

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**APPELLATE JURISDICTION**

**Criminal Appeal No. HAA 11 of 2014**

**STATE**

**Appellant**

**v**

**SAKIUSA BULIVOROVORO**

**Respondent**

Counsel: Mr. L. Fotofili for the State  
Mr. P. Tawake (L.A.C.) for the Respondent.

Dates of hearing: 8 Oct, 21 November 2014

Date of Judgment: 18 December 2014

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**JUDGMENT**

Sentence: dangerous driving causing death

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In the Magistrate's Court at Nasinu on the 12<sup>th</sup> February 2013, the respondent ("the accused") entered a plea of guilty to the following charges:

**FIRST COUNT**  
**Statement of Offence**

**DANGEROUS DRIVING OCCASIONING DEATH:** contrary to section 97(2)(c) and 114 of the Land Transport Act 35 of 1998.

**Particulars of Offence**

**SAKIUSA BULIVOROVORO** on the 26<sup>th</sup> day of June 2009 at Nasinu in the Central Division drove a motor vehicle along Khalsa Road in a manner which was dangerous to the public having regards to all the circumstances of the case and thereby caused the death of Ateca Manoaqalo Katonivere.

**SECOND COUNT**  
**Statement of Offence**

**DANGEROUS DRIVING OCCASIONING GRIEVOUS BODILY HARM:** contrary to section 97(4)(c) and 114 of the Land Transport Act 35 of 1998.

**Particulars of Offence**

**SAKIUSA BULIVOROVORO** on the 26<sup>th</sup> day of June 2009 at Nasinu in the Central Division drove a motor vehicle along Khalsa Road in a manner which was dangerous to the public having regards to all the circumstances of the case and thereby causing grievous bodily harm to Joseph Vavalagi.

2. He had earlier entered pleas of not guilty when first called upon to plea on the 24<sup>th</sup> March 2010.
3. After agreeing a set of relevant facts, he was duly convicted by the learned Magistrate on both counts and he provided mitigation of his plea on 16<sup>th</sup> September 2013. He was sentenced on the 7<sup>th</sup> February 2014 to 12 months imprisonment suspended for 2 years for the first count and fined \$200 and disqualified for three months for the second count.

4. The State has filed a timely appeal against the sentences praying that they be wrong in law and manifestly lenient.

5. The facts agreed by the accused below were:

“on the 26<sup>th</sup> June 2009 at about 8am, the accused Sakiusa Bulivorovoro was driving vehicle registration number LR 2170. It was a rental vehicle, rented for 7 days. He was driving along Khalsa Road and was heading in the direction of the Kings Road. The victims, one of whom was 13 years old, Ateca Manuqalo and her brother Joseph Vavalagi, at the time were also on that patch of road on their way to school. The accused, in his attempt to overtake another vehicle, lost control of his rental vehicle and bumped both of them. Ateca died immediately due to the impact of the vehicle against her. Her brother Joseph sustained serious injury and was rushed to the hospital. The accused was charged.”

6. The maximum penalty for the offence of dangerous driving causing death (Count 1) is a term of imprisonment for 10 years and a fine of \$10,000 with the minimum being a fine of \$1,000 and disqualification for 6 months. The penalties for dangerous driving occasioning actual bodily harm (Count 2) are a fine of \$2,000 and 2 years imprisonment and disqualification for twelve months. The disqualification periods are discretionary and not mandatory as for the driving with alcohol in the blood offences.

7. The tariff for dangerous driving causing death is a term of imprisonment of between 2 to 4 years. This tariff was set by Shameem J in the case of **Sharma v. State** [2005] FJHC 464 followed in **Benjamin Padarath** HAC 13 of 2004. In **Sharma** Shameem J said:

“In 1998, Parliament passed the Land Transport Authority Act which increased the maximum penalty for this offence to ten years. There can be no clearer parliamentary intention as to sufficiency of penalty. To reflect such parliamentary intention, I held in **Waqataivovo** that the tariff for these offences must increase to 2 to 4 years imprisonment.”

8. As this Court said in **Kumar** CA 172 of 2014 (Ltk):  
“there is no doubt that the tariff is still now 2-4 years and the “momentary inattention” mitigating factor is not available under the harsher penalty on the LTA Act. Irresponsible and dangerous driving that causes loss of life should no longer receive lenient sentences no matter who the accused is or what his status in the community might be. There is no room for suspended sentences for this offence.”

Whereas the offence of driving under the influence of alcohol requires the mandatory removal of the driver from the roads for a period of at least 3 months then so this offence should require the removal of the errant driver from society for at least 2 years.

9. Given that this offence was committed on a very busy thoroughfare at the “peak” time of 8am when the accused was attempting to overtake another vehicle, losing control, then his driving was dangerous in the extreme.
10. The sentences passed below were in the circumstances extremely lenient.
11. The appeal against sentence is allowed and pursuant to s.256(2) of the Criminal Procedure Decree. I quash the sentences passed below and would sentence the accused/respondent afresh.

12. For the first offence of dangerous driving causing death I take a starting point of three years imprisonment. For the accused's clear record and mitigation advanced below, I reduce that term by 6 months. He entered a plea, although not at the first available opportunity so he must have some credit for that. A further reduction of 6 months is given for that plea. The final sentence arrived at is therefore a term of imprisonment of two years and that is the sentence I now pass on the respondent. For reasons given above that term is not to be suspended.
13. For the second offence of dangerous driving occasioning actual bodily harm, I pass the same sentence of imprisonment of two years and I make that concurrent to the period to be served for Count 1. In addition he is fined \$200 (already paid).
14. The respondent has already been disqualified from driving for three months following sentencing in the lower Court. However I impose a further period of 6 months disqualification to commence on the day he is released from prison.



A handwritten signature in blue ink, appearing to read "P.K. Madigan".

**P.K. Madigan**  
**Judge**

At Suva  
18 December 2014.