
DISTRICT COURT ROTTERDAM

Juvenile Division
Prosecution number: 000000/23

Date of judgment: 7 January 2023
Inter partes proceedings

Judgment of the full court in the criminal case against the accused:

Jack D,
born in Rotterdam on 00-00-2005, registered in the Personal Records Database at the address XXXXX XX.

Counsel for the defendant: Mr X, LL.M., lawyer in Rotterdam
Prosecutor: Ms Y, LL.M.

This judgment was rendered following a hearing on the merits. The hearing on the merits of the case took place on XX XX 2022.

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The accused is - in brief – charged with the manslaughter of the victim Olivia, alternatively charged as causing a traffic accident causing the death of Olivia by negligence. In addition, the accused is charged with causing a traffic accident with injury by negligence with the victim being John D. The full text of the charge as written down by the prosecutor in the indictment is included in Chapter 1 of this judgment.

The court finds most of the charges proven. The proven charges, the motivation of this decision and a summary of the means of evidence are set out in Chapter 2 of this judgment.

The proven offences are prohibited conduct punishable by law. What the prohibited conduct comprises, is described in Chapter 3 of this judgment. That chapter also discusses whether this conduct constitutes a statutory criminal offence, and the criminal liability of the accused.

The court imposes on the defendant a juvenile detention of 12 months, four of which are suspended, with a probation period of 2 years. Chapter 4 of this sentence lists all components of the sentence and its motivation.

Chapter 5 concludes this judgment with a brief account of all decisions and the signature of the judges and the registrar.

1. The charge following from the indictment

Fact 1 primary

that he, on 00-00-0000 in XX, deliberately took the life of the victim Olivia F. by driving a passenger car, driven by him - the accused - at a (very) high speed into Olivia F., while Olivia F. was on a pedestrian crossing, as a result of which, Olivia F. died.

alternatively

that he, on or around 00-00-0000 in XX, as a road user, namely as a driver of a motor vehicle, travelling therein on a (public) road, behaved in such a way that a fatal traffic accident due to his fault has occurred by driving recklessly, in any case very, or at least considerably, carelessly and/or inattentively,

- without holding a valid driving licence;
- within the urban area;
- on a bend in the road;
- while for victim Olivia F., the traffic light was green and she was crossing the road;
- at a speed of 120 km/h;
- driving into Olivia F.;

killing that Olivia.

Fact 2

that he, on or around 00-00-0000 in XX, as a road user, namely as a driver of a motor vehicle, driving with it on a (public) road, behaved in such a way that a traffic accident attributable to him occurred as a result of reckless, or at least very, or at least considerable, carelessness and/or inattentive driving

- without holding a valid driving licence;
- within the urban area;
- on a bend in the road;
- while for another road user the traffic light was green and she was crossing the road;
- at a speed of 120 km/h;
- drove into Olivia F.;
- braked hard;

causing bodily harm to John D.

2. The proof

Acquittal

With the public prosecutor and the defence, the court is of the opinion that the charge of manslaughter, cannot be legally and convincingly proved. The accused is acquitted of this charge.

Views

The public prosecutor and the defence believe that fact 1 in the alternative and fact 2 can be proved.

Establishment of guilt

The court finds that it has been legally and convincingly proven that the accused committed the offences he is charged with, in such a way that:

Fact 1 in the alternative

he, on 00-00-0000 in XX, as a road user, namely as a driver of a motor vehicle, driving it on a public road, behaved in such a way that a fatal traffic accident occurred due to his fault by driving very carelessly and inattentively:

- without holding a valid driving licence;
- within the urban area;
- on a bend in the road;
- while the victim Olivia F. crossed the road and the traffic light in front of her was green;
- at a speed of 120 km/h;
- drove into Olivia F.;

killing that Olivia F.

Fact 2

he, on 00-00-0000 in XX, as a road user, namely as a driver of a motor vehicle, travelling therein on a public road, behaved in such a way that a traffic accident due to his fault occurred by driving recklessly, at least very carelessly and inattentively,

- without holding a valid driving licence;
- within the urban area;
- in a bend in the road;
- while the victim Olivia F. crossed the road and the traffic light in front of her was green;
- at a speed of 120 km/h;
- drove into Olivia F. and
- braked hard;

causing John D. bodily injury, namely serious fractures on his skull, neck, arms and ribs.

