

former *alab* is the rightful holder of the *alab*'s position. However, Drebal is not a party to this action.

It is ordered, adjudged, and decreed that plaintiff's complaint be and the same is hereby dismissed.

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

ESTHER CRUZ RASA

Criminal Case No. 245

Trial Division of the High Court

Mariana Islands District

November 30, 1970

Prosecution for the crime of involuntary manslaughter. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that under the Trust Territory statute involuntary manslaughter consisted of the commission of an unlawful act not amounting to a felony and thus the determination that the defendant was exceeding the speed limit when she lost control of her car with death resulting, or a finding that in attempting to pass another vehicle the defendant violated a section of the code relating to such action, also with death resulting, would in either event be sufficient to establish the defendant's guilt.

1. Homicide—Involuntary Manslaughter—Generally

To render a person guilty of manslaughter the negligent act which caused the death must have been the personal act of the party charged and not the act of another. (T.T.C., Sec. 383)

2. Homicide—Involuntary Manslaughter—Elements of Offense

Under the Trust Territory statute, involuntary manslaughter consists of commission of an unlawful act not amounting to a felony and a single act is all that is required. (T.T.C., Sec. 383)

3. Homicide—Involuntary Manslaughter—Elements of Offense

A determination by the court that the defendant was exceeding the speed limit when she lost control of her car with death resulting would be sufficient to find the defendant guilty of involuntary manslaughter. (T.T.C., Sec. 383)

4. Homicide—Involuntary Manslaughter—Elements of Offense

A finding that in attempting to pass another car the defendant violated the provisions of Section 814(b) of the Trust Territory Code with death resulting would suffice to sustain a verdict of guilty of involuntary manslaughter. (T.T.C., Secs. 814(b), 383)

5. Homicide—Involuntary Manslaughter—Elements of Offense

While criminal negligence is not an element of the Trust Territory statute on manslaughter, culpable or so-called criminal negligence, when

TRUST TERRITORY v. RASA

it is defined as either a substantial deviation from the standards of due care or gross, wilful or wanton disregard of the lives or safety of the public, constitutes unlawful driving under section 815(b)(1), (2) of the Code and either or both of those unlawful acts will sustain a manslaughter conviction. (T.T.C., Secs. 383, 815(b)(1), (2))

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*Assessor:* PRESIDING JUDGE IGNACIO V. BENAVENTE  
*Interpreter:* IGNACIO C. BENAVENTE  
*Court Reporter:* ELSIE T. CERISIER  
*Counsel for Prosecution:* LYLE L. RICHMOND, *District Attorney*  
*Counsel for Defendant:* ROGER L. ST. PIERRE, *Public Defender*

TURNER, *Associate Justice*

FINDINGS OF FACT

1. Margarita P. Pinaula, a front seat passenger in an automobile driven by the defendant, was fatally injured when the driver lost control of the vehicle and it overturned. In addition to sustaining numerous bruises, her upper left chest was crushed causing death. Death was the direct result of the defendant's loss of control of the vehicle and its overturn.

2. The traffic fatality occurred on Highway 2W, Saipan Island, from a point described as the "oil pump house" to the structure known as "The Fountain." The highway is 40 feet 8 inches wide, is marked with a center line, is concrete pavement and at the time, approximately 2:00 o'clock in the afternoon, was dry.

3. The defendant was attempting to pass a vehicle being driven in the same direction by Vicente Barcinas. During the attempt to pass, the defendant and Barcinas both increased their speed, so that two eyewitnesses, Albert S. Camacho, called by the defense, and Absalon Waki, called by the prosecution in rebuttal, both said that "it appeared" the defendant and Barcinas were "racing" on the highway.

4. At a point approximately opposite the pump house, defendant lost control of her car and began to zigzag down the left side of the highway for a distance between 500 and 600 feet at which point the right front fender of defendant's car struck the left door of the Barcinas car. Thereupon defendant's car went into an uncontrolled skid, leaving tire marks for 328 feet down the left side of the highway. The skid abruptly ended at the left edge of the pavement when defendant's car turned over and slid for another 141 feet along the pavement. The car then completed the turnover and rolled over at least a second time and finally ended right-side-up off the highway, facing it, some 53 feet further along from the point the sliding ended and the rolling began.

5. During the final roll the victim fell from the car and was found lying on the ground near the spot the car came to rest, her left upper chest crushed.

6. From the pumphouse where the defendant's car began weaving on the left side of the road during the passing attempt to the point where the tragedy ended was more than 1,000 feet and from the point the uncontrolled skid began, evidenced by the tire marks on the highway, to the end was 522 feet of the total distance.

