

IN THE MAGISTRATE'S COURT AT LABASA

CRIMINAL JURISDICTION

Traffic Case No. 377 of 2017

STATE

v

SHIU RAM

Counsel : **Mr Rakaria. I** for the prosecution
Ms Sumer. A for the accused

Judgment : **10 July 2020**

JUDGMENT

1. The accused, *Shiu Ram* is charge for *Dangerous Driving Occasioning Death*, contrary to section 97(2)(c) of the *Land Transport Act*.
2. The particulars of the offence are;-
"Shiu Ram on the 17th day of January 2017, at Nabouwalu in the Northern Division drove a motor vehicle registration number HL 608 along Labasa Nabouwalu highway at Dama in a manner which was dangerous to the public having regards to all the circumstances of the case and thereby caused the death of Ronal Nilesh Chand."
3. On 21 March 2017, the accused pleaded not guilty to the charge.

4. The case proceeded to trial on 19 May 2020. The Prosecutor called seven witnesses. The accused is the only witness for the defence case.

Law

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 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 burden of proof is on the prosecution to prove all the above elements of the offence beyond the reasonable doubt.

Analysis and determination

8. The accused was identified in court by Satyrath Prakash the second witness for the prosecution case, Mohammed Rafiq the third witness for the prosecution case, and Vilitati Ratotodro the fourth witness for the prosecution case, as the person who was driving the vehicle HL 608 at the time of the accident. PC 4350 Kushal, the seventh witness for the prosecution case also identified the accused in court as the person he cautioned interviewed for this case.

9. The evidence adduced has established that the accused drove the vehicle registration number HL 608 on 17 January 2017, along the Labasa Nabouwalu highway when it hit the bus HC 606 at Dama.
10. Satyrath is the driver of the bus HC 606. Mohammed and Vilitati were passengers in the bus HC 606. Satyrath, Mohammed, and Vilitati were all eye witnesses to the accident and they all assist in the removal of Ronald Nilesh Chand (Ronald) from the vehicle HL 608. Their evidence had established that Ronald Nilesh Chand was badly injured from the accident. Satyrath and Mohammed were not sure if Ronald was still alive or dead. Vilitati who is a Pastor said that Ronald was dead when they put him on the road as his body was black from the blood clot.
11. The accused stated during cross-examination that *"if the drivers would have helped him, Ronald would not have died on the spot and Ronald could have gone to the hospital and died there"*.
12. Dr Daniella John is the first witness for the prosecution case. She is a Senior Pathologists Registrar and she conducted the post mortem examination for Ronald Nilesh Chand on 19 January 2017. She stated that the cause of death is definitely from the motor vehicle accident resulted in acute blood flow to the degree of sufficient to cause death. She tendered Ronald Nilesh Chand's Post Mortem Report as Prosecution Exhibit 8. The death certificate of Ronald Nilesh Chand was tendered as Prosecution Exhibit 2.

13. The evidence has confirmed that Ronald Nilesh Chand died as a result of the motor vehicle accident between the vehicle HL 608 and the bus HC 606.
14. I now consider the evidence on the element of driving in a dangerous manner.
15. 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".*
16. 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".*
17. Further in **Tikotani v The State** [2005] FJHC 58; HAA 0001 of 2005 (18 March 2005) the High Court state: -

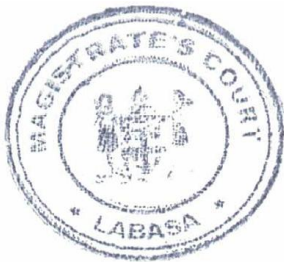
"In order to prove dangerous driving, the prosecution must lead evidence that the accused was at fault in some way (applying an objective test) and that this manner of driving created a dangerous situation."

18. The accused stated that at the bend in Dama he saw a horse and he drove the vehicle over to the other lane. He tried to go back to his lane but his vehicle was overloaded with live fish, water and coral and he cannot take his vehicle back to his lane because the vehicle will be one sided. He saw the bus and he signalled to the driver of the bus to go to the other lane (the lane in which the accused should be driving). He applied his break but he could not stop his vehicle and he hit the bus.
19. Satyrath stated that he was driving on his lane when he saw the vehicle coming on his lane. He stop the bus and beep his horn, but the vehicle came and collided with the bus.
20. Satyrath, Mohammed, and Vilitati stated that they did not see any animal crossing the road between the bus and the oncoming vehicle driven by the accused. I accept their evidence and rejected the evidence of accused that he tried to avoid the horse.
21. The accused manner of driving by driving on the other lane used by the bus has created a dangerous situation. The accused was at fault when he was not able to drive his vehicle back on his lane resulted in the collision. As such, he was driving below the standard expected of a competent and prudent driver.
22. The accused said that there are some defectives on the vehicle he was driving. Josua Dimuri is the sixth witness for the prosecution case. He is the vehicle examiner that examined both the vehicle HL 608 and the bus HC 606 after the accident. He

said, that there is no defective in the bus or in the vehicle HL 608 to contribute to the accident. He tendered the vehicle accident report for the bus and vehicle HL 608 as prosecution exhibit 11 and 12 respectively. It is clear from this evidence that the accident was a result of the dangerous manner in which the accused was driving.

23. In assessing the evidence, it is apparent that the accused was driving in a dangerous manner.
24. In analysing and examining the evidence adduced, I find that the Prosecutor has established all the elements of the offence and has proved all the elements of the offence beyond reasonable doubt.
25. In this judgment, I find the accused guilty as charged and I convicted the accused accordingly.

28 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE