

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 239 of 2023

STATE

v

ALVIN CHAND

Counsel: Ms. L. Latu and Ms. K. Dugan for the State
Mr. P. Gade and Mr. A. Chand for the Accused

Date of Sentencing Hearing: 18th June 2024

Date of Sentencing: 15th July 2024

SENTENCE

1. Alvin Chand, the accused, is indicted with the following 3 counts as laid out in the Information dated 29 September 2023 by the Director of Public Prosecution.

COUNT ONE

Statement of Offence

DANGEROUS DRIVING OCCASIONING DEATH: Contrary to sections 97(2)(c) and 114 of the Land Transport Act 1998.

Particulars of Offence

ALVIN CHAND on the 16th day of July 2023 at Princess Road, Sawani, Nausori in the Eastern Division drove a motor vehicle with registration EH 296 along the Princess Road, Sawani, Nausori in a dangerous manner having regard to all the circumstances of the case and thereby caused the death of **NILESH PRASAD**.

COUNT TWO

Statement of Offence

DANGEROUS DRIVING OCCASIONING GRIEVOUS BODILY HARM:

Contrary to sections 97(4)(c) and 114 of the Land Transport Act 1998.

Particulars of Offence

ALVIN CHAND on the 16th day of July 2023 at Princess Road, Sawani, Nausori in the Eastern Division drove a motor vehicle with registration EH 296 along the Princess Road, Sawani, Nausori in a dangerous manner having regard to all the circumstances of the case and thereby occasioned grievous bodily harm to **SHEKHAR KAUSHAL SHARMA**.

COUNT THREE

Statement of Offence

FAILURE TO REPORT ACCIDENT: Contrary to section 63(2)(a) of the Land Transport (Traffic) Regulations 2000.

Particulars of Offence

ALVIN CHAND on the 16th day of July 2023 at Princess Road, Sawani, Nausori in the Eastern Division being a driver of a motor vehicle registration no. EH 296 which was involved in an accident on a public road, namely, Princess Road, Sawani, Nausori failed to report the particulars and circumstances of the accident within 24 hours after the accident to the nearest police station namely the Nausori Police Station.

Brief facts

2. The accused Alvin Chand is a 30 year old male driver residing at Navitoko Settlement, Sawani, Nausori. The deceased Nilesh Prasad is a 32 year old male carpenter and the accused's neighbour at Navitoko Settlement.

3. Count 1 – Dangerous driving occasioning death

On 16 July 2023 at approximately 6.45pm, the accused Alvin Chand, Shekhar Kaushal Sharma (PW1), Ashitosh Lal (PW2) and Nilesh Prasad (deceased) were consuming alcohol at the accused's residence at Navitoko Settlement, Sawani, Nausori. Having drunk all the alcohol, they then decided to buy some more alcohol, and all boarded vehicle registration number EH296 driven by the accused for that purpose. In that vehicle, PW1 sat at the front passenger seat, Nilesh Prasad (deceased) sat behind PW1, and PW2 sat behind the accused who then drove the vehicle to Prince Way supermarket situated on Princess Road to purchase alcohol. Upon reaching Prince Way supermarket, they all disembarked and went into the supermarket and purchased a bottle of whiskey, then boarded the vehicle and sat in the same seating arrangement, and the accused drove the vehicle along Princess Road returning to Navitoko Settlement. As the vehicle approached the Green Gold sawmill yard at Sawani, Nausori, Ashitosh Lal (PW2) noticed that the accused was driving the vehicle in a dangerous and reckless manner and at high speed of more than 100km/hr. The vehicle was shaking when it reached Rambessesar Chaudry School at Waila and there were no potholes on the road. According to Shekhar Kaushal Sharma (PW1), their vehicle then overtook another vehicle, it lost control and veered off

the right side of the road. This was witnessed by Apenisa Waqaqai (PW3) who was waiting at the bus stop near the junction at the Waila Treatment Plant stating that he saw the same vehicle traveling at high speed, went to the opposite lane and veered off the road then bumped the EFL post and landed on the Waimanu river bank. PW3 then ran to the vehicle and saw only 3 passengers inside the vehicle while the 4th passenger Nilesh Prasad (deceased) was found lying on the cassava patch. PW3 then got the accused, PW1 and PW2 out of the vehicle, and soon thereafter PW1, PW2 and Nilesh Prasad (deceased) were transported to the Nausori hospital in another vehicle while the accused fled the scene of the accident.