7. From these figures it is obvious the two cars were traveling at tremendous speed before the "sideswiping" occurred. The estimate of the speed made by the two eyewitnesses of between 70 and 75 miles per hour is believable. The testimony of the defendant that she "speeded up" to 45 miles per hour, (the posted maximum speed limit) in order to pass the Barcinas car simply does not conform to the believable evidence.

#### OPINION

Before looking at the several points of law decisive of this case, consideration should be given first to the legal

effect, if any, of Barcinas' action in increasing his speed when the defendant attempted to pass him. The defense theory was that Barcinas' conduct caused the loss of control of her car by the defendant and that the loss of control by the defendant was the cause of the fatal injury to the victim.

The defendant's testimony that she was forced off the left side of the highway conflicts with the eyewitness account that Barcinas was on the right side of the highway and that the defendant was on the left and the two cars came together in the center of the highway when the defendant's car began to zigzag.

However culpable Barcinas may have been in engaging in a race with the defendant, it is inescapable that it was not Barcinas' car that went out of control, overturned and killed Margarita. The act causing the death was that of the defendant. She lost complete control of her vehicle, when it sideswiped the Barcinas car, went into a long uncontrolled skid and then rolled, resulting in the death.

[1] The same point arose and the same conclusion as here was reached in *State v. Gartland* (Mo.), 263 S.W. 165, noted at 95 A.L.R.2d 175 at 212. As quoted by *A.L.R.* the Missouri court pointed out there could be no common design by two persons to commit a negligent act and to "render a person guilty of manslaughter; the negligent act which caused the death must have been the personal act of the party charged and not the act of another." It was the defendant's act in the present case, not another's act, which was the proximate cause of the fatality from which stemmed the manslaughter charge.

Having concluded that it only was the defendant's conduct that was the proximate cause of the fatality, it next must be determined whether that conduct came within the definition of involuntary manslaughter.

Section 383, Trust Territory Code, defines the crime as: "Whosoever shall unlawfully take the life of another without malice, in the commission of an unlawful act not amounting to a felony . . ." shall be guilty of involuntary manslaughter. The "unlawful acts" charged in the information were: (1) speeding; (2) unlawful passing; (3) negligent driving; and (4) reckless driving.

Some courts have said that speed alone, or driving on the left side of the highway without more, or driving recklessly, are not sufficient to sustain a manslaughter charge. But those decisions involved a manslaughter statute unlike the Trust Territory provision. *People v. Grieco* (N.Y.), 193 N.E. 634, cited in Wharton's Criminal Law, Sec. 973.

[2] Arizona, having a statute almost identical to the Trust Territory provision, reaches a contrary result to the New York rule. Involuntary manslaughter consists of "commission of an unlawful act not amounting to a felony" under both the Arizona and Trust Territory statutes. A single act is all that is required. In *Gibbs v. State*, 58 P.2d 1037, and *State v. Ponce*, 124 P.2d 543, the Arizona court held that commission of a misdemeanor—driving while under the influence of intoxicating liquor—warranted conviction for involuntary manslaughter when the driving caused death.

In California the manslaughter statutes are different, but the same rule prevails that a single unlawful act of driving a vehicle resulting in death will sustain the charge. In *People v. Ross*, 294 P.2d 174, 177, the California court said:—

"Thus defendant's conviction (of manslaughter) may be sustained either upon the theory that he committed an unlawful act, not amounting to a felony, without gross negligence, which proximately caused the death . . . or a lawful act which might (and did) proximately cause death, in an unlawful manner but without gross negligence."

[3, 4] Thus, a determination by the Court that the defendant was exceeding the speed limit when she lost control of her car with death resulting would be sufficient to find the defendant guilty. Also a finding that in attempting to pass the Barcinas car the defendant violated the provisions of Section 814(b) of the Code would equally suffice to sustain a verdict of guilt.

[5] Criminal negligence is not an element of the Trust Territory statute on manslaughter. However, culpable or so-called criminal negligence, when it is defined as either a "substantial deviation" from the standards of due care or "gross, wilful or wanton disregard of the lives or safety of the public" constitutes unlawful driving under Section 815(b)(1), (2) of the Code. Either or both of these "unlawful acts" will sustain a manslaughter conviction.

The evidence in this case is convincing beyond a reasonable doubt that the defendant's driving violated four different sections of the Code, and that any one or all were sufficient to warrant a finding that the defendant is guilty of involuntary manslaughter.

The information, being in two counts, also charged defendant with negligent driving in violation of Section 814(b) (1). From what has been said a separate conviction might have been found upon this charge but because it was one of the unlawful acts upon which the manslaughter count rested the Court deems it better to merge the lesser crime into the greater and not make a specific finding and judgment on the negligent driving charge.

It is, therefore, the verdict and judgment of this Court that Esther C. Rasa is guilty of the crime of involuntary manslaughter and that she shall be sentenced in accordance with the statutory penalty.