

JOSEPH JACKSON, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued November 14, 16, 1949. Decided December 16, 1949.

Where defendant, with a grudge against decedent, saw decedent and others twenty-four feet in front of him at the bottom of a hill, and recklessly, negligently, with great speed, and without any regard for the safety of pedestrians rode down the hill and into the decedent, so wounding him that he died twenty-four hours later, a verdict of manslaughter will not be disturbed and a conclusion of accidental homicide will not be substituted in its place.

On appeal from conviction of manslaughter, *judgment affirmed*.

M. S. Cooper for appellant. *The Solicitor General*, assisted by *R. F. D. Smallwood*, for appellee.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

Joseph Jackson, appellant, was indicted for the murder of one Francis Miller in the City of Careysburg, Montserrado County, on November 24, 1948.

The trial was before His Honor D. T. Harris, Circuit Judge of the First Judicial Circuit, Montserrado County, presiding by assignment, and resulted in a verdict in favor of the state for manslaughter instead of murder. Defendant, now appellant, then filed a motion for a new trial and, that having been denied, after final judgment he took exceptions and has brought his case before this supreme Judicature for a review.

From the records certified before us it appears that this case grew out of a dispute over a rice and fish transaction between one Jarbobo, and one Kingba. Not being able to settle same amicably, Kingba's mother, who claimed the rice as hers, entered an action against Jarbobo in a justice of the peace court. Decedent was brought into the case by being requested by one Robert Miller, his relative, to attend court to represent Jarbobo, a protege of his.

It was after the determination of the case as the parties were returning home that the cause of this case took place.

Appellant, Joseph Jackson, seemingly of an irascible temperament, brother of the said Kingba, was not altogether pleased with the judgment, and had previously made the remark, perhaps unthinkingly but prophetically, that whoever supported or defended Jarbobo, he, appellant, would "raise hell with him so much so that the palaver would have to reach Monrovia."

The records reveal that after the case decedent with three other persons were on their way home going down a hill when defendant, now appellant, coming behind them riding a bicycle with speed ran into decedent, violently throwing him to the ground, wounding him in several places, and, as it was afterwards discovered, fracturing his skull.

Appellant gave the following testimony:

"In passing by my uncle Jimmie Jackson's place he hailed me to find out how we had settled the rice matter, and there I remained. Jarabo, Kamah, the road overseer's wife Kpalawenne, and Francis, decedent, upon my oath I took the hill leading from one John Simms place down on the curve. I, knowing well how the vehicles run on the road, riding with a new bicycle going down to a deep curve like that, knowing that my life is pending if I go down with speed, not drunk, not absent minded, hearing and knowing the traffic rules of vehicles, I went down with my brakes on, slowly ringing the loud bell. When I observed the four people they were on the deep curve about the distance of approximately twenty-four feet. I went riding on my right. The road is built in a way that the constant passing of vehicles has caused that part of the road, the middle, to be so raised that one driving a vehicle could not be in the center but must be either on the right or the left. I constantly rang my bell until I got to them. The decedent wheeled around to the direction from which I was coming. I fell and he fell by hitting against the bicycle. Then we got up and went to the home of one Mrs. Mary Brown, and I asked her for some cold water, saying, 'In coming down I had an accident.' "

Other witnesses stated that the ringing of the bell was simultaneous with the knocking down of decedent by Jackson with his bicycle. If, as he said, he saw the four persons twenty-four feet away from him and he was riding slowly with his brakes on ringing all the time, it is not possible for him to have hit decedent so hard as to bring about the results reported by the witnesses and by Dr. Schnitzer and the subsequent death of Miller within twenty-four hours after the happening.

In addition, the evidence shows that appellant, after the running over and knocking down of decedent, evinced great callousness and unconcern about the seriousness of the wound he had caused. Even when it was pointed out to him that since decedent was growing weak from the long walk owing to the loss of blood and it was suggested that a passing vehicle be stopped in order to take the injured man, appellant promptly objected, saying, "That is what I say, you always like to meddle in my business. The man can walk." He thus caused Miller, as wounded as he was, to walk two miles.

In short the evidence generally tends to show without doubt that appellant was riding recklessly as he rode with such speed, although going down a hill, and without any regard to the safety of pedestrians whom he himself testified he saw twenty-four feet away on a road twelve feet wide before a collision.

Appellant has submitted in his argument and brief that the verdict of the jury was against the law and the evidence and that he should have been acquitted or at most convicted of accidental homicide. The State on the other hand contended that the verdict of the jury was sound and supported by the law and the evidence adduced.

Our Criminal Code defines manslaughter as follows :

"1. Any person who shall without legal justification or excuse unlawfully kill any human being, malice prepense not appearing from the circumstances; or 2. who while engaged in any lawful pursuit shall without intent to hurt, negligently kill any human being; or 3. who being the aggressor in any sudden affray, shall unlawfully kill any human being, shall be guilty of felony and shall be punished by imprisonment not exceeding five years." Crim. Code of 1914, ch. II, § 56.

Although appellant was engaged in a lawful act of riding a bicycle, yet the circumstances show that he evinced such recklessness and culpable negligence and disregard for the safety of pedestrians that his hope, as we dig deeper and deeper into the evidence, to be adjudged guilty of accidental homicide cannot be realized.

"The cases are numerous which hold that manslaughter may be committed by culpable negligence while performing some lawful act, and new conditions and inventions constantly present new circumstances, but the rule regarding liability remains the same. The following illustrations will, however, show the application of the rule. Thus, one may handle fire arms in such a negligent way that another's life is taken; explosives or poisons may be so negligently used or administered that lives are

lost in consequence; physicians may cause death by culpable negligence in administering drugs dangerous to life or in performing surgical operation; one authorized to administer lawful corporal punishment, as parents, teachers, or others, may unreasonably neglect to observe proper care and moderation, and by excessive correction cause death ; motor vehicles, railway trains, passenger ships, machinery, including an x-ray machine, and many other potentially dangerous agencies may be operated so carelessly and without due regard to the safety of others that the culpable persons may be guilty of manslaughter. . . . These illustrations are but examples of the many ways in which responsibility for the unintended death of another may be incurred by the careless and reckless way or manner in which acts lawful in themselves are performed. It is the failure to exercise in any particular case the care required by the law that makes criminal the fatal consequence in such a case." 2 Burdick, *Crimes* 207 (1946).

Taking all the evidence into consideration and the law controlling, we have come to the conclusion that the judgment of the court below should be affirmed ; and it is hereby so ordered.

Affirmed.