

IN THE RESIDENT MAGISTRATE'S COURT OF FIJI
AT NAVUA

Traffic case No: - 1456/2010

THE STATE

V

ASHNEEL GOVIND SAMI

For Prosecution : - Sgt. Lenaitasi

For Accused : -Mr. Singh from the Kholi and Singh

RULING ON NO CASE TO ANSWER

1. The accused is charged with offence of Careless Driving contrary to section 99(1) and 114 of the LTA Act No. 35 of 1998.
2. The accused pleaded not guilty for the charge and this matter was taken for hearing on 04/07/2012 and 30/05/2013. After the prosecution closed their case the learned counsel submitted that there was no case made out against the accused by the prosecution and filed written submission regarding that.
3. Section 178 of the Criminal Procedure Decree states that "***if at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused***".
4. **In Regina v Galbraith(C.A) [1981]** Lord Lane CJ stated the following "How then should the judge approach a submission of "no case" ?

- 1] If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.
- 2] The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.”

5. **In Abdul Gani Sahib v. State [2005] HAA0022/05S, 28th April 2005**, Madam Shameem held that the correct test in Magistrate’s Court under Sec. 210 of the Criminal Procedure Code is,

1. Whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and;
2. Whether on the prosecution case at its highest, a reasonable tribunal could convict.

6. **In State v Aiyaz [2009] FJHC 186; HAC033.2008 (31 August 2009)** his Lordship Justice Goundar said

The test for no case to answer in the Magistrates’ Court under section 210 is adopted from the Practice Direction, issued by the Queen’s Bench Division in England and reported in [1962] 1 All E.R 448 (*Moiden v R (1976) 27 FLR 206*). There are two limbs to the test under section 210:

- [i] Whether there is no evidence to prove an essential element of the charged offence;
- [ii] Whether the prosecution evidence has been so discredited or is so manifestly unreliable that no reasonable tribunal could convict.

An accused can rely on either limb of the test under section 210 to make an application for no case to answer in the Magistrates’ Court.” [Emphasis added]

7. The accused is charged with the offence of Careless Driving contrary to section 99(1) and 114 of the LTA Act. Section 99(1) of the Act states:-

“A person who drives a motor vehicle on a public street without due care and attention commits an offence and is liable on conviction to the prescribed penalty.”

8. PW1 said he parked the car side of the road to pick a passenger and at that time his signal lights were on. Suddenly the accused's vehicle came and bumped his vehicle from behind. At that time his vehicle was not in the road. PW4, the IO said the accident happened because the accused did not take the precautions.
9. Above evidence has fulfilled all the elements in the offence and they were credible.

Therefore hold that at the conclusion of the prosecution case, it appears to the court that a case is made out against the accused sufficiently to require making a defense.

10. Accordingly, I dismissed the submission made by the learned counsels for the Accused person under the section 178 of the Criminal Procedure Decree.

01/07/2013

H. S. P. Somaratne
Resident Magistrate, Navua