

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 438 of 2012

STATE

v

ROHIT VIMAL PRASAD

For the Prosecution : Mr Fotofili. L
For the Accused : Mr Kohli. A

Judgment : 19 February 2018

JUDGMENT

1. The accused *Rohit Vimal Prasad* is charge for *Dangerous Driving Occasioning Death*, contrary to section 97(2)(c) and 114 of the *Land Transport Act*.
2. The particulars of the offence are;-
"Rohit Vimal Prasad on the 26th day of January 2012, at Labasa in the Northern Division drove a motor vehicle registration number GN 864 along Labasa Wainikoro road at Vulovi in a manner dangerous to another person occasioning the death of Isireli Moce."
3. On 10 August 2012, the Accused pleaded not guilty to the charge. The case finally proceeded to trial on 18 April 2016.
4. On the trial date, the Prosecution called eight witnesses. The Accused is the only witness for the defence.

5. 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"

6. The elements of the offence that the prosecution must prove beyond reasonable doubts are;-

- a. *the accused,*
- b. *drove a vehicle,*
- c. *in a dangerous manner,*
- d. *resulted in an impact,*
- e. *and causing death to a person.*

7. The Accused in his evidence confirmed that on 26 January 2012, he was on day shift starting at 6.30am for 8 hours shift. During the shift, he was instructed by CPL Bull to go home and reported back for duty at 6pm. He reported back to work at 6pm for 12 hours night shift. He was directed to be the driver from 6pm to 7am. He did not complete his 12 hours shift because of the accident at Vulovi. He was travelling from Vunika towards Labasa. He was driving and Sgt Isireli was with him sitting in the front passenger seat when they had an accident at Vulovi.

8. The above evidence of the Accused, has satisfied and established the elements of the offence (a), (b), and (d) in paragraph 6 above. This judgment will now focus on elements of driving in a dangerous manner and causing death to a person, that is element (c) and (e).

9. For the element of dangerous driving, there is no evidence from any witness to say that he was present or witness the accused driving the vehicle and bumped the culvert.

10. The Accused in his evidence stated that he was driving at 40 to 50 speeds before the accident and was driving on the left hand side of the road. It was heavy rain so he was driving towards the middle marking and when he was driving the accident occurred. His eyes suddenly closed for 2 to 3 seconds and when he opens his eyes the vehicle had bumped the culvert as he was unable to control the vehicle. He said he only slept for a few seconds. He said may be he was tired. He was not speeding. The accident was at 12.10am.

11. The Fiji Court of Appeal in **Kumar v State** [2002] FJCA 12, AAU 0014 of 2002 (30 August 2002) confirmed that the test for dangerous driving in Fiji was set out in **Sambhu Lal v Regina** Criminal Appeal No. 49 of 1986, where the Fiji Court of Appeal refers to the test laid down in **Doreen Rose Gosney** [1971] 2QB 674, which state:-

"In order to justify a conviction there must be, not only a situation which, viewed objectively, was dangerous, but there must also have been some fault on the part of the driver, causing that situation. Fault certainly does not necessarily involve deliberate misconduct or reckless..... Fault involves a failure, a falling below the care or skill of a competent experienced driver, in relation to the manner of the driving and to the relevant circumstance of the case. A fault in that sense, though normally no danger would have arisen from it, is sufficient. The fault need not be the sole cause of the dangerous situation. It is enough if it is, looked at sensibly, a cause".

12. In **Lasike v State** [2002] FJHC 159; HAA 0058 of 2002 (13 September 2002), the High Court state:-

*"The offence is proved when the driver drives in a way which falls below the standard expected of a competent and prudent driver, and thereby causes a situation, which viewed objectively, is dangerous in **R v Gosney** and **Sambhu Lal v Regina**".*

13. Further in **Tikotani v The State** [2005] FJHC 58; HAA 0001 of 2005 (18 March 2005) the High Court state: -

"In order to prove dangerous driving, the prosecution must lead evidence that the accused was at fault in some way (applying an objective test) and that this manner of driving created a dangerous situation."

