

IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO.: HAA 14 of 2024
(Labasa Magistrates' Court Traffic Case No. 19 of 2018)

BETWEEN: **JITENDRA KUMAR**

APPELLANT

AND: **STATE**

RESPONDENT

Counsel: **Ms. R. Raj for the Appellant**
 Mr. T. Tuenuku for the Respondent

Date of Hearing: **31 January 2025**

Date of Judgment: **28 February 2025**

JUDGMENT

1. On 19 April 2024, in the Magistrates' Court at Labasa, the learned Resident Magistrate ("the Resident Magistrate") convicted the appellant of dangerous driving occasioning death, contrary to section 97(2)(c) of the Land Transport Act.
2. On 28 May 2024, the appellant was sentenced to a term of 2 years' imprisonment, with a non-parole period of 18 months. He was also disqualified from driving for a period of 12 months.
3. By a timely Petition of Appeal filed on 24 June 2024, the appellant appeals against his conviction on the sole ground that the Resident Magistrate erred in law and in fact when he failed to critically analyse the element of dangerous driving before convicting the appellant.

An overview of the prosecution case

4. The prosecution case against the appellant at trial was that he drove a bus along Jaduram Street, Labasa Town, in a dangerous manner, and collided with an elderly pedestrian, crushing her skull, and causing her death.

5. In a nutshell, the prosecution advanced its case on the basis that the appellant failed to keep a proper look out whilst driving in a congested area. On the prosecution case, this constituted driving in a dangerous manner.
6. In order to prove its case the prosecution called seven witnesses and tendered the deceased's Post Mortem Report, and sketch plans of the scene.
7. The key prosecution witnesses were eye-witnesses to the fatal incident: Mr Eremaia Bukadaki; Mr Jone Vero; and Ms Rosa Wainiqolo.
8. Mr Bukadaki testified that he saw an old lady ("the deceased") crossing the road from Labasa bus stand towards BSP. He saw the front right side of the bus bump the deceased, she fell down, and two rear tyres went over her leg right up to her head. He stated that the driver drove fast, and a bit harshly as he was changing gear a lot and looking towards the bus stand, and not facing the front.
9. Mr Vero stated that, when she was hit by the bus, the deceased was in the middle of the pedestrian crossing.
10. Ms Wainiqolo said that the deceased was standing in the middle of the pedestrian crossing when the front of the bus hit her, knocking her down and dragging her. She testified that she saw that the driver was not looking ahead of him, and was looking to the bus stand.

An overview of the defence case

11. The appellant elected not to give evidence in his own defence, but did call Mr Mohamed Jamal, who testified that the deceased was crossing outside the pedestrian crossing. She was walking with a stick, and her body was bent over. He said she stumbled because of her flip flops. She fell down, and the bus ran over her.
12. When he was cross-examined, however, Mr Jamal accepted that he had not made a statement to the police, did not see the deceased trip over her flip flops, and did not know how she went under the bus.

The impugned Judgment

13. In his impugned Judgment, the Resident Magistrate correctly identified that the central issue for his determination was whether the prosecution had made him

sure that the appellant drove his bus in a dangerous manner in all the circumstances of the case.

14. The Resident Magistrate made extensive reference to relevant case authorities on the definition of dangerous driving in Fiji.
15. Of particular relevance for present purposes is the case of *Lasike v State*, Fiji Court of Appeal Criminal Appeal No HAA 58 of 2002, in which dangerous driving was defined as follows:

“Dangerous driving is the causing of a dangerous situation by a manner of driving which falls below the standard expected of a prudent driver”

16. The Resident Magistrate then went on to carefully review the evidence bearing on this central issue. He concluded that the evidence supported that the appellant was driving below the standard of a competent and prudent driver.

The submissions

17. I am grateful for counsels’ oral and written submissions. It is not necessary for me to deal with all the points raised, but I have considered everything advanced by the parties.
18. In seeking to develop her complaint that the Resident Magistrate failed to critically analyse the element of dangerous driving, Ms. Raj undertakes an extensive review of the evidence. Regrettably, she goes on to make a number of unwarranted attacks on the prosecution case. To take a couple of the more egregious submissions by way of example:
 1. *“How can the driver look in bus stand direction and still not see the pedestrian. It is very clear that the witnesses are framing the driver because a life was lost.”* It would have been wholly inappropriate for trial counsel to have suggested to the eye-witnesses, without any evidential basis whatsoever, that they were being deliberately dishonest, and it is not appropriate for Ms. Raj to attack the integrity of the eye-witnesses at this stage.
 2. *“That due to her bendy and short posture and that she was limping, she could not be seen by the driver nor her presence known to the driver while he was driving.”*
19. Mr Tuenuku, who also appeared for the prosecution at trial, is particularly affronted by the appellant’s suggestion that the deceased’s physical frailty

somehow excuses his failure to see her on the pedestrian crossing. Mr Tuenuku makes the entirely reasonable point that, if the appellant had difficulty in seeing short people from his bus (of which there was no evidence) he should have been more diligent, especially in a busy area.

20. Where I disagree with Mr Tuenuku is his assertion that recklessness is a fault element for the offence of causing death by dangerous driving.
21. In no way chastened by Mr Tuenuku's righteous indignation on behalf of the deceased, Ms. Raj warmed to her theme in her written response:

"This clearly suggest that the bus did not hit the deceased, but it was the deceased who bump into the bus and due to her limping posture she lost her balance and fell underneath the bus and got crushed."

Discussion

22. The appellant bears the burden of satisfying this Court that the Resident Magistrate fell into error in failing to critically analyse the element of dangerous driving.
23. In my considered view, it is not remotely arguable that the Resident Magistrate erred.
24. As I have already alluded to, the Resident Magistrate applied the correct test for dangerous driving. The appellant does not appear to argue otherwise.
25. Instead, the thrust of the appeal has been to seek to persuade this Court to take a different view of the evidence adduced at trial.
26. This Court could only interfere with the Resident Magistrate's findings if those findings were not reasonably open to him. Plainly, the central finding that the appellant drove in a dangerous manner was properly open to him. Indeed, it was the only reasonable finding open to him on the totality of the evidence.
27. The defence theory that the deceased had accidentally thrown herself under the bus was inherently implausible, not to mention wholly unsupported by evidence.
28. For the sake of completeness, I should say that I am unpersuaded by the prosecution submission that the fault element is subjective recklessness. The

Resident Magistrate applied an objective test. In my view, he was correct to do so.

Conclusions

29. For these reasons, I conclude that the conviction was supported by the evidence, and the Resident Magistrate did not err in law, and there has otherwise been no miscarriage of justice.

Orders

1. The appeal is dismissed.
2. The conviction recorded by the Resident Magistrate is affirmed.



A handwritten signature in black ink, consisting of the letters "HJB" followed by a long horizontal stroke that ends in a small upward hook.

Hon. Mr. Justice Burney

At Labasa

28 February, 2025

Solicitors

Office of the Legal Aid Commission for the Appellant

Office of the Director of the Public Prosecution for the Respondent