

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case. No. HAC 014 of 2021

BETWEEN : **THE STATE**

A N D : **PAUL ELIJAH SORBY**

Counsel : Mr. J. Nasa for the State.
Mr. S. Heritage for the Accused.

Dates of Hearing : 24, 25, 26, 27, 28 February, 2025

Closing Speeches : 07 March, 2025

Date of Judgment : 07 March, 2025

JUDGMENT

1. The Director of Public Prosecutions charged the accused by filing the following information dated 23rd February, 2021:

FIRST COUNT

Statement of Offence

MANSLAUGHTER: Contrary to section 239 (a) and (b) and (c) (ii) of the Crimes Act 2009.

Particulars of offence

PAUL ELIJAH SORBY on the 20th of April 2018, at Sigatoka in the Western Division, drove a motor vehicle with registration number HT 438 along Batiri Queens Road, in a manner that caused the death of MANOA DEVO, and at the time of driving, the said PAUL ELIJAH SORBY was reckless as to the risk that his conduct would cause serious harm to Manoa Devo.

SECOND COUNT

MANSLAUGHTER: Contrary to section 239 (a) and (b) and (c) (ii) of the Crimes Act 2009.

Particulars of offence

PAUL ELIJAH SORBY on the 20th of April 2018, at Sigatoka in the Western Division, drove a motor vehicle with registration number HT 438 along Batiri Queens Road, in a manner that caused the death of LUSIANA NAWAKATUTU, and at the time of driving, the said PAUL ELIJAH SORBY was reckless as to the risk that his conduct would cause serious harm to LUSIANA NAWAKATUTU.

THIRD COUNT

MANSLAUGHTER: Contrary to section 239 (a) and (b) and (c) (ii) of the Crimes Act 2009.

Particulars of offence

PAUL ELIJAH SORBY on the 20th of April 2018, at Sigatoka in the Western Division, drove a motor vehicle with registration number HT 438 along Batiri Queens Road, in a manner that caused the death of TITILIA VUNAWENA, and at the time of driving, the said PAUL ELIJAH SORBY was reckless as to the risk that his conduct would cause serious harm to TITILIA VUNANEWA.

FOURTH COUNT

DANGEROUS DRIVING OCCASIONING GRIEVOUS BODILY HARM:
Contrary to section 97 (1) and (4) (c) and section 114 of the Land Transport Act 1998.

Particulars of offence

PAUL ELIJAH SORBY on the 20th of April 2018, at Sigatoka in the Western Division, drove a motor vehicle with registration number HT 438 along Batiri Queens Road, which was involved in an impact occasioning grievous bodily harm to Losalini Bainimua, and at the time of the impact the said Paul Elijah Sorby was driving in a manner dangerous to Losalini Bainimua.

FIFTH COUNT

DANGEROUS DRIVING OCCASIONING GRIEVOUS BODILY HARM:
Contrary to section 97 (1) and (4) (c) and section 114 of the Land Transport Act 1998.

Particulars of offence

PAUL ELIJAH SORBY on the 20th of April 2018, at Sigatoka in the Western Division, drove a motor vehicle with registration number HT 438 along Batiri Queens Road, which was involved in an impact occasioning grievous bodily harm to Peni Kalinisei, and at the time of the impact the said Paul Elijah Sorby was driving in a manner dangerous to Peni Kalinisei.

2. In this trial, the prosecution called nine witnesses and after the prosecution closed its case, this court ruled that the accused had a case to answer in respect of all the offences as charged.

BURDEN OF PROOF AND STANDARD OF PROOF

3. As a matter of law, the burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no obligation on the accused to prove his innocence. An accused is presumed to be innocent until he or she is proven guilty. The standard of proof is one of proof beyond reasonable doubt.

ELEMENTS OF THE OFFENCE

4. To prove counts one, two and three the prosecution must prove the following elements of the offences of manslaughter beyond reasonable doubt:
 - (a) The accused
 - (b) engaged in a conduct; and
 - (c) the conduct caused the death of three persons; and
 - (d) the accused intended that the conduct will cause serious harm to the deceased persons or the accused was reckless as to a risk that the conduct will cause serious harm to the deceased persons. The accused is reckless with respect to a risk of causing serious harm to the deceased persons if;
 - (i) he is aware of a substantial risk that serious harm will occur due to his conduct exists or will exist; and
 - (ii) having regard to the circumstances known to him, it was unjustifiable for him to take that risk.
5. Manslaughter is the killing of someone by an unlawful conduct. If this court is satisfied that the accused was engaged in a conduct which caused the death of the deceased persons and the accused was reckless as to the risk that his conduct would cause serious harm to the deceased persons, then this court must find the accused guilty of manslaughter.