Evidence

The proven facts are based on the - content of the – means of evidence listed below. For both offences, only a statement for these means of evidence has been made. This statement will suffice, because the accused confessed to what was proven there and no acquittal was subsequently pleaded.

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Means of evidence

1. Statement of the accused at the hearing of XX-XX-XXXX.
2. Police investigation, statement by John D.¹
3. Police investigation²

¹ The page numbers mentioned in the footnotes are included in the 'Case file X. In this case, they are pages x.'

² Page number x.

3. The prohibited conduct and punishability

Legal qualification of the offence

The facts proven qualified as:

Fact 1 in the alternative:

violation of Section 6 of the Road Traffic Act 1994, while the accident involved causing another person's death

Fact 2:

violation of Section 6 of the Road Traffic Act 1994, while the accident involved causing bodily injury to another person.

Punishability of facts and accused

No facts or circumstances have become plausible to exclude the punishability of the facts or the criminal liability of the accused.

The offences are punishable and the accused is criminally liable.

4. The punishment

Prosecutor's request

The prosecutor requested a juvenile prison sentence of 18 months, based on the proven facts.

Assessment

Facts on which the penalty is based

Through his fault, the accused caused a serious car accident that killed the victim Olivia F. and injured the accused's brother. In trying to keep his brother out of the hands of the police, the accused drove at a very high speed through a village to get away because of a previous crime committed by his brother. The accused drove without lights on poorly lit streets in the inner city at an average speed of 130 km/h. He repeatedly ignored red traffic lights at major intersections without slowing down.

As the accused took a bend in the road, he suddenly saw the victim in front of him. The victim was walking late at night and crossed the road at a traffic light that was green for pedestrians. The accused tried to brake and hits Olivia at 120 km/h. As a result of the collision, Olivia was thrown into the air. She landed against the wall of a house and her head hit the wall with full force. She suffered multiple skull fractures and massive brain trauma and died instantly. The accused's brother suffered injuries.

The victim Olivia F. was a single mother and cared for her three young children aged three, five and ten years old.

Personal circumstances of the accused

The extract from the judicial documentation shows that the accused has not been previously convicted of criminal offences.

The accused attends the local high school where he is doing well. He is liked by his classmates. His development, both physically, intellectually and mentally, is in the normal range for a young man his age. He lives with his parents.

Conclusion

The seriousness of the offences justifies a juvenile prison sentence of substantial duration, keeping in mind that the maximum juvenile prison sentence in this case is two years. A juvenile prison sentence of 12 months then comes into view from the perspective of retribution and deterrence of other juveniles. On the other hand, the accused is still young and is doing relatively well. The sentence to be imposed must therefore contain a clear perspective for the accused. For this reason, the unconditional part of the juvenile sentence is limited to eight months. The other four months of juvenile detention will be imposed on a conditional basis with the aim of making the accused realise that, after he is released again, this terrible incident will never happen again.

Legal provisions

Consideration was given to Sections 77i, 77r, 77x, 77y, 77z, 77aa of the Penal Code and Section 6 of the Road Traffic Act 1994.

5. Decisions in brief and signature

The court:

declares not proven that the accused committed the offence under fact 1 primary and acquits the accused thereof;

declares proven that the accused committed the offences under fact 1 in the alternative and facts 2 as described above;

finds that the proven facts constitute the criminal offences listed in chapter 3;

declares the accused liable to punishment;

sentences the defendant to a **juvenile detention of 12 months, of which four months are suspended**

attaches a probationary period to this, set at 2 years;

enforcement can be ordered if the convicted person does not comply with the general condition and also if the convicted person does not comply with a special condition during the probation period or a condition attached to it by operation of law;

states as a general condition:

the convicted person will not commit a criminal offence before the end of the probation period.

This judgment was delivered by:

Mr XX, chairman and juvenile judge,

and Mrs YY and ZZ, judges,

in the presence of Mr GG, registrar,

and pronounced at the public hearing of this court on 00-00-2023.