

**IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION**

Traffic Case No. 285/2017

BETWEEN: STATE

PROSECUTION

AND: PRAVEEN DUTT

ACCUSED

Counsel: Sergeant 4971 Veni Vunaki for the State
Mr. A. Dayal, Ms. A. Kumar & Ms. S. Singh for the Accused

Date of Hearing: 28 September 2024
Date of NCTA Ruling: 24 January 2025
Date of Defence's Case: 17 November 2025
Date of Judgment: 29 January 2026.

JUDGMENT

Introduction

1. Mr. Praveen Dutt ("the Accused") on 9 March 2017 was charged and produced in Court for 1 count of Dangerous Driving Occasioning Death contrary to section 97(2)(c), 5(c), 8 and 114 of the Land Transport Act. The particulars of the offence are:

Statement of Offence

Dangerous Driving Occasioning Death: *Contrary to Section 97(2)(c), 5(c), 8 and 114 of the Land Transport Act No. 35 of 1998.*

Particulars of Offence

Praveen Dutt, on the 20th day of February 2017 at Ba in the Western Division drove a motor vehicle registration number LT 1537 on Moto Road, Vatulaulau in a manner which was dangerous to the person involved in an impact occasioning the death of ***Tulsi Narayan***.

2. On 30 January 2019, the Accused pleaded Not Guilty to the above charge. The matter had subsequently been fixed for Trial on various dates but the same never proceeded.
3. On 6 & 7 November 2023, Trial proceeded in the matter before this Court's predecessor. Prosecution called 4 witnesses and thereafter closed its case. The counsel for the Accused then made an application pursuant to section 178 of the Criminal Procedure Act stating that a case was not sufficiently made out against the Accused to require him to make a defence and the matter was adjourned for Ruling. Subsequently on 23 January 2024, this Court's predecessor found that there was a case to answer and the matter was adjourned for Defence's case.
4. This Court then took over proceedings on 22 April 2024 and as such informed the Accused of his right under section 139(2) of the Criminal Procedure Act 2009, which allowed the Accused

to demand that the witnesses or any of them in this matter be re-summoned and re-heard. After informing the Accused of this right, the Accused informed that he wished to exercise the said right in having all the witnesses re-summoned and re-heard by this Court.

5. Thus, this matter was re-fixed for Trial on 28 September 2024 wherein Prosecution called 4 witnesses and then closed their case. The counsel for the Accused then made an application pursuant to section 178 of the Criminal Procedure Act stating that a case was not sufficiently made out against the Accused to require him to make a defence
6. On 24 January 2025, this Court refused and dismissed the application for no case to answer and held that it appeared that a case was made out against the Accused to sufficiently require him to make a defence in respect of the charge. The Accused was then explained the procedure under section 179 of the Criminal Procedure Act and it was also explained to him that he had a right to remain silent. The Accused chose to give evidence and call 1 witness.
7. It was after this Court delivered its Ruling that the counsel for the Accused invoked the supervisory power and jurisdiction of the High Court albeit incorrectly to set aside the decision of this Court's Ruling on the basis that this Court had stated that Prosecution had proven all elements of the offence beyond a reasonable doubt. However, in its Judgment delivered on 16 May 2025, the High Court held that the application lacked merit and therefore dismissed it.
8. This Court acknowledges that the Judgment delivered in the High Court directed for the matter to be heard without delay. However, there had been some delay due to unavailability of the Court for health reasons. The Accused and his wife eventually gave evidence on 17 November 2025. After closing Defence's case, the counsel for the Accused sought time to file Closing submissions which was done on 15 December 2025 whilst Prosecution indicated that it would rely on the Court Record.
9. Having read the submissions and considered the evidence presented by Prosecution and Defence, I now pronounce my Judgment.

Burden of Proof

10. It is imperative to highlight that as a matter of law, the onus or burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no burden on an accused to prove his or her innocence as an accused is presumed to be innocent until proven guilty.
11. It is for the prosecution to prove the accused's guilt beyond a reasonable doubt. If there is doubt, so that the court is not sure of the accused's guilt, or if there be any hesitation in the court's mind on any of the ingredients or on the evidence led by prosecution, the accused must be found not guilty of the charges and accordingly acquitted.