14. In this case, the act of the Accused in closing his eyes and sleeping for 2 to 3 seconds while driving is dangerous. As a result the accused was unable to control the vehicle and caused him to drive the vehicle over to the other side of the lane and over to the other side of the road and collided with the culvert. Such manner of driving is below the standard required of a competent and prudent driver.
15. I now move to consider the last element of causing death to a person. The Accused stated that in the vehicle are Sgt Isireli and him. They had an accident where the vehicle bumped the culvert.
16. *Ravin Chand* is the prosecution fifth witness. He stated that on midnight of 26 January 2012, he was driving alone when he saw a police vehicle on top of the cement on the side of the bridge. He cannot remember the registration number. He got out of his car and saw a policeman sitting on the road. The policeman informed him that he is injured and if he can take him to the hospital. He knew the person is a policeman because that is a police vehicle but the policeman was not in uniform. The policeman informed him that one injured person in the vehicle so he call the Labasa Police Station. He did not inspect the vehicle but one person was sitting inside the vehicle on the passenger seat. He did not speak to him because the door was lock. He taps the door and no answer from inside and the person was not moving. He took that policeman to Labasa Hospital and he recognise and identifies that person as the accused in court.
17. The fourth prosecution witness is Police Constable *Kushal Naicker*. He stated that on midnight of 26 January 2012, he received a report from the Operation that a police vehicle involved in an accident at Vulovi. They proceeded to the scene and he is the first officer to arrive at the accident scene at Vulovi along the Labasa Wainikoro public road. The vehicle GN 864 was used by the Fiji Police as fleet 268 and was heading towards Labasa. The vehicle was on the opposite lane bumping the culvert and was on top of the cement culvert. The driver was not in the vehicle and Sergeant Isireli was in the front passenger seat and his head was on the driver's seat and was

unable to speak. They call Sergeant Isireli where he was not responding and not moving. They removed Sergeant Isireli from the driver's door when the ambulance arrived. There was no break or tyre marks on the road and the vehicle was half on the road and half on the road edge. He draws a sketch map (*prosecution exhibit 4A*) and prepared fair sketch and key (*prosecution exhibit 4B and 4C*).

18. The second prosecution witness is *Doctor James Kalougivaki* a specialised pathologist. He is an expert witness. He refers to the post mortem report of Isireli Moce who was examined on 14 April 2012, at the Labasa Hospital by Dr Swamy Goundar. He worked with Dr Goundar for 2 years and he is familiar with Dr Goundar's hand writing and signature and he confirmed and recognise them in Isireli Moce's report. He read Isireli Moce's medical report that the first cause of death is pessemism. The second cause is infected ulcer which is the main stream cause of death. The injury to the bone that covers the spine on the third and fourth at the neck level is quite serious. There is dislocation and immobility and he was not able to move his body freely. The extensive infection and ulcers has spread through the blood and he died because of the infection in the blood.
19. It is clear from the evidence that the injuries received by Isireli Moce from the vehicle accident has caused the infection of the blood and led to his death.
20. Other evidence that was led by the prosecution includes *Isikeli Kini* the first witness for the prosecution. He stated that he is a standard and engineering officer at LTA. On 27 January 2012, he examined a Toyota Hilux vehicle registration GN 864 at the Namara Police Station. He finds no mechanical defects that may cause the accident. He tendered his report as *prosecution exhibit 1*.
21. *Viliame Meo* is the third witness for the prosecution. He interviewed the accused in 2012, and by consent the written caution interview was tendered

as *prosecution exhibit 2* and the typed version was tendered as *prosecution exhibit 3*.

22. The sixth witness for the prosecution is *Fredrick Bull*. On 25 January 2012, the accused was listed for night shift. At 11am the accused was release to go home and come back for the night shift. He met the accused at 7pm when he reported in for the night shift. He handed over the key for fleet 268 to the accused. There was nothing wrong with the vehicle. If fatigue or tired there is no harm to park the vehicle and rest for a while once fit he can commence driving. He knew Sgt Isireli and he passed away 3 months after the accident in 2012 and he attended the funeral.
23. If the accused is tired or fatigue as it appears to be his defence, than he should informed Sgt Isireli for him to rest for a while as suggested by *Fredrick Bull*. That would be the best approach taken by a competent and prudent driver. If the accused takes that approach the accident would be avoided and *Tsireli Moce* would be still alive.
24. In assessing the evidence, and the closing submission of the prosecution and the defence, I am satisfied that the Prosecution has established all the elements of the offence. I find that the Prosecution has proven his case beyond reasonable doubt.
25. In my judgment, I find the Accused guilty as charge and accordingly, I convicted the Accused as charged.

28 days to appeal.



C. M. Tuberi

RESIDENT MAGISTRATE

