

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL CASE NO: HAA 009/2013**

**BETWEEN : SALESH SATEN LAL**

**APPELLANT**

**AND : STATE**

**RESPONDENT**

**COUNSEL : Mr Nandan and A Reddy for the Appellant  
Mr J B Niudamu for the Respondent/State**

**Date of Hearing : 08/04/2014**

**Date of Judgment : 18/07/2014**

**JUDGMENT**

[01] Salesh Saten Lal (hereinafter “the appellant”) was charged for Dangerous Driving Occasioning Death contrary to Section 97(2) (c) and 114 of the Land transport Act No: 35 of 1998. The Charge was filed at the Navua Magistrates Court on 09<sup>th</sup> day of February 2009.

[02] The particulars of offence were:

“Salesh Saten Lal on the 9<sup>th</sup> day of September 2007 at Navua in the Central Division drove a motor vehicle registration No: FF 707 on Queens Road, Galoa, Serua, in a dangerous manner occasioning the death of Fipi Lagilagi Waqalevu”

- [03] After a prolonged trial the Learned Magistrate Navua on the 19<sup>th</sup> day of September 2012 convicted the Appellant. On the 25<sup>th</sup> day of January 2013 he was sentenced to 02 years imprisonment with 14 months to be served and the remaining 10 months to be suspended for 2 years.
- [04] Being aggrieved the Appellant has appealed against the conviction and sentence. The Appellant filed his petition of appeal on 13/02/2013. Before hearing in the High Court the Appellant with the leave of the court filed an amended petition of appeal against both conviction and sentence. The Appellant appealed against the conviction on the following grounds:
- (i) That the learned Magistrate erred in law and in fact in convicting the Appellant on the charge of Causing Death by Dangerous Driving.
  - (ii) The learned Magistrate erred in law and in fact in convicting the accused when no evidence was adduced by the prosecution in relation to the speed zone of the area where the accident took place.
  - (iii) That the learned Magistrate erred in law and in fact in convicting the Appellant when no evidence was adduced by the prosecution that the accused was speeding.
  - (iv) That the learned Magistrate erred in law and in fact in not considering the fact that the victim crossed the road from behind a parked bus thus obscuring the vision of the Appellant.
  - (v) That the learned Magistrate erred in law and in fact in not convicting that it was the victim that crossed the path of the Appellant's bus by coming straight into the path of the bus without giving any opportunity to the Appellant to swerve, manoeuvre or steer the bus in order to avoid the accident.
  - (vi) That the learned Magistrate erred in law and in fact when he failed to uphold the defence's submission that the Appellant was not driving in a dangerous manner.

- (vii) That the learned Magistrate erred in law and in fact in finding that the Appellant was speeding when all the witnesses gave conflicting evidence as to the speed at which the bus was travelling.
- (viii) That the learned Magistrate erred in law and in fact in holding that a 7 tonne bus travelling at 50 kmph can be stopped suddenly when it is impossible to do so.
- (ix) That the learned Magistrate erred in law and in fact in holding that the bus driven by the Appellant braked only after impact.
- (x) That the learned Magistrate erred in law and in fact in finding the evidence of all prosecution witnesses when they said that the Appellant was driving at high speed although none of the witnesses testified that he was driving in a dangerous manner.
- (xi) That the learned Magistrate erred in law and in fact in having the sketch plan admitted when the same was not drawn in the presence of the Appellant.
- (xii) That the learned Magistrate erred in law and in fact when he failed to consider the following material facts when he convicted the Appellant for Causing Death by Dangerous Driving;
  - 1) That there was no consumption of alcohol;
  - 2) That the Appellant was not racing or competing with other drivers;
  - 3) That there was no persistent and deliberate course of very bad driving;
  - 4) That there was no bad behaviour on the part of the Appellant like failing to stop or escaping from the scene of the accident;
  - 5) That the Appellant did not drive recklessly.

[05] The appeal grounds against the sentence are:

- (a) That the sentence is manifestly harsh and excessive and wrong in principle in all circumstances of the case in view of the foregoing grounds:
  - (i) That the Appellant was a 1<sup>st</sup> offender.
  - (ii) That the Appellant had a good driving record up to the date of accident.

- [11] The Learned Magistrate had considered all the evidence before finding the accused guilty of the charge. I agree with the Learned Magistrate finding the Appellant guilty in this case. Therefore I dismiss the Appeal against the conviction as it has no merits.
- [12] Now I consider whether the sentence passed against the Appellant is appropriate. The State submits that the sentence passed in this case is quite excessive compared to other case laws in relation to this charge.
- [13] The Appellant was sentenced on 25/01/2013. He was granted bail pending appeal on 11/04/2013. He has already served two and half months of his sentence. Considering all and acting under Section 256(3) of the Criminal Procedure Decree 2009, I suspend the remaining period of the sentence for a period of 03 years from today. Suspended sentence is explained to the Appellant.
- [15] Appellant has 30 days to appeal.

   
P. Kumararatnam  
**JUDGE**

At Suva  
18/07/2014