

**IN THE MAGISTRATES COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION**

Magistrates' Court Criminal Traffic Case No. 70 of 2018

STATE

-v-

SATENDRA NAND

For the State: Constable A. Lal

For the Defendant: Ms. A. Waqanivalagi, of counsel instructed by the Legal Aid Commission

Date of Trial: 15 May 2019

Date of Judgment: 29 May 2019

JUDGMENT

1. You stood trial for **Dangerous Driving** contrary to section 98 (1) and 114 of the **Land Transport Act No. 35 of 1998**.
2. During trial, the State called two witnesses and tendered three exhibits: your Record of Interview with the Police, the Rough Sketch Plan of the Accident Scene and the Faired Sketch Plan of the Accident Scene.
3. At the close of the Prosecution case, your counsel made an application of "no case to answer." I adjourned briefly to consider the application and after examining the evidence against the applicable test for that stage of the proceedings, I ruled a case to answer and thereafter explained the substance of the State's allegations against you and I put to you your options under section 179 of the **Criminal Procedure Act 2009** in full.
4. You testified on your own behalf and indicated that you did not wish to call witnesses. That was the end of the Defence case.

Presumption of Innocence

5. I remind myself that you are presumed innocent until proven guilty.

Burden and Standard of Proof

6. I remind myself that the burden of proving the case against you rests with the Prosecution and it never shifts.
7. To be precise, Section 57 of the **CRIMES ACT 2009** makes clear that the prosecution bears the legal burden of proving *every element of an offence relevant to the guilt of the person charged* and section 58 of the **CRIMES ACT 2009** makes clear that this legal burden must be discharged by the prosecution beyond reasonable doubt.

Elements of the Offence

8. The elements that the State needs to prove beyond reasonable doubt are as follows:
 - (i) You
 - (ii) Drove a motor vehicle
 - (iii) Along a public street
 - (iv) In a manner that was dangerous to the public in all the circumstances of the case.
9. I assess the manner of your driving objectively: see **Attorney-General v Parmanandam** [1968] FJSC 8; [1968] 14 FLR 6 (15 March 1968), having regard to the nature, condition and use of the public street in question and the amount of traffic which is actually at the time or which might reasonably be expected to be on that public street: *see* section 98 (1) of the **Land Transport Act No. 35 of 1998**.
10. A public street is defined pursuant to section 2 of the **Land Transport Act of 1998** to mean:
 - “(a) any land or place vested in the State for the purpose of a road or public road, as defined in any Act;
 - (b) any street, road, land, thoroughfare, footpath, bridge or other place open to or used by the public for passage with vehicles and includes every carriageway, footpath, traffic island, median, nature strip or any area provided to separate vehicular traffic on any such street, road, land, thoroughfare, footpath, bridge or other place, regardless whether such place has been vested in the State for the purpose of being a road or public road as defined in any Act; or
 - (c) any place declared under section 71.”

Analysis

Identification

11. It was not disputed at trial that you were driving **CR 761** along the Soasoa Bend on the Wainikoro to Labasa Road on the date and time in question.
12. This element is proved beyond reasonable doubt.

Along a Public Street

13. I am satisfied beyond reasonable doubt that the Labasa to Wainikoro/Wainikoro to Labasa Road is a road which is open to *and* used by the public for passage with vehicles.
14. A Judge or Magistrate is entitled to use general information and general knowledge of the common affairs of which men of ordinary intelligence possess, but they may not act on their personal or private knowledge: **Ingram v. Percival** (1969) 1 QB 548 adopted in **State v. Sucutuiqaga** [2001] FJLawRp 114; [2001] 2 FLR 421 (5 December 2001) per Shameem J.
15. I do so here. The Police Bus driven by Special Constable Ronil Pratap *i.e.* GP 832 and the cane truck you were driving *i.e.* CR 761 used that road because it is a public road open to all members of the public subject to whatever weight restrictions the Land Transport Authority may impose by regulation.
16. This is a matter of general information and general knowledge of the common affairs of Labasa and its surrounds here in the Northern Division which men *and women* of ordinary intelligence possess.
17. This element is proved beyond reasonable doubt.

In a manner that was dangerous to the public in all the circumstances of the case

18. The main point of contention is whether you were driving dangerously in all the circumstances of the case.
19. The State's case is that you swung widely around the bend at Soasoa and your cane truck came across the double line in the middle road onto the lane bearing on-coming traffic.
20. Special Constable Ronil Pratap testified to this effect. He struck me as an honest and forthright witness and I believe that he was telling the truth.
21. Moreover, the State's case is that you tried to correct your vehicle to avoid a head on collision. You wrested your vehicle back onto your lane but the back end of your truck fishtailed out past the double line and hit the front windshield of **GP 832** scratching the side of the bus all the way to the back tire and causing three windows in the front end of the bus to shatter.
22. Special Constable Ronil Pratap and Bausema Lilinatabua, 2nd in Command of the Fiji Police Band who had been a passenger in the second row from the front in **GP 832** on the day and time in question both testified to this effect. They were forthright and compelling witnesses.
23. I accept their evidence as truth. Swinging a loaded cane truck around a blind bend past the double line and onto oncoming traffic travelling in the opposite direction is objectively very dangerous behavior. Even if you are able to avoid a head-on collision as you so narrowly did here, there is always the danger of fish-tailing as clearly

occurred in this instant case. Had the vehicle you hit been smaller, or both of you been less experienced drivers, the outcome might have been grievous injury or worse..

24. Because it was a blind bend on a public road, you were under obligation to approach with caution in the expectation that a vehicle might be approaching on its lane in the opposite direction. You did not and you put your life and the life of the passengers of GP 832 thereby.


25. This element is proved beyond reasonable.

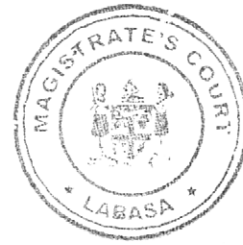
Result

26. In the result and for the reasons set out above, I find that the State has proven each element of the offence of **Dangerous Driving** as charged beyond reasonable doubt.

27. I find you guilty and I convict you of **Dangerous Driving** contrary to section 98 (1) and 114 of the **Land Transport Act No. 35 of 1998** as charged.

28. I will now hear plea in mitigation.


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Seini Puamau
Resident Magistrate



Dated at Labasa this 29th day of May 2019