

[HIGH COURT OF AUSTRALIA.]

HARLOR

AGAINST

THE QUEEN.

ON APPEAL FROM THE COURT OF CRIMINAL APPEAL OF
NEW SOUTH WALES.

H. C. OF A. *Criminal Law—Manslaughter—Culpable driving—Death “through the impact of a motor vehicle with any vehicle or other object in, on or near which the person was at the time of impact . . .”—Whether death of passenger in offending vehicle caught—Interpretation—Crimes Act 1900-1951 (N.S.W.), s. 52A (1).*

1956.

SYDNEY,

Aug. 28, 30.

Dixon C.J.,
Williams,
Fullagar,
Kitto and
Taylor JJ.

Section 52A of the *Crimes Act 1900-1951* (N.S.W.) provides:—“(1) Where the death of any person is occasioned . . . through the impact of a motor vehicle with any vehicle or other object in, on or near which the person was at the time of impact and . . . the motor vehicle was at the time of impact being driven by a person—(a) under the influence of intoxicating liquor or of a drug; or (b) at a speed or in a manner which is dangerous to the public, the person last-mentioned shall be guilty of the misdemeanour of culpable driving . . .”.

Held, that the provisions of the sub-section do not cover the case where the deceased person was a passenger in a vehicle, which, because it collided with another vehicle or object, brought such person into proximity with that other vehicle or object.

Decision of the Court of Criminal Appeal of New South Wales, reversed.

APPEAL from the Court of Criminal Appeal of New South Wales.

Henry Alfred Joseph Harlor was on 25th May 1956 arraigned on a charge of manslaughter arising out of the death of a passenger on a motor omnibus of which he was the driver, such death ensuing as a result of a collision between such motor omnibus and a stanchion of the Iron Cove Bridge, Sydney, on 23rd July 1955. At his trial the jury acquitted him of the crime of manslaughter but found him guilty of the misdemeanour of culpable driving, an offence created by s. 52A (1) of the *Crimes Act 1900-1951* (N.S.W.).

Harlor appealed against such conviction to the Court of Criminal Appeal of New South Wales (*Owen, Herron and Walsh JJ.*), which court dismissed his appeal, whereupon he moved the High Court for special leave to appeal against such decision upon the ground that there was no evidence on which he could be convicted of the offence of culpable driving.

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The High Court treated the motion for special leave as an appeal, which was forthwith heard.

The provisions of s. 52A (1) of the *Crimes Act* 1900-1951 (N.S.W.) appear fully in the judgment of the Court hereunder.

J. M. Foord, for the appellant.

H. A. Snelling Q.C., Solicitor-General for the State of New South Wales, and *J. R. Nolan*, for the Crown.

Cur. adv. vult.

THE COURT delivered the following written judgment :—

Aug. 30.

This application for special leave to appeal was made by an accused person who had been tried upon an indictment for manslaughter. Upon the trial he was convicted of an offence under s. 52A (1) of the *Crimes Act* 1900-1951 (N.S.W.). The Solicitor-General for New South Wales appeared upon the application and stated that he concurred in the view that the case was one in which the Court might properly grant special leave to appeal. The Court thereupon treated the application as an appeal and as an appeal it was argued forthwith.

It appears that the applicant was the driver of a motor omnibus and that he drove it against one of the stanchions or piers of the Iron Cove Bridge. A passenger was killed who was travelling on the upper deck of the omnibus. The applicant was indicted for manslaughter in respect of the passenger's death, but he was convicted under s. 52A (1). The question for decision is whether, upon the proper construction of that provision, it applies to a case such as this where the person killed is riding in the vehicle of the offending driver and meets his death because the vehicle is driven against some other object. The applicant appealed against his conviction to the Supreme Court sitting as a court of criminal appeal. His appeal was dismissed, the court placing upon s. 52A (1) a construction giving the provision a sufficiently wide operation to include the circumstances of the case. Section 52A (1) is as follows :—" Where the death of any person is occasioned through impact with a motor vehicle or through the impact of a motor vehicle with any vehicle or

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other object in, on or near which the person was at the time of impact and in either case the motor vehicle was at the time of impact being driven by a person—(a) under the influence of intoxicating liquor or of a drug ; or (b) at a speed or in a manner which is dangerous to the public, the person last-mentioned shall be guilty of the misdemeanour of culpable driving and shall be liable to imprisonment for five years.” A consideration of the language of the sub-section will show that in order to bring the present case within it it must be held that the passenger’s death was occasioned through the impact of the omnibus with an object, namely the pier, near which the passenger was at the time of impact. The passenger was only “ near ” the object, consisting of the pier, because he was riding in the bus which by its impact with the pier brought him close to it. Is that the kind of thing the words contemplate ?

The first part of the sub-section provides for the case of the death of the person occasioned through impact with a motor vehicle. There was an earlier version of the section which was adopted by Act No. 31 of 1951, s. 2 (e). In that version there was no alternative condition. The accepted view of the words “ where the death of any person is occasioned through impact with a motor vehicle ” was that they were not satisfied except by an impact by the motor vehicle with the person killed. He might be a pedestrian or a cyclist or an equestrian or his body might in some other way be exposed to the impact of the vehicle ; but there must be an impact with him bodily. By Act No. 16 of 1955, s. 2 (a), the section was re-enacted in its present form. That is to say there was inserted an alternative expressed in the additional words “ or through the impact of a motor vehicle with any vehicle or other object in, on or near which the person was at the time of the impact ”. The general intention of these words is plain enough. They are intended to apply to a case in which the motor vehicle driven by the person accused of the offence strikes another vehicle in, on or near which the person killed was at that time, and to a case in which it strikes some other object in, on or near which that person then was. There is a definition in sub-s. (7) of the word “ object ” but it is not an exclusive definition. Sub-section (7) provides that without limiting the generality of the meaning of the expression “ object ”, that expression in sub-ss. (1) and (2) includes animal, building and structure.

It would be possible to say that the deceased in the present case was “ near ” the pier of the bridge with which the vehicle collided only because he was a passenger in the vehicle and was brought into proximity with the pier by the very vehicle itself. But the

whole provision on its language seems to be directed not to the persons in the motor car which makes the impact but to persons who are outside that vehicle and are nevertheless killed by impact of that vehicle directly or indirectly. The first alternative in the section refers to direct impact. The second part of the sub-section refers to the impact of the vehicle with something else, either another motor vehicle or some other object and it requires that at the time of the impact the person whose death is caused should be on, in or near that other thing. If the offender's car runs into another car the death must be the consequence of the man killed being in that other car or on it or near it, as he would be if he was about to get into it or was attending to a tyre or the tail-light. If the offender's car struck a post or a stanchion and caused it to fall upon a bystander that would be within the words. But the present case seems to be outside the conception. It would be driving the literal meaning of the words to a quite unintended application if they were read as covering a case where the deceased person was a passenger in a vehicle which, because it collided with another vehicle or object, brought him into proximity with that other vehicle or object. It is unnatural so to understand them. We think the conviction was therefore wrong.

The appeal should be allowed. The order of the Supreme Court should be discharged and in lieu thereof an order should be made setting aside the conviction and entering a verdict of not guilty upon the whole indictment and a judgment of acquittal.

Special leave to appeal granted. Application to be treated as the hearing of the appeal. Appeal allowed. Order of the Supreme Court as a court of criminal appeal discharged. In lieu thereof order that the conviction be set aside and a verdict of not guilty upon the whole indictment be entered and a judgment of acquittal.

Solicitors for the appellant, *Morgan, Ryan & Brock.*

Solicitor for the Crown, *F. P. McRae*, Crown Solicitor for New South Wales.

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