

IN THE MAGISTRATE'S COURT AT LABASA

CRIMINAL JURISDICTION

Traffic Case No. 632 of 2017

STATE

v

JWALA PRASAD

Appearance : **PC Lal** for the Prosecution
 : **Ms Choy. C** for the Accused

Ruling : **7 June 2017**

RULING

NO CASE TO ANSWER

1. The Accused, Jwala Prasad is charge for *Dangerous Driving Occasioning Death*, contrary to *section 97(2)(c)(8)*, of the *Land Transport Act*.
2. The particulars of the offence are that on 22 July 2017, at Dreketi, in the Northern Division, you drove a motor vehicle registration number DD 932 at Matasawalevu along Labasa Nabouwalu Highway having regards to all the circumstances of the case, you drive the said vehicle in a manner which was dangerous and thereby caused the death of Jadu Ram.

3. The Accused pleaded not guilty to the charge on 31 October 2017. The Counsel for the Accused informed the court that there is no admission. The case proceeded to trial on 5 February 2018.
4. The Prosecutor called Pravin Chand (Pravin) as the first witness, Rajesh Deo (Rajesh) as the second witness, CPL Ivin as the third witness, and PC Prasad as the fourth and final witness. The Counsel for the Accused makes an application of no case to answer and was directed to file his submission. The submission was filed on 7 February 2018. The Prosecution submission was filed on 16 April 2018.

Application

5. The application is made under *section 178 of Criminal Procedure Act*. The Defence submitted that there was no evidence to show that the Accused drove in a dangerous manner that resulted in the accident and causing the death of the deceased person. No tribunal can convict on the evidence adduced.

Law

6. *Section 97(2)(c) of the Land Transport Act, state;-*
"(2)A person commits the offence of dangerous driving occasioning death if the vehicle driven by the person is involved in an impact occasioning the death of another person and the driver was, at the time of the impact, driving the vehicle-
(c) in a manner dangerous to another person or persons"
7. The elements of the offence are;-
 - a. *the accused,*
 - b. *drove a vehicle,*

- c. *in a dangerous manner,*
- d. *resulted in an impact,*
- e. *causing death to a person.*

8. The test for no case to answer in the Magistrate Court was set in the case of **Abdul Gani Sahib v the State** (unreported) Criminal Appeal No. HAA 0022 of 2005 (28 April 2005). The test are:

i. Whether there is relevant and admissible evidence in respect of each element of the offence.

ii. If there is evidence, whether it is so discredited that no reasonable tribunal could convict on it.

9. The burden of proof is on the Prosecution. The consideration on the weight of the evidence, the credibility of the witness, and the requirement to prove the case beyond reasonable doubt are immaterial at this stage.

Analysis and determination

10. The Accused was identified in court by Pravin and Rajesh as the driver of the vehicle in which the deceased person Jadu Ram was travelling on at the time of the accident.

11. Pravin stated in his evidence that on 22 July 2017, around 5.30pm he was standing in his verandha when he saw the vehicle that was driven by the Accused was bumped by a vehicle that was coming from Nabouwalu. His father Jadu Ram was in the vehicle driven by the Accused. He said, that the vehicle that was coming from Nabouwalu was speeding. He said the vehicle driven by the Accused has just cross the middle lane turning right into his drive way when the vehicle coming from Nabouwalu came and collided with the Accused vehicle. When he went to rescue his father there was a big cut on his father's head and he took his father

to the hospital and was pronounced dead. The Accused vehicle was not speeding. The driver that was coming from Nabouwalu was driving in a dangerous manner by speeding that caused the impact and death of his father.

12. Rajesh stated that he was in his farm near to the place of the accident. He did not see the accident. He did not see who was speeding but he heard a sound and he ran to the main road where he saw a white land cruiser was tumbled and rolling over. Pravin's father Jadu Ram was in the blue hilux driven by the Accused. He went and assist Pravin in taking Jadu Ram to the hospital. There was a cut on Jadu Ram's head.
13. Pravin is the only witness who saw the manner of driving as he is the only witness who saw the accident. Pravin's evidence shows that the Accused was not driving in a dangerous manner. His evidence state that it was the driver of the other vehicle that came from Nabouwalu that was driving in dangerous manner and caused the accident and the death of his father.
14. The caution interview was tendered as prosecution exhibit 1A and 1B by CPL Ivin. There is nothing in the interview to show that the Accused was driving in a dangerous manner.
15. The rough sketch plan was tendered as prosecution exhibit 2 by PC Prasad. The rough sketch plan shows 20.2 meters of tyre break marks before the point of impact of the vehicle that travels from Nabouwlau. The position of the Accused vehicle from the point of impact was 22.1 meters and the position of the other vehicle was 41.2 meters. The Accused vehicle was pushed back by 22.1 meters. The rough sketch does not show or suggest any possible dangerous driving by the Accused but it support Pravin's evidence that the other vehicle was speeding. A vehicle travel on normal speed

should be able to come to a permanent stop within 20 meters of applying the brakes.

16. The Post Mortem Result was tendered as prosecution exhibit 3 which confirmed the death of the Jadu Ram from the road accident.
17. The evidence adduced has not shown that the Accused was driving in a dangerous manner. The evidence clearly shows that the Accused was following the road rules. The Prosecution fails to elicit evidence from PC Ivin and PC Prasad on the reason why the Accused was charged in this case as the evidence does not support the charge. The Prosecution failed to adduce evidence to show that the Accused manner of driving was dangerous.
18. With the evidence adduced, no court can convict on it.
19. In this ruling, I find that there are insufficient evidence adduced by the Prosecution for the Accused to put his defence. I find that there is no case to answer and I allow the application.
20. Pursuant to *section 178* of the *Criminal Procedure Act*, I dismiss the proceeding and I acquit the Accused accordingly.

28 days to appeal



A handwritten signature in blue ink, appearing to read "C. M. Tuberi", is written over a blue oval-shaped line.

C. M. Tuberi
RESIDENT MAGISTRATE