Dr. Varsha Singh (PW4) who was on duty at the Nausori Health Center on 16 July 2023 stated that Nilesh Prasad (deceased) was produced at the hospital at about 8.16pm, and he was gasping and unresponsive, and despite their best efforts to treat him, he succumbed to his injuries and was pronounced dead at about 8.48pm. The autopsy was conducted on 18 July 2023 at the CWM hospital by Pathologist Dr. Praneel Kumar (PW5) who noted the following causes of death in the autopsy report [Annexure A]: *a) Bilateral Hemothorax; b) Multiple rib fractures; c) Severe traumatic chest injuries; and d) Motor vehicle accident.* The accused Alvin Chand drove vehicle EH296 in a dangerous and reckless manner resulting in the impact causing the death of Nilesh Prasad (deceased) on 16 July 2023.

4. Count 2 – Dangerous driving occasioning grievous bodily harm

The accused Alvin Chand drove vehicle EH296 in a dangerous and reckless manner resulting in an impact causing grievous bodily harm to Shekhar Kaushal Sharma (PW1) on 16 July 2023. The grievous bodily harm, according to Dr. Varsha Singh's medical report dated 16 July 2023 [Annexure B], is that PW1 sustained right clavicular (i.e. collarbone) fracture and soft tissue injury on his left knee due to the motor vehicle accident.

5. Count 3 – Failure to report accident

Apenisa Waqaqai (PW3) stated that the accused fled the scene of the accident when he went to provide assistance immediately after vehicle EH296 bumped the EFL post and landed on the Waimanu river bank. According to the accused's wife Shyreen Sharma

(PW6) that she was at home when the accused and his friends went in the vehicle to buy alcohol, and thereafter she called PW1's mobile phone and while conversing with the accused, he then told her that their vehicle was involved in an accident near the Waila Treatment Plant. After sometime PW6 saw the accused walking home, changed his clothes, and went to his father-in-law's house situated also at Navitoko Settlement. Cpl.4803 Shaneel (PW7) arrested the accused at a relative's house at Navitoko Settlement, Sawani, Nausori, and the accused admitted that he drove vehicle EH296 at the time of the accident. The accused was then taken to the Nausori Police Station in police vehicle fleet 121, and on the way the accused began complaining of having left abdominal pain, and he was taken instead to the Nausori Health Center by PW7.

In the course of the investigation, Mosese Cokanasiga took photographs of the crime scene and compiled a photographic booklet dated 18 July 2023 [Annexure C], and PC.6097 Jone (PW9) drew the rough & fair sketch plans of the crime scene [Annexure D]. On 17 July 2023, Dilesh Chand (PW10 – Vehicle Examination Officer) examined vehicle EH296 and provided the relevant LTA Vehicle Test Sheet [Annexure E].

On 18 July 2023, the accused was interviewed under caution in the Hindi language at Nausori Police Station via Video Recording Interview (VRI) whereby he admitted the allegations, and was formally charged thereafter. In his record of interview, the accused admitted that he drove vehicle EH296, and drinking and driving was a mistake on his part. Furthermore, he admitted having overtaken on a double line and he caused the death of the deceased during the accident. [Annexure F – English & Hindi transcripts of the record of interview of Alvin Chand dated 18 July 2023]

6. On 25 January 2024 the accused Alvin Chand being represented by Legal Aid counsel Ms. A. Bilivalu pleaded guilty to the aforesaid indictments voluntarily and unequivocally. Prosecutor Ms. L. Latu read out the *Summary of facts* on 22 February 2024, which facts were voluntarily admitted by the accused via his Legal Aid counsel Ms. A. Dean. The *Antecedent Report* also submitted by the prosecutor indicate that the accused does not have any prior conviction. This Court then formally entered the conviction against the accused,

and adjourned the matter for plea in mitigation and sentencing hearing. Counsels were given time to prepare and file their sentencing submission. Plea in mitigation and sentencing hearing was done on 19 April 2024 and 18 June 2024, and the matter adjourned for sentencing. This is the Court's finding on sentence.

