



THE COURT OF APPEAL

[104/12]

The President

Sheehan J.

Hogan J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

GERARD BRETT

APPELLANT

JUDGMENT of the COURT (Ex tempore) delivered by The President on the 18th day of December 2014

1. This is an unusual and very sad case. It is a serious case.

2. The accident happened on 21st January 2010. The accident happened at Portrane, County Dublin. The accused had been for many years a person of unblemished character and reputation and he worked as a psychiatric nurse in Portrane. But on this occasion, he did not behave in unblemished fashion; he drove when he was drunk. As a result of that, he caused the death of Mr. Benedict Brady who was crossing the road. That happened because the accused man decided to drive when he was drunk.

3. The evidence is that his car was weaving across the road before the accident. It is true, indeed, that the evidence does not disclose excessive speed. That, in fairness, does distinguish the case from many other instances of dangerous driving and dangerous driving causing death. Having said that, it was driving at a sufficient speed to kill Mr. Brady. The evidence in the case was that the braking happened at or after the impact. There might have been circumstances on a January night when somebody in dark clothing was crossing the road and when a driver, using all his or her faculties and not being impaired by drink or anything else, might have an accident and that accident could result in a fatality. All those things are possible. But the central fact in this case is that Mr. Brett had impaired his own capacity to react to any circumstances by the fact that he had consumed a very large quantity of drink, such that his blood alcohol reading was 266mg. per litre.

4. In those circumstances, the learned trial judge was perfectly entitled to take a serious view of the case. This Court shares that serious view of the case. There were, of course, mitigating elements in the case and they have to be respected. The accused pleaded guilty. The Court was satisfied, and this Court is satisfied that there was genuine remorse. He had lived a life of unblemished reputation, as I have said, so there was nothing of that kind in the past.

5. Those would be regarded, which is not in any way to diminish them, as normal mitigating elements. There were also in this case, and are also some quite extraordinary mitigating elements. They are Mr. Brett's health condition. He has a number of serious areas, but principally, he has very serious kidney trouble which requires dialysis three times every week. He also has eye problems. The case was made in the Court below that if Mr. Brett were to be sentenced to jail sentence, his renal difficulties, with the need for regular dialysis three times a week for three and half hours on each occasion, plus his vision impairment would cause him particular difficulties. If his vision had been the same at the time of the accident that might have been another ground for considering his behaviour irresponsible. However, in fairness, Counsel, Mr. O'Higgins on his behalf, points out that that was not a feature in the case in the Court below and suggested that Mr. Brett's eyesight had in fact deteriorated in the period between 2010 and 2012, and that would appear to be consistent with the medical report, but in any event, it is clear that this Court would consider it unfair to invent a new case for Mr. Brett to face, in addition to what he faced, so that matter is not taken into account in regard to any aggravation and the Court will dismiss that from its consideration.

6. There is a long and detailed report by a consultant hepatologist, and in summary, from a long report, it begins its conclusion that Mr. Brett is a chronically ill, frail, 65-year old gentleman who had, at the time of the report on 3rd March 2012, been dependent on dialysis for five years. He had very limited options for haemodialysis access. His mode of dialysis carried with a significant risk of infection that was life-threatening. The report goes on and the question had arisen as to whether the only threat to this man's lifespan was from the possibility of infection, but that does not appear to be a complete description of it. That is part of the reason, but if one goes further into the medical report, it does not confine itself, as the Court understands the report, to the risk of infection arising from the mode of dialysis. The point is that there is indeed a significant shortening in the estimation of Mr. Brett's lifespan.

7. The Court is faced, in these circumstances, with a difficult choice as was the Court below. But this Court is of the view that the learned trial judge did fall into error by insufficiently appreciating and evaluating the quite extraordinarily unusual health issues, of which I have mentioned but a number, that the learned trial judge insufficiently appreciated those issues which operate in two ways. First of all, the appellant's health

condition and anticipated lifespan are relevant matters to be considered in the mitigation of the crime and they are also relevant in

considering how he would be able to cope with a prison sentence. Faced with the difficult choice that has to be made, the Court is satisfied that the learned trial judge did err in principle. It is also relevant, that before Mr. Brett, who is now on bail, was granted bail he had spent some seven weeks in custody already, so he has served something of a jail sentence. But in all the circumstances, the Court is persuaded that there was an error in principle and that in the, as I say, quite extraordinarily unusual circumstances that obtain in this case, that it is appropriate to suspend the balance of the sentence over and above what Mr. Brett has already served in jail. So that will be the judgment of the Court. The conviction and disqualification will be endorsed. He will be disqualified for a period of three years from 2012. The Court will suspend the sentence on condition that he keeps the peace and be of good behaviour and not apply for a Driving Licence. The Court will suspend the sentence for 18 months from today's date.

Approved: Ryan P.