Summary of Evidence

12. Solomoni Vakatale ("Mr. Vakatale") testified that on 20 February 2017 as he was returning from Nasole Village coming down the slope at Vatulaulau Sanatan School, he saw an old man crossing the road as such Mr. Vakatale slowed his vehicle and turned on his vehicle's hazard signal. Mr. Vakatale then testified that at the same time, a taxi which was a white fielder with registration number LT 1537 driven by the Accused continued to drive despite Mr. Vakatale's hazard signal. It was at this point that Mr. Vakatale stated that Accused's vehicle continued to

roll down at the same speed and bump the old man who then fell onto the bonnet of the Accused's car and then tumbled a few times before he lay motionless on the road.

13. Mohammed Shiraz testified that on 20 February 2017 at about 7pm, he had been changing after his shower when he heard a loud noise from outside. He then informed his father that an accident had taken place as such they went outside and saw a taxi go uphill and then reverse with the driver then getting off the vehicle. Mr. Shiraz testified then testified that he saw a person was lying on the right side of the road and that his father stopped a vehicle, picked up the old man and took him to the Hospital. Mr. Shiraz further testified that the taxi side mirror was damaged and that there was also damage on the front glass of the car.
14. Munesh Kumaran ('Mr. Kumaran'), testified that on 20 February 2017, he was on duty and that he had received a call regarding an accident at Vatulaulau. He testified that he went to visit the scene and drew a Rough Sketch Plan of the scene of the accident which was tendered as 'PEX1'. He testified that the vehicle LT 1537 was facing towards Moto on the left-hand side of the road and on the right-hand side where the victim was lying there were blood stains there.
15. Dr. Praneel Kumar ('Dr. Kumar') had conducted the post-mortem of Tulsī Narayan on 21 February 2017 at the Lautoka Hospital Mortuary and testified that an external and internal examination of the deceased was done. He stated that the cause of death was a massive subarachnoid haemorrhage caused from a fatal road accident. The Post-Mortem Report was tendered as 'PEX2'.
16. The Accused agrees that he had been driving his motor vehicle and that it had impacted the deceased herein but he maintains that it occurred when he was attempting to move his vehicle to the side due to the blinding lights of the on-coming vehicle and not because he had been driving in a dangerous manner.
17. The Accused's wife Shobna Kumari ('Ms. Kumari') stated that the Accused had slowed down his vehicle because of the rain and was driving slowly and that because there had been an on-coming vehicle in front of them coming from Nasole and because this vehicle's lights were very bright white lights, the Accused slowed the vehicle down and moved the vehicle towards the left when they heard a noise.

Evaluation of Evidence

18. In ***Kumar v State***; *Criminal Appeal No. HAA 014 of 2001S (12 April 2002)* Her Ladyship Justice Shameem discussed the test for dangerous driving wherein she stated:

"In R -v- Gosney (1974) 3 ALL ER 220, it was held that a charge of dangerous driving is proved when the driver drives in a way which falls below the standard of a competent and prudent driver, and thereby causes a situation, which viewed objectively, is dangerous.

The test for a charge of Dangerous Driving is an objective one, as is the test for Careless Driving. The difference between the Careless Driving and Dangerous Driving is not the manner of driving, (which has the same test) but the situation that has been caused thereby. In other words, a person who drives carelessly, also drives dangerously, if viewed objectively, his/her manner of driving creates a dangerous situation. Thus a person who drives carelessly, drives dangerously if he/she thereby causes a death.