6. Whether the accused drove motor vehicle registration number HT 438 in a manner which was reckless as to a risk that his conduct would cause serious harm to the deceased persons is a matter entirely for this court to decide on the basis of the facts and circumstances of the case.
7. What this court will have to consider with regard to this particular state of mind is whether the accused was aware of a substantial risk that death will occur due to his conduct and having regard to the circumstances known to him, it was unjustifiable for him to take that risk.
8. The first element is concerned with the identity of the person who allegedly committed the offences. This element is not in dispute.
9. The second element relates to the conduct of the accused. To engage in a conduct is to do an act which is a voluntary act by the accused or is a result of the will of the accused. The act of the accused need not be the sole or principal cause, but the act should substantially contribute to the death of the deceased persons.
10. The third element is the conduct of the accused that caused the death of the deceased persons. Conduct means an act done by the accused the law requires a link between the conduct of the accused and the death of the deceased persons. This court must be sure that the conduct of the accused caused the death.
11. In other words, whether the motor vehicle driven by the accused which collided with the oncoming car in which the deceased persons were travelling caused the death of the deceased persons. It is also kept in mind that the act need not be the sole cause but should substantially contribute to the death of the deceased persons.
12. With regards to the state of mind of the accused the prosecution must prove beyond reasonable doubt either that the accused intended to cause

serious harm to the deceased persons or that the accused was reckless as to a risk of causing serious harm to the deceased persons by his conduct. The prosecution should only rely on one of the two limbs of this element. In this case the prosecution is alleging that the accused person was reckless in causing the death of the deceased persons.

13. It is for the prosecution to prove beyond reasonable doubt that it was the accused who was engaged in a conduct and the conduct caused the death of the deceased persons and the accused was reckless as to a risk that his conduct will cause serious harm to the deceased persons.
14. The prosecution states that it was the accused who drove motor vehicle registration no. HT 438 under the influence of alcohol in a manner that caused the death of the deceased persons and at the time of driving the accused was reckless as to the risk that his conduct would cause serious harm to the deceased persons.
15. A person is reckless if he is aware of a substantial risk that serious harm would occur and, having regard to the circumstances known to him, he was unjustified to take that risk. The first step is to decide if there was a risk and whether the risk was “substantial”. The risk is substantial if an ordinary prudent motorist, under the circumstances as they were known to the accused, would not have taken the risk at the time it was taken.
16. If this court finds that an ordinary prudent motorist would have taken the risk to be substantial at the time it was taken, then this court must decide whether the accused was aware of that substantial risk, that is, that serious harm could occur. If this court finds that the accused was aware of a substantial risk that serious harm would occur then, I must proceed to consider whether, having regard to the circumstances known to the accused, he was unjustified to take that risk.

17. Whether taking the risk was unjustified is a question of fact for this court to determine. It is not possible to have direct evidence regarding a person's state of mind as no witness can look into the accused's mind and describe what it was at the time of the alleged incident. However, this court can deduce the state of mind of an accused from the facts and circumstances as proved by evidence.
18. If this court is satisfied that the prosecution has proved all the above elements beyond reasonable doubt then this court must find the accused guilty of manslaughter.
19. If on the other hand, this court finds that the prosecution has failed to prove any of these elements beyond reasonable doubt then this court must find the accused **not** guilty of manslaughter.
20. To prove counts four and five the prosecution must prove the following elements of the offence of dangerous driving occasioning grievous bodily harm beyond a reasonable doubt:
 - a) The accused;
 - b) drove a motor vehicle registration number HT 438 which was involved in an impact occasioning grievous bodily harm to Losalini Bainimua / Peni Kalinisei; and
 - c) at the time of the impact;
 - d) the accused drove the said vehicle in a manner dangerous to Losalini Bainimua/Peni Kalinisei.
21. If this court is satisfied that the prosecution has proved all the elements of the offence of dangerous driving occasioning grievous bodily harm, then this court must find the accused guilty of the offences. However, if there is a reasonable doubt with respect to any elements of the offences of

dangerous driving occasioning grievous bodily harm then this court must find the accused not guilty.

