

IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 005 OF 2018S

BETWEEN : SIMIONE RAMATAU

APPELLANT

AND : THE STATE

RESPONDENT

Counsels : Appellant in Person
Ms. L. Bogitini for Respondent

Hearings : 4 May and 11 June, 2018

Judgment : 28 December, 2018

JUDGMENT

1. On 21 September 2016, in the Suva Magistrate Court, the following charge was read and explained to the appellant:

Statement of Offence [a]

DANGEROUS DRIVING OCCASIONING DEATH: Contrary to Section 97 (2)(c) and 114 of the Land Transport Act No. 35 of 1998.

Particulars of Offence [b]

SIMIONE RAMATAU, on the 21st day of January 2015, at Lami in the Central Division, drove a motor vehicle Registration Number FZ 645, on Marine Drive, Lami, in a manner dangerous to another person, involved in an impact occasioning the death of VERENAISI BUKA SOLOIKA.

2. He appeared to understand the same, and he pleaded not guilty to the charge. He was previously given his right to counsel, but by conduct, he appeared to have waived the same. He was representing himself.
3. On 21 and 22 September 2016, including the 3rd October 2016, the prosecution called eight witnesses; Ms. Sainimere Raivaka (PW1); Alusio Tamanitokulu (PW2); PC 3241 Koresi (PW3); DC Klint (PW4); WPC Maretoga (PW5); Krishna Chand (PW6); Makario Namato (PW7) and Doctor James (PW8). On 10 March 2017, the prosecution closed their case. The court found a case to answer. The defence presented their evidence on 27 March 2017. The appellant (DW1) gave evidence, followed by Makario Namato (DW2) and Krishna Vendaya (DW3).
4. On 20 April 2017, the court delivered its written judgement, finding the appellant guilty as charged. On 2 May 2017, the court delivered its written sentence, imprisoning the appellant for 2 ½ years, and directing that he serve a non-parole period of 2 years imprisonment. He was also disqualified from driving for 3 years therefrom.
5. He was not happy with the court's above decisions. On 27 December 2017, he filed his leave to appeal out of time to the Chief Registrar. His application was hand written. He had filed further written submissions on 15 February 2018, on 23 March 2018 and on 11 June 2018. The prosecution filed their written submission on 18 May 2018. I have perused all the papers, and I have listened to the parties' verbal submissions.
6. The appellant's appeal was approximately 6 months out of time. Technically speaking, by virtue of section 248 (1) of the Criminal Procedure Act 2009, he had no right of appeal, unless the High Court grants him permission to appeal out of time. Permission will be granted if he showed "good cause". "Good cause" is often taken to mean he had merits in his appeal. I will therefore examine whether or not he had merits in his appeal.
7. Before I consider the merits of the appeal, I would like to say something on the presentation of someone's appeal. Appellate advocacy is something that had to be mastered carefully. The grounds must be presented in a way that is understood by the appellate court. Quality rather than quantity is the name of the game. The use of proper

English is desired. Repetition is not encouraged as it wasted the court's time. Careful laying out of the complaints is a must. That is why lawyers are required to prepare a proper appeal. In this case, the appellant was not legally represented, and I found it hard to understand what his complaints were.

8. I had looked at the respondent's submission to understand the appeal grounds. I have carefully examined the Magistrate Court record, the learned Magistrate's judgment and sentence to find out if any fault or irregularity on the part of the Magistrate Court, had been done.
9. The appellant was prosecuted for "dangerous driving occasioning death", contrary to section 97 (2)(c) of the Land Transport Act 1998, which reads as follows:

"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 –

- (a) under the influence of intoxicating liquor or of a drug;***
- (b) at a speed dangerous to another person or persons; or***
- (c) in a manner dangerous to another person or persons."***