*There are many authorities which say that the test for both Dangerous Driving and Careless Driving, is whether the accused has departed from the standard of a reasonable, prudent, competent and experienced driver in all the circumstances of the case. The accused is guilty of either offence even if he committed an error of judgment (Simpson -v- Peat (1952) 1 ALL ER 441) or was an inexperienced driver (McCrone -v- Riding (1938) 1 ALL ER 157.) **The difference between Careless Driving and Dangerous Driving in Fiji, is whether the manner of driving (which fell below the requisite standard expected) created a dangerous situation. Thus a careless driver is also a dangerous driver, if his careless driving caused a pile-up of vehicles on a busy motorway resulting in death and injuries. The question of what is careless as opposed to dangerous is one of fact, usually best left to the trial court to decide, on the evidence. However, on a charge of Causing Death by Dangerous Driving, it is no defence that the driver was driving carelessly and not dangerously. The only question is whether the driver's manner of driving fell below the standard expected of a reasonable and prudent driver, and thereby caused a dangerous situation as a result of which, a person died.***

19. Considering *Kumar* [supra], the Court will need to first determine whether the manner the Accused was driving created a dangerous situation and then consider whether there had been some fault by the driver causing this dangerous situation. If the conduct of the driver contributed to cause the dangerous situation then it has fallen below the care or skill of a competent and experienced driver and it could constitute the element of fault.
20. For a proper analysis of the evidence, it is imperative for the Court to turn its mind to the elements for Dangerous Driving Occasioning Death, which are:
 - i. the accused
 - ii. in a manner dangerous to the other person
 - iii. drove a motor vehicle which was involved in an impact
 - iv. occasioning the death of the person
21. The circumstance which Prosecution herein is stating occasioned the death of the deceased is through an impact between the deceased and the vehicle driven by the Accused.
22. From the outset there is no dispute that on 20 February 2017, the Accused was driving motor vehicle LT 1537 and that the said motor vehicle which was driven by the Accused was involved in an accident on Moto Road, Vatulaulau. This is evident from the Accused's evidence in Court.
23. Further, there is also no dispute that on the said date at Moto Road, Vatulaulau, that an impact between the Accused's vehicle and the deceased occurred. This is also evident from the Accused's evidence.
24. Thus, it is proven beyond a reasonable doubt that the Accused drove motor vehicle with registration number LT 1537 on 20 February 2017 on Moto Road, Vatulaulau and that the Accused's motor vehicle with registration number LT 1537 was involved in an impact with the deceased.
25. The only dispute that arises is whether the Accused drove his motor vehicle with registration number LT 1537 in a manner dangerous to the deceased. The Accused denies that he was driving in a manner which was dangerous to the person involved in the impact. Prosecution through its witness maintains that the Accused had been driving in a manner which was dangerous which led to the impact between the Accused's vehicle and the deceased.

26. The Court will need to evaluate the evidence by Prosecution whilst keeping in mind the evidence presented by the Accused insofar as they relate to the issue it is considering. The evidence presented by the parties will be evaluated to determine the testimonial trustworthiness of the evidence which will be done by evaluating the credibility – the correctness or veracity of the evidence and the reliability of evidence – the accuracy of the evidence - vide **State v Prasad** Criminal Case No. HAC 72 of 2021 (20 June 2024). In doing this, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide **State v Moroci** Criminal Case No. HAC 161 of 2023 (26 April 2024)).
27. The evidence led by Prosecution through Mr. Vakatale is that as he was driving his vehicle with registration number HI 409 down the slope at Vatulaulau Sanatan School returning from Nasole Village, he saw the deceased walking with his walking stick and that the deceased had been trying to cross the road from the left to right side. Due to this, Mr. Vakatale testified that he slowed down and turned on his hazard signal. Mr. Vakatale further testified that the vehicle driven by the Accused continued to drive despite him giving his hazard signal.
28. Mr. Vakatale went on to testify that while he stopped his vehicle, the Accused continued to roll down the same speed until there was a sudden bump and the old man fell onto the bonnet of the Accused's car and then tumbled a few times before he lay motionless on the road.
29. Mr. Vakatale then testified that he and the Accused got off their respective vehicles and the Accused was asking what had happened to which Mr. Vakatale responded "Didn't you see my hazard signal and didn't you see the man walking towards your side".
30. With Mr. Vakatale's evidence in mind, the evidence of Mr. Kumaran is then considered. He testified that he had visited the scene on 20 February 2017 and drew a Rough Sketch Plan of the scene of the accident which was tendered as 'PEX1'. He explained that the Accused's vehicle LT 1537 was facing towards Moto on the left hand side of the road and on the right hand side where the victim was lying there were blood stains there.
31. With respect to the post-mortem of the deceased, Dr. Kumar testified that the external examination of the deceased showed multiple abrasions which are scuffing of the skin and contusions which are bruising or discolouration. He explained that the contusions were on the left side of the head. Dr. Kumar also testified that there was a peri-orbital ecchymosis, with peri meaning around and orbital meaning the orbit around the eye and ecchymosis being a black discolouration around the eye. He stated that any type of blunt force such as punches or being hit causes blackening around the eye.
32. With regards to the internal examination, Dr. Kumar testified that there was a sub-capsular hematoma bleeding inside with there being a collection of blood in the frontal region - the area around the forehead, which was suggestive of blunt force trauma. Dr. Kumar further testified that with the brain there was a massive bilateral – meaning on both the left and right side of the hemispheres – subarachnoid haemorrhage. He explained that the brain had 2 membranes being the Pia membrane and above that the arachnoid membrane with the subarachnoid being below the arachnoid membrane and there being bleeding there. The subarachnoid haemorrhage was present on the occipital region which is towards the back of the brain.

