

IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No. 20 of 1984

Between:

ABDUL HAROON SAMUT
s/o Abdul Ishaq Samut

Appellant

- and -

R E G I N A M

Respondent

Mr. Sohan Singh & Mr. R. Singh
for the Appellant

Mr. Z. Iqbal for the Respondent

Date of Hearing: 13th November, 1984

Delivery of Judgment: 15th Nov, 1984

JUDGMENT OF THE COURT

Mishra, J.A.

The appellant was convicted by the Supreme Court Labasa, of causing death by dangerous driving and fined \$250, in default 6 months' imprisonment. He was, in addition, disqualified from holding or obtaining a driving licence for a period of 5 years.

He appeals against his conviction and sentence.

The deceased, driver of a Public Works truck, died after a collision between his truck and the appellant's at a bend near the village of Urata on the road leading to Savu Savu. The appellant's truck was heavily laden with logs and considerable damage was caused to Public Works truck.

The deceased was examined by Dr. Wahid Khan at Savu Savu hospital. The doctor's evidence is -

"He was conscious. He had compound fracture of right tibia. Foot was hanging loose and turned back. He had fracture of both thigh bones. He had fracture of left tibia. He had fracture of hip bones, fracture of spine. He had difficulty in breathing. He had fracture of ribs on both sides. His blood pressure was normal. After massive bleeding his pressure would go down. His pressure on admission was normal but it gradually went down. Dr. Vanesh was helping me. He was given injection to ease pain - morphine. We gave fluid to increase blood pressure. He should have had blood transfusion but we had no facilities to give him blood transfusion. We gave normal saline fluid. He did not respond at all. He died after 10 minutes.

In my opinion cause of death was due to terminal shock due to massive blood loss. "

In cross-examination he stated that Savu Savu Hospital had no blood bank or the deceased's life could have been saved. Cross-matching blood, he said, would take about 15 minutes.

Ground 1 reads -

"That the Learned Trial Judge misdirected the assessors on the issue of cause of death hence there was a gross miscarriage of justice."

The appellant relies on section 206 the relevant part of which reads -

"206. A person is deemed to have caused the death of another person although his act is not the immediate or the sole cause of death in any of the following cases:-

- (a) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill."

The appellant submits that it should have been possible to find blood donors at Savu Savu for purposes of blood transfusion and that the cause of death was, therefore, not the injuries but the employment of medical treatment without common knowledge or skill. There was, he says, no direction to the assessors on this likely aspect of the cause of death.

We reject the submission that any such direction was called for. The evidence clearly indicated not only that there was no blood bank at Savu Savu but also that the hospital had no facilities for giving blood transfusion. Even if the facilities had been there, cross-matching of blood would take about fifteen minutes. The deceased died in ten minutes. There is no suggestion in the evidence that, under the circumstances, giving of saline fluid was not the normal treatment in such cases. Cross-examination of the doctor was extremely brief and does not seem at all to have been directed at establishing absence of common knowledge or skill.

The Learned Judge dealt with the medical evidence in detail and said -

"I do not think you will have any difficulty in coming to the conclusion that the deceased (PWD truck driver) had died as a result of very serious injuries he received in this accident. This a matter for you to decide."

In view of the massive injuries sustained by the deceased the Learned Judge was, in our view, perfectly entitled to make that observation.

The ground fails.

The remaining grounds, taken together, complain generally of unsatisfactory evidence and inadequate evaluation of it. Counsel submits that there was no acceptable evidence of the speed of the appellant's vehicle and that the summing-up failed to take a proper account of inconsistencies apparent in the evidence of prosecution witnesses, particularly in view of the distance from Urata village to the place of accident and of situation concerning visibility owing to vegetation. He also complains of the absence of any properly drawn plan to which reference might have been made during the trial.

We are, satisfied that the summing-up, taken as a whole, was comprehensive and well-balanced and the complaints, therefore, are without substance. The Judge must have been fully aware of the discrepancies and the difficulty of dealing with such evidence without a proper plan. He, and the assessors therefore, viewed the scene of the fatality to make a proper assessment of distances of the nature of the bend of visibility and other relevant matters.

We, therefore, reject the submissions.

The appeal against conviction is dismissed.

As for sentence, the appellant's submission relates solely to the order of disqualification.

We accept his submission that, while his driving was at fault, the evidence does not indicate that fault to have been of any great magnitude. The nature of the gravel road and the load on the truck obviously required greater control than he was able to exercise at the crucial moment.

His record also was not such as would require too long a period of disqualification.

We, therefore, set aside the order made by the Learned Judge and in its place substitute an order disqualifying the appellant from holding or obtaining a driving licence for a period of three years.

J. J. O'Neil
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JUDGE OF APPEAL

Samuel J. Neenan
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JUDGE OF APPEAL

W. G. Casey
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JUDGE OF APPEAL