22. In respect of the elements of dangerous driving, I have to consider whether the accused's manner of driving fell below the standard of a reasonable and prudent driver and was viewed objectively as dangerous. Additionally, the vehicle driven by the accused was involved in an impact that caused grievous bodily harm to Losalini Bainimua/Peni Kalinisei.
23. In this case, the accused is charged with five offences, I have borne in mind that the evidence in each count is to be considered separately from the other. It is not to be assumed that because the accused is guilty of one count that he must be guilty of the others as well. This also applies to the outcome of not guilty.

ADMITTED FACTS

24. In this trial the prosecution and the defence have agreed to certain facts titled as admitted facts. These facts are part of the evidence and I have accepted these admitted facts as accurate, truthful and proven beyond reasonable doubt.
25. I will now remind myself of the prosecution and defence cases. In doing so, it would not be practical of me to go through all the evidence of every witness in detail. I will summarize the important features for consideration and evaluation in coming to my final judgment in this case.

PROSECUTION CASE

EVIDENCE

26. The first witness, Losalini Bainimua, informed the court that on 20th April, 2018, at about 3 am the witness with her mother, grandmother, and younger brother Peni Kalinisei left Lautoka for Naitasiri.

27. The car was driven by Manoa Devo, Peni was sitting beside the driver. The witness was sitting behind the driver, her mother Titilia Vunawena, was sitting beside her and her grandmother, Lusiana Nawakatutu was sitting behind Peni. When they reached Nadi, the witness fell asleep. She woke up when she heard her brother crying and screaming for help. The witness saw that her mother and grandmother were bending down and not moving.
28. The witness thought her mother and grandmother were sleeping. The witness became unconscious. When she woke up, she felt pain in her thighs, which were swollen. The witness called for help. She was taken to the roadside and then to the hospital. The thighs of the witness were bandaged, and then she was transferred to Lautoka Hospital, where she was further treated because her face was swollen, and her thighs and ankle were fractured.
29. In cross examination, the witness agreed that they were going to Naitasiri for a funeral. They were in a hurry, and the driver was driving the car fast.
30. The second witness, Peni Kalinisei, the younger brother of Losalini, said at 3 am on 20th April, 2018, the witness, along with his mother, grandmother and sister Losalini, were going to Naitasiri from Lautoka in a taxi. The witness was seated in the front passenger seat. Behind him was his grandmother, followed by, his mother, and behind the driver was Losalini. The driver of the taxi was Manoa Devo.
31. On the way, the witness fell asleep. He woke up after the accident had occurred. According to the witness, the dashboard of the car was stuck on his foot. He saw his sister Losalini, crying with blood on her. The witness also received injuries from broken glass. The witness saw his mother and grandmother bending down.

32. The witness was helped out of the car by members of the public. The accident was between a red twin cab and their car, which was a hybrid fielder. The witness was taken to the hospital.
33. During cross examination, the witness agreed that they were on their way to attend a funeral but denied that the family was in a rush to go to Naitasiri that morning.
34. The third witness, Alisi Nai, informed the court that on the evening of 19th April, 2018, after knocking off from work at midnight with her friends Wati, Marika and Vili, they started drinking Fiji Gold beer at Lomawai village. The drinking started at about 1 am. Whilst drinking, Luisa (aunt of the witness), Kele (sister of the witness) and Paul (the accused, her granduncle) arrived bringing their own Fiji Gold beer and joining them.
35. After the drinking finished at about 3 am, all of them boarded the accused red twin cab to buy more beer. The twin cab was driven by the accused.
36. The witness was seated on the tray of the twin cab with Vili, Maikeli and Manoa. The group left at about 3.30 am for Naidovi. The shops were closed, the witness fell asleep whilst returning to the village. When she woke up, she was in the Sigatoka Hospital. The witness recognized the accused in court.
37. During cross examination, she agreed that the accused was sleeping in the vehicle the entire time the drinking was taking place and was only woken up to buy more drinks.
38. In re-examination, the witness could not recall exactly when the accused had gone to sleep in the vehicle.

