

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 320 of 2012

STATE

v

MOHAMMED IRSHAD

Counsel: Mr S. Nath with Mr. R. Kumar for the State
Mr. A. Kohli for the accused.

Date of hearing: 20 October 2014

Date of Ruling: 20 October 2014

RULING

The accused was charged with the following offence:

Statement of Offence

MANSLAUGHTER ARISING FROM A BREACH OF

DUTY: Contrary to section 240 and 241(5) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MOHAMMED SAJID ALTAF and MOHAMMED

IRSHAD on the 11th day of September 2012 at Nasinu in the Central Division, failed to take precautions when in charge or control of a bus, registration number BM 582, and such failure resulted in the death of VINAY NAND ABRAHIM KHAN

2. His co accused, Mohammed Altaf entered a plea of guilty on arraignment and he proceeded to be tried alone after his plea of not guilty.
3. The State called 4 civilian witnesses in their case and produced by consent the record of the caution interview, the answers to charge, photographs and the post mortem report of the pathologist. They then closed the prosecution case against the accused.
4. Mr. Kohli then made application that there be no case to answer against his client on the basis that there is no evidence whatsoever of a duty of care to the deceased; that there is no evidence that he was negligent and that negligence led to the death of the deceased.
5. Mr. Nath and then Mr. Kumar submitted in reply that the fact that the accused told his co accused to start the bus (a fact

gleaned from the admitted interview under caution) means that he is complicit in the bus being started and moved, and he is therefore equally liable for this negligent act causing the death.

6. To find a case to answer, there must be some evidence on each element of a crime before the Court: the quality of the evidence is irrelevant because that is ultimately a matter for the assessors. If there be no evidence of an element in the evidence, then it is the duty of a trial Judge to withdraw the case from the assessors.

7. The facts of this case as disclosed by the four prosecution civilian witnesses are that on the 11th September 2012, this accused along with another were mechanics employed by S. Nairs Garage and on that date they were instructed with 3 or 4 other co-workers to prepare a bus for its L.T.A annual check. Two or three were attending to painting of the bus (including the deceased) and this accused and his co accused were instructed to repair oil leakages and steering linkage. It was at about 2.30pm while repairing the steering that the accused was outside the bus in front of one of the front wheels while his co-accused was in the driver's seat testing the steering wheel. The only way the accused could determine his repair of the oil leakage was to have the engine running and so he asked his co-accused to start the bus. The bus was started but then it moved thereby running over the head of the deceased who unbeknown to both of them was under the bus in front of the back wheel.

Analysis

8. There is no doubt that it was this accused who on the 11th September 2012 was helping to repair the bus. Nor is it in dispute that while repairing the leakage he told his co-accused

to start the bus. The evidence then shows that the bus then moved along a level surface leading to the tragic death of a co-worker.

9. Safety precautions had been put in place, such as chocks before the wheels and the locking of the power breaks but unfortunately these precautions were “overridden” and the bus was able to be put into motion.
10. It is an element of the offence that the accused was “in charge or control of a bus” and there is not one shred of evidence that he was in such control or charge. It was the evidence of the foreman (R.Lal) that nobody could drive the bus without a licence and without his authority. He did not give authority to either the accused or his mechanic colleague to drive it nor did either have a licence to do so. The count would fail on this basis alone, but there is more.
11. The State have produced no evidence to show that the accused had a duty of care to the deceased who was a painter doing paint work on the outside surface of the bus. He had gone underneath the bus to attend to work on the rear wheel base and that fact was beyond the knowledge of the accused. Despite the fact that every employee working as a member of a team owes some sort of duty of care to his team mates by way of safety, there is no evidence that this accused as a mechanic outside the bus owed a special duty of care to a team mate who was working under the bus unbeknown to him.
12. Lastly there is no evidence that the accused’s breach of any duty led to the death of the deceased.
13. I find that there is no case to answer against the accused. He is found not guilty and acquitted.



A handwritten signature in black ink, appearing to read "P. K. Madigan". The signature is written in a cursive style with a large, looping initial "P".

P. K. Madigan
Judge

At Suva
20 October 2014