JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 21/90

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA

VS.

DELROY BROWN

Mr. Howard Hamilton, Q.C. for the Appellant

Miss Marcia Hughes for Crown

June 11, 1990

ROWE P.:

Delroy Brown was convicted of the offence of manslaughter in the St. Catherine Circuit Court on the 24th of January, 1990 and he was sentenced to a term of five years imprisonment at hard labour and in addition that he should be disqualified from holding or obtaining a driver's licence for a period of ten years from the date of conviction. He has been granted leave to appeal against the sentence.

Mr. Howard Hamilton who appeared for him before us has not argued against the conviction. He has quite rightly conceded that the learned trial judge was generous in his summing-up to the jury on all questions of law and of fact and that there was evidence, which if believed, could have supported

the conviction for manslaughter. What he challenges is the length of the sentence.

It is necessary for us to say a few words about the facts of the case so as to put the sentence in perspective.

Five year old Damion Harrison died on the 9th of May, 1988, from injuries he sustained when he was hit by a motor car driven by the appellant Delroy Brown. The accident occurred on the Grange Lane road in the parish of St. Catherine.

The case for the prosecution was that approximately 4 o'clock in the afternoon on the 4th of May, 1988, the appellant drove his motor car along Grange Lane and as he approached a parked car his motor car swerved onto the soft-shoulder of the road, travelled along the soft-shoulder for about five feet and in the process hit down and killed Damion who was standing in the bush along the soft-shoulder.

A number of witnesses were called by the prosecution, one of them being a Mr. Rowe who was standing by the parked motor car and the other a Mr. DeLisser, who was driving his motor vehicle in the opposite direction.

Mr. Rowe had the impression that the car driven by the appellant was coming at full speed, but when he was asked to put the speed into miles per hour he vacillated considerably so that the learned trial judge was able to say to the jury that they could not base any finding adverse to the appellant on Mr. Rowe's estimation of speed in miles per hour.

Mr. DeLisser, he also spoke of the speed at which the car of the appellant was travelling and he estimated that it was no more than forty-five miles per hour.

The point of impact as given by the eye-witnesses was supported by Corporal Gardner whose evidence was that,

accompanied by the appellant, he went to the scene of the accident that same night, that the appellant pointed out to him where the accident took place, and that apart from seeing the tyre marks on the ground he also saw blood, hair and other debris on the soft-shoulder. If believed, that was some indication that the boy had fallen on the soft-shoulder of the road as against the evidence from the appellant that the boy was hit down in the road.

The prosecution also called a Mr. Mattis, a certifying officer, whose evidence was that he examined the appellant's car and he found that it was defective. The defects concerned the braking system by virtue of which, Mr. Mattis said, the car could only be brought to a halt if it was switched off in gear. The brakes were not holding and the defects which he found could not have happened as a result of the accident.

There was one bit of evidence coming from Mr. Mattis which was challenged by the defence. The prosecution said that the appellant was present at the time of the examination of the motor vehicle by Mr. Mattis and that he then told Mr. Mattis that brake fluid was leaking from one of the wheels. Now on Mr. Mattis' evidence this was what alerted him to check on one of the wheels and he did find that brake fluid had leaked out. He found that the master cylinder was defective. It was open to the jury to have inferred that the defect to the braking system was known to the appellant prior to the time of the accident.

The defence as we have indicated was that it was not the negligence of Mr. Brown, the appellant, which caused the accident but rather the injudicious running across the road of two little boys right in the path of the driver and he in

the agony of the moment tried to stop, and tried to swerve but all to no avail. That defence was rejected by the jury.

We come to speak of the sentence of imprisonment. Mr. Hamilton did open by saying that here was a case in which the appellant was not convicted, certainly in the judge's mind, for an act of commission. It was not that he was driving at a speed or at a manner which was dangerous in the circumstances but rather that he was driving a defective vehicle and Mr. Hamilton was endeavouring to convince the Court that even if the appellant had made the statement to Mr. Mattis about the condition of the brakes that this should not be interpreted as meaning it was a condition known to the appellant prior to the accident but rather that it could have been something which had come to his knowledge between the date of the accident and the date of the examination. That was an ingenious argument on the part of Mr. Hamilton but when one remembers that the appellant had distanced himself from this statement at the trial we do not see how that interpretation could be of any avail at this time to the appellant.

The appellant was a taxi-man. He had contracts to convey school children from four different schools to their parents and there was no evidence that in his performance of those contracts he had acted in any way irresponsibly. He called two of the Church Leaders from his Congregation and they gave glowing reports of his early childhood and of his participation in Church work and said they regarded him as a responsible person. They were somewhat surprised that he could have found himself in the situation in which he was. It was pointed out in his favour by his counsel at trial that he had co-operated as best as he could with the police after the

accident and that he did what he could for the child in trying to get him medical attention. All this was evidence going to show that he was a person of responsible nature.

The learned trial judge said he took all those mitigating circumstances into consideration and a passage from his summing-up is to our mind of such importance that we approve it and repeat it. He said:

> "I am absolutely convinced in my own mind that in returning this verdict against you this jury intended to send a message to the Jamaican people, that message being that any driver of a motor vehicle anywhere in this country who is charged for motor manslaughter, if proved to be guilty after a full trial will be found guilty of a most serious crime. For my own part I too would wish to communicate a message and it is this: that in the circumstances prevailing in Jamaica today, any motor vehicle driver who is found to be guilty of the crime of manslaughter must expect to receive a sentence of imprisonment.
>
> Your attorney has just asked me not to impose such a sentence on you but if I did not do that I would not be respecting the verdict of this jury and I would be failing in my duty to all the people of this country. You must receive a custodial sentence as punishment for what you did and also as a deterrent for other potential offenders. A motorist has to know that if he drives his vehicle in such a way that it takes the life of a Jamaican, and if charged and found guilty of Manslaughter he is likely to lose his freedom."

We think that these were very wise words. We think that the message was and is a perfectly fair and sound one. If one takes the life of anyone on the Jamaican roads in circumstances which amounts to manslaughter that person can expect to receive a custodial sentence.

In the circumstances of this case a sentence of five years is manifestly excessive. We are prepared to hold that as this appellant did not have any previous conviction, it was not proved that he had been driving in a reckless manner immediately prior to the accident and the gravamen of his offence, was driving a defective vehicle, a vehicle grossly defective to his own knowledge, on the road in circumstances where he could not bring it to a stop in the normal way, a five year sentence was inordinately high. We think that a two year sentence would be more appropriate.

We would therefore allow the appeal against sentence and substitute for the original term of imprisonment a term of two years hard labour. We would order that the sentence begins to run from the 31st of March, 1990. We have looked at the disqualification of ten years. We think that it is on the high side but we do not think it is sufficiently excessive, sufficiently out of range to be counter productive. Disqualification for ten years to stand.