39. The fourth witness, Luisa Taufua informed the court that on the night of 19th April, 2018, the witness, the accused and some others were drinking grog at a settlement in Lomawai. The accused is her uncle. The grog session ended after midnight, the witness, along with Kele was walking home.
40. Shortly after, the accused came in his red twin cab and suggested that they all go for a drink. The group went to buy some Fiji Gold beer. The group, namely the witness, Kele and the accused were drinking beside Adi's handicraft shop.
41. Later, they joined Vili, Alisi, Marika and Wati in the drinking session. After the drinks finished at about 3 am, the group wanted to buy more drinks, so all went in the twin cab driven by the accused.
42. The witness sat in the front passenger seat with Wati, Kele and Marika in the back seat and Vili, Alisi, Manoa and Maikeli in the tray of the twin cab. The vehicle was driven to Naidovi and all the shops were closed. On the way back, the witness fell asleep. The witness woke up when Kele from the back seat was thrown onto the dashboard of the vehicle.
43. The witness got frightened and was thereafter assisted out of the car by some people. She saw that an accident had occurred. The witness was then taken to Sigatoka Hospital. The witness recognized the accused in court.
44. During cross examination, the witness agreed that she, Kele and the accused went and bought six bottles of Fiji Gold beer. The witness agreed that the accused was driving in a normal manner when, after the grog session, they went to buy drinks and drove from the place they were drinking to Lomawai village.

45. The witness agreed at Lomawai village, the accused decided to sleep in the twin cab, and it was after the drinks had finished that she woke the accused to buy more drinks. When they went to buy more drinks, the accused was driving the twin cab in a normal manner. The witness confirmed that she did not see the actual collision.
46. The fifth witness Litia Yadraca on 24th April, 2018 had gone to the Lautoka Hospital Mortuary to identify the body of her husband Manoa Devo.
47. The sixth witness, Manoa Nariri, informed the court that at around 4 am on 20th April, 2018, while drinking grog, he received a text message to join another group for a drinking session. The witness joined the group, and when the beer finished, they all decided to buy more. The witness, with the accused who was the driver of the twin cab, went to the ATM machine where the witness withdrew some money, but they were unable to buy any beer since all the shops were closed. When they were returning home, the witness sat on the left side of the vehicle tray leaning on the glass of the twin cab in front. When they went past the Vatudradra Police Post, the vehicle started to swerve. The witness shouted for the driver to stop the vehicle.
48. According to the witness, the accused did not hear him because the windows of the twin cab were up. The vehicle continued after passing Batiri junction, as soon as they reached the bend, the witness saw an oncoming vehicle in the middle of the road. The twin cab, driven by the accused, went onto the lane where the oncoming vehicle was. The witness jumped out of the twin cab and blacked out. The accused is the uncle of the witness, and the witness was able to recognize the accused in court.
49. In cross examination, the witness agreed that when the accused drove the vehicle from the village to buy more drinks, the accused was driving in a normal manner. When returning from Naidovi to Friendly shop, the

accused was again driving in a normal manner. The witness did not agree with the suggestion that the vehicle was not swerving.

50. The witness was referred to his police statement dated 11th May, 2018 to line 8 which was read as follows:

“We managed to stop and checked at the Friendly Shop at Vatudradra and it was closed. At about nearly 5am when we reached the stretch from Batiri road I saw the vehicle was moving towards the other lane.”

51. The witness agreed that his statement does not mention that the vehicle was swerving, however, he said he meant the same thing. When it was put to the witness that the vehicle was not swerving the witness disagreed. When questioned that the facts were fresh in his mind but he did not tell the police. The witness said he told the police but the police did not record it.

52. Upon further questioning, the witness agreed that it is not mentioned in his police statement that he was shouting for the driver to stop the vehicle. When it was put to the witness that the reason why it is not in his police statement is that he had not shouted was because there was nothing to shout about, the witness said *“I did call out.”* Although the incident was fresh in his mind, he did not tell the police about the fact that he had shouted for the driver to stop because he was not in good state of mind.

53. The witness agreed his police statement was taken in May, while the accident had happened in April. The witness disagreed he was in good state of mind in May.

54. The witness disagreed that the oncoming vehicle was coming towards the lane of the accused’s vehicle, he stated that the oncoming vehicle was in the middle of the road.

55. The witness agreed that by the time the twin cab went on to the other lane, the oncoming vehicle went back to its lane. When the witness was questioned that he did not see the actual collision, the witness said, *“The accident happened and I was thrown out. From there, I got blacked out.”*
56. In re-examination, the witness stated that he was admitted in hospital when the police officer came to take his statement.

PREVIOUS INCONSISTENT STATEMENT

57. This court directs its mind to the fact that the defence counsel during the cross examination of Manoa Nariri had questioned this witness about some inconsistencies/omissions in his police statement