Count 1 – Dangerous driving occasioning death

7. The penalty for the offence of *Dangerous driving occasioning death* prescribed under section 114 of the Land Transport Act 1998 is: (a) *Minimum - \$1,000 fine, disqualification for 6 months;* (b) *Maximum - \$10,000 fine / 10 years imprisonment and disqualification for any period up to life.*

8. The relevant tariff is 2 to 4 years imprisonment according to State v Apted [2015] FJHC 653; HAR 2 of 2015 (11 September 2015) and at paragraphs 8 – 11 Madigan, J. (as he then was) held:

8. The present offence of dangerous driving occasioning death is enacted by the Land Transport Act of 1998. It was previously an offence under the Penal Code, Cap 17 (now repealed). Section 238 of the Code provided for the offence of causing death by reckless or dangerous driving of motor vehicle and the maximum penalty was a penalty of five years imprisonment. The Land Transport Act ("the Act") in 1998 provided for the enforcement of traffic laws and in doing so repealed the provisions of section 238 (supra).

9. Section 97 of the Act provides for this offence which the respondent has been charged with, and by s.114 of the Act increased the maximum penalty to 10 years imprisonment, with a maximum fine of \$10,000 and disqualification of licence for any period of up to whole of life.

10. In the case of Sharma HAA 97 of 2005S, Shameem J in assessing the impact of this doubling of the maximum term of imprisonment said this:

“In 1998 Parliament passed the Land Transport Authority Act and increased penalty for causing death by dangerous driving to 10 years imprisonment. There can be no clearer Parliamentary intention as to sufficiency of penalty. To reflect such ... intention, I held in Waqaraitavo that the tariff for such offences must increase to 2 to 4 years imprisonment”.

11. This new tariff imposed by Shameem J, has subsequently been followed by the High Court in Kumar CA 172 of 2014, and Bulivorovoro HAA 11 of 2014.

9. The same tariff was also adhered to by Rajasinghe, J. in Hussein v State [2017] FJHC 854 HAA 6 of 2017 (7 November 2017) stating at paragraph 31, *‘[t]he applicable tariff for the offence of Dangerous Driving Occasioning Death is between 2 to 4 years. (vide: State v Benjamin Padarath Criminal Case No. HCA 13 of 2004S, Iowane Waqairatavo v The State Criminal Appeal No. HAA 127 of 2004S, Kumar v State [2014] FJHC 775; Criminal Appeal 172.2014 (27 October 2014), State v Chand [2014] FJHC 210; HAM 199.2013S (27 March 2014)’. Furthermore, in Naisogovesi v State [2018] FJHC 218; HAA 69 of 2017 (19 March 2018) Sharma, J. stated at paragraph 21, *‘In Iowane Waqairatavo vs The State, Criminal Appeal No. HAA 127 of 2004S, Shameem J. established the tariff for the offence of dangerous driving occasioning death to be between 2 to 4 years imprisonment. Her ladyship also made a very pertinent observation which is applicable today in the following words: “... Deaths on our roads have led to untold suffering for the families of the deceased. Children have lost parents, siblings and relatives in road deaths which could have been avoided had the driver exercised little care. It is time the courts took a principled and determined approach to causing death by driving cases, especially when Parliament has, in unequivocal terms, indicated to the judiciary that sentences should increase.”**
10. Given the tariff of 2 to 4 years imprisonment, for this instant I take the starting point of 3 years.
11. The accused drove vehicle EH296 while being intoxicated to buy more alcohol and in a dangerous and reckless manner which led to the impact that caused the death of his

neighbour Nilesh Prasad (deceased), 32 years and a carpenter. Road deaths such as this causes immense suffering for the surviving families of the deceased, and could have been avoided had the accused exercised care and drove whilst sober. For these aggravating factors, I enhance the sentence by 2 years.

12. The accused is 30 years, though separated from his wife, is in a de facto relationship and has a 10 month old child with his de facto partner. He earns about \$200 weekly as a driver and the sole bread winner for his family. He resides at Navitoko Settlement, Sawani, Nausori with his de facto partner (domestic worker), mother (53 years, domestic worker), two sisters (i.e. 17 years old student, and 29 years old, unemployed and asthmatic). He has no prior conviction. For these mitigating factors, I deduct 1 year resulting in the interim custodial term of 4 years.