10. The crucial questions were as follows: Was the appellant driving a vehicle that was involved in an impact? On page 27 of the Magistrate Court record, the appellant gave sworn evidence. He said, he was driving a vehicle on that day. He said, it was a silver colour carrier. He said, there was heavy rain and a thunder storm. He said, he was travelling at 60 kmph, and at times, he drove between 40 to 50 kmph. He said, his vehicle slid to the right. He said, he braked. He said, he ended up on the other side of the road. He said, he hit a post, and swerve to a wall. He said, he hit a lady with his vehicle. The answer to the above question, on the appellant's own sworn evidence, was that he was driving a vehicle at the time, and the vehicle was involved in an impact.
11. The appellant, when caution interviewed by police, also gave the same answer he gave orally in court. See questions and answers 22, 23, 24 and 25 of Prosecution Exhibit No. 2 (his police caution interview statements). So, on the appellant's own oral evidence, and the answers he gave above in his police caution interview, did satisfy a part of the

requirements of section 97 (2)(c) of the Land Transport Act 1998, that is, he was driving a vehicle that was involved with an impact, at the material time.

12. The next question would be: Did the impact occasioned the death of another person? In question and answer 24 of his police caution interview statement, the appellant admitted he hit a woman with his vehicle at the material time, and she was thrown away. In his oral evidence on page 27 of the Magistrate Court record, the appellant admitted he hit a woman with his vehicle at the time. He said, the woman was later taken to hospital. Doctor James (PW8), on page 22 of the Magistrate Court record, said he did the post-mortem examination of the woman. He said, the cause of death was severe head injury as a result of a motor vehicle accident. He tendered his post-mortem report of the woman as Prosecution Exhibit No. 7. All the above evidence satisfy the statutory requirement that the appellant drove a motor vehicle, at the material time, that was involved in an impact that occasioned the death of Verenasi Buka Soloika.
13. The last question was: At the time of the impact, was the appellant driving the motor vehicle, in a manner dangerous to another person or persons? The authorities say that the appellant must be found to be at fault at the time to be liable. Fault implies negligence. Negligence calls for the standard of a reasonable person at that time. In other words, what would a reasonable driver do if he was confronted with the situation that confronted the appellant, at the material time, on 21 January 2015? The appellant, in his oral evidence said, at the time, it was raining heavily. He said, it was a thunder storm. He said, it was dark. He said, it was 2.30 pm. He said, he was travelling at 60 kmph. At time, he travelled at 40 to 50 kmph. He said, water was flowing on the road, coming from a blocked drain. He said, 2 cars and a shore bus was in front of him.
14. He said, he overtook the bus when it stopped in the middle of the road. He said, as he was driving, his vehicle slid to the right. He said, he stepped on the brake. He said, he ended up on the other side of the road. He said, his vehicle hit a post and swerve onto a wall. He said, in the process, his vehicle hit a lady. When you consider all the above evidence together, the inevitable inference of fact was that he was speeding prior to the accident. A reasonable driver, given the surrounding circumstances that confronted the appellant at that time, would have slowed down his vehicle and possibly put on his lights or hazard lights, to warn other road users. Blocked drain and water running onto the

road demanded that vehicles slow down to enable the security and safety of other road users, at the time. Looking at all the evidence in this case, it was obviously clear that the appellant did not exercise due care and attention at the material time. He obviously drove at a speed which was not safe, given the surrounding circumstances. In other words, by not slowing down his motor vehicle, given the adverse weather condition, he thus drove his vehicle in a manner which was dangerous to the deceased, in this case. The statutory requirement of section 97 (2)(c) of the Land Transport Act 1998 had been satisfied. The learned Magistrate reached the above conclusion in finding the appellant guilty as charged. In my view, he had not erred.

15. As to the appellant's appeal against sentence, I find the learned Magistrate had applied the right law and reached the right sentence.

16. Given the above, I find the learned Magistrate had not erred in law or in fact, in convicting the appellant as charged, and sentencing him to 2 ½ years imprisonment, with a non-parole period of 2 years. The appellant's application for leave to appeal out of time is dismissed. There is no merit in the purported appeal.




Salesi Temo
JUDGE

Solicitor for Appellant : **In Person.**

Solicitor for Respondent : **Office of DPP, Suva.**