33. Dr. Kumar testified that the common cause of subarachnoid haemorrhage is trauma unless proven otherwise. He further went on to state that the cause of death was a massive subarachnoid haemorrhage caused from a fatal road accident.
34. In cross examination, when questioned how he would determine cause of death if the history had not been presented to him, Dr. Kumar explained that a massive subarachnoid haemorrhage can be caused by trauma or pre-existing causes as well as by looking at the patterns of injury externally as well as internally – such as abrasion and contusions which are seen from trauma such as motor vehicle accidents.
35. It is apparent from the evidence of Mr. Vakatale that the Accused's vehicle impacted the deceased and in conjunction with the evidence of Dr. Kumar, the impact of the Accused's vehicle caused the deceased to suffer multiple abrasions and contusions with the contusions being on the left side of the deceased's head as well as a sub-capsular hematoma and massive subarachnoid hemorrhage given that such injuries can be caused from blunt force trauma such as motor vehicle accidents.
36. With respect to whether the manner in which the Accused was driving created a dangerous situation, whilst Prosecution tendered the Rough Sketch Plan, Mr. Kumaran who gave evidence with respect to attending the scene of the accident and drawing the Rough Sketch Plan did not provide any further evidence regarding how the accident had taken place, in what manner the Accused had been driving the motor vehicle to have caused the accident or how and why the Accused's driving could have created a dangerous situation.
37. Given the above, the Court is unable to ascertain whether the manner in which the Accused was driving had created a dangerous situation and whether the conduct of the Accused contributed to causing the dangerous situation which fell below the care or skill of a competent and experienced driver.
38. Further, the Accused and his wife, Ms. Kumari both testified that because the on-coming vehicle lights were very bright, the Accused had slowed his vehicle down and had been moving towards the side of the road when they had a banging noise. Further, the Accused had testified that it had been raining that particular evening and that he had been driving at 50km but then because of the oncoming vehicle's bright lights he was then traveling at about 30-40km.
39. The Court finds that Prosecution failed to disprove or discredit the Accused's and Ms. Kumari's evidence with respect to the events that led to the impact of the Accused's motor vehicle with the deceased. Prosecution was unable to contradict the evidence of the Accused and Ms. Kumari to show that the Accused's driving created a dangerous situation which fell below the care or skill of a competent and experience driver and that this led to his vehicle impacting and occasioning the death of the deceased.
40. Thus, considering the evidence in totality, the Court finds that Prosecution failed to satisfy beyond a reasonable doubt that the Accused drove his motor vehicle with registration number LT 1537 in a manner which was dangerous to the person involved in an impact which occasioned the death of Tulsi Narayan.

Determination

41. I find that Prosecution has failed to discharged its burden in proving the elements of Dangerous Driving Occasioning Death against the Accused beyond a reasonable doubt

42. I, therefore, find the Accused, Praveen Dutt, not guilty as charged for Dangerous Driving Occasioning Death and acquit him forthwith.

43. Any party aggrieved with this decision has 28 days to appeal to the High Court.



N. Mishra
Resident Magistrate