13. With the provisional custodial term of 4 years imprisonment, I further make the following deductions:

a) Early guilty plea - 1 year 4 months is deducted being the one third, which approach is consistent with the Fiji Supreme Court decisions in Qurai v State [2015] FJSC 15; CAV24.2014 (20 AUGUST 2015) per Justice Saleem Marsoof at para. 54, and Aitcheson v The State [2018] FJSC 29; CAV0012.2018 (2 November 2018), paras. 12-15; and

b) Time spent in custody - 190 days (i.e. 6 months 6 days) is deducted for the time spent in custody until guilty plea consistent with section 24 of the Sentencing and Penalties Act 2009 including Aitcheson v The State [2018] FJSC 29; CAV0012.2018 (2 November 2018) (Supreme Court of Fiji), paras. 7-11.

14. Thus, the head sentence for Count 1: Dangerous driving occasioning death is 2 years 1 month 24 days imprisonment, and disqualification from driving for 12 months.

Count 2 – Dangerous driving occasioning grievous bodily harm

15. The maximum penalty for the offence of *Dangerous driving occasioning grievous bodily*

harm prescribed under section 114 of the Land Transport Act 1998 is \$2000 fine / 2 years imprisonment and disqualification for 12 months.

16. Rajasinge, J. in Hussein v State [2017] FJHC 854; HAA 6 of 2017 (7 November 2017) at paragraph 32 stated *'[t]he applicable tariff for the offence of Dangerous Driving Occasioning Grievous Bodily Harm is from a fine and suspended term to 12 months of imprisonment (vide: Chand v State [2015] FJHC 192; HAA 11.2015 (18 March 2015), Ali v The State [2016] FJHC 1137; HAA 51 of 2016 (29 December 2016)'*.
17. In State v Degei [2019] FJHC 478; HAC 333 of 2018 (24 May 2019) Goundar, J. sentenced the accused to 12 months imprisonment and 6 months disqualification from driving for the offence of *Dangerous driving occasioning grievous bodily harm*, which sentence ran concurrently with the custodial terms of 4 years for *Manslaughter*, and 3 months imprisonment and 12 months disqualification from driving for *Driving a motor vehicle whilst there is present in the blood a concentration of alcohol in excess of the prescribed limit*.
18. The accused Alvin Chand drove vehicle EH296 in a dangerous and reckless manner which led to the impact that caused Shekhar Kaushal Sharma (PW1) to sustain fracture on his right collarbone and soft tissue injury on his left knee according to the medical report dated 16 July 2023 by Dr. Varsha Singh.
19. For Count 2: *Dangerous driving occasioning grievous bodily harm*, the accused is sentenced to 12 months imprisonment and disqualified from driving for 6 months.

Count 3 – Failure to report accident

20. The maximum penalty for the offence of *Failure to report accident* prescribed under the Land Transport (Fees and Penalties) Regulations 2000 is \$200 fine / 30 days imprisonment, and fixed penalty of \$25 if issued a TIN in respect of the offence under regulation 63(2)(a) of the Land Transport (Traffic) Regulations 2000.

21. For Count 3: Failure to report accident, the accused is sentenced to 10 days imprisonment.

Totality principle of sentencing

22. Considering the *Totality principle* of sentencing and relevant provisions in the Sentencing and Penalties Act 2009, the custodial terms for Counts 1 - *Dangerous driving occasioning death*, 2 - *Dangerous driving occasioning grievous bodily harm*, and 3 - *Failure to report accident*, are hereby made concurrent resulting in the aggregate custodial term of 2 years 1 month 24 days, and disqualification from driving for 12 months for the accused.

23. Having considered Defence counsel's submission on suspension, I have decided not to suspend the imprisonment term in light of the degree of offending, however, pursuant to section 18(1) of the Sentencing and Penalties Act 2009, I hereby impose a non-parole period of 1 year 8 months to the custodial term of 2 years 1 month 24 days.

24. The accused Alvin Chand is therefore sentenced to 2 years 1 month 24 days imprisonment with a non-parole period of 1 year 8 months, and disqualified from driving for 12 months.

25. Thirty (30) days to appeal to the Fiji Court of Appeal.



Hon. Justice Pita Bulamainivalu

PUISNE JUDGE

At Suva

15 July 2024

Solicitors

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused