

Mrs. Victoria Charles-Clarke for the Crown

Mr. Lorne Theophilus for the Accused

2004: March 03
March 04

REASONS FOR DECISION

1. **HARIPRASHAD-CHARLES J:** The facts of this case are not complicated. Leonard Joseph, now deceased was riding his motor cycle along the Castries-Gros Islet Highway in the direction of Castries. On approaching the Vide Bouteille area, in the vicinity of the American Drywall Building, he continued his journey on his motor cycle riding in the outermost left lane of the three-lane highway. He passed the first entrance of the American Drywall Building and as he was approaching the second entrance, he collided with a motor pickup registration number TA8600 which was driven by the Accused. At the time of the collision, the Accused was 5 feet into the deceased' lane. He was coming out of a minor road into a major road. He was therefore under a duty to stop at the intersection and proceed carefully unto the major road when it was safe and prudent to do so. Having found himself 5 feet into the deceased's left and proper lane of the road, the Accused caused an obstruction on the road.

2. Many different accounts of how the accident occurred were told. For the sake of brevity, I will not go into them for this was left to the Jury to determine.
3. Leonard Joseph, the motorcyclist suffered major head and bodily injuries and was taken to Victoria Hospital. Dr. Seema Gupta was the first doctor who attended to him in the Accident and Emergency Department. She said that Mr. Joseph arrived at the hospital in an unconscious state, bleeding from his ear, nose and mouth. He had a deep laceration to his right forehead, a deep rear skull fracture with brain matter present in the wound and bilateral periorbital haematoma making eye examination difficult. He had abrasions on his left hip and deformity of the left palm. Mr. Joseph's condition worsened and he had to be intubated. His X-ray results showed depressed skull fracture on the right side, fracture of the femur on the left side and fracture of the left metacarpal bone. Mr. Joseph was taken into Intensive Care for further management but his condition worsened and he went into cardiac arrest at 8.10 p.m. Attempts at resuscitation failed and Mr. Joseph was pronounced dead at 8.25 p.m. that night.
4. Dr. Stephen King, the Consultant Pathologist, performed the post-mortem examination on the body of the deceased. He noted several injuries on the body of the deceased. There were fractures of the right and left frontal bones of the skull and the front temporal bone of the skull. The fractures of the right temporal and right frontal bones were depressed, comminuted and compound. There was intra-ventricular bleeding of the brain and subarachnoid bleeding. There was a laceration of the left lobe of the liver. There was bleeding in the soft tissue around the upper portions of both kidneys.
5. Dr. King opined that the cause of death was extensive brain damage secondary to a head injury. A contributing cause was the internal abdominal bleeding from laceration of the liver. The head injury was a very severe injury and according to him, the fatal injury. The chances of survival with that injury were not very good. He concluded that the injuries to the deceased were consistent with a blunt force trauma and that there are a variety of scenarios that could have caused these injuries but a motor vehicular accident was the most common cause of the injuries.

6. Sergeant 135 Titus Leo carried out investigations into this fatal accident. The Accused was subsequently arrested and charged for the offence of causing the death of Leonard Joseph on Friday, 19th October 2001 at about 4.30 p.m. on the Vide Bouteille Highway. The Accused was later indicted on a two-count indictment for causing the death of Leonard Joseph by dangerous driving as well as dangerous driving.
7. After nearly three hours of deliberation, a Jury returned a unanimous verdict of guilty of dangerous driving.
8. Mr. Lorne Theophilus appearing for the Accused put in a plea in mitigation.
9. In sentencing, the court took into consideration several factors, principal among them are what are termed “mitigating” as well as the “aggravating” factors.
10. I start off by stating that the practice of the High Court of Saint Lucia over the years has been not to impose custodial sentence for an offence of such magnitude.
11. Section 56 (1) of the Motor Vehicles and Road Traffic Act, 1994 states as follows:

“ A person who drives on a road... in a manner dangerous to the public... shall be liable on conviction on indictment to imprisonment to a fine of five thousand dollars or to imprisonment for a term of three years or both.
12. Section 56 (3) states that a person convicted of an offence under subsection (1) shall, unless the Court orders otherwise, having regard to the lapse of time since the date of the previous or last conviction or for any special reason, be disqualified, for such period as the Court orders from the date of the conviction, from holding or obtaining a driving licence.
13. The Learned Director of Public Prosecutions submitted that besides the penalties contained in Subsection (1), the Court should disqualify the Accused from holding or obtaining a driving licence under subsection (3).

14. Mr. Theophilus, on the other hand, argued that the Accused is a driver by profession and taking such a harsh measure would be to deprive him of his livelihood. He next submitted that the Accused is a young man of 24 years old with no previous criminal or traffic convictions. He is a simple man of simple means and was 21 when this accident occurred. He has one child.
15. The Court is mindful that a death has occurred and the deceased has left to mourn a young wife and two young children, one of whom was some weeks old when the father met his untimely death. This must be a difficult moment for the family. But the Accused has been found guilty of dangerous driving so I have to rid my mind of any sentence relating to causing death by dangerous driving.
16. As Mr. Theophilus correctly submitted, if I disqualify the Accused from driving, I will be taking away his livelihood. At the same time, I must weigh it against the gravity of the offence.
17. I am left with no alternative but to impose the maximum fine of \$5,000.00 to be paid forthwith in default, 2 years imprisonment.
18. A lesson must be learned and hopefully, this will deter others who are bent on disobeying traffic laws and regulations in Saint Lucia.

Indra Hariprashad-Charles
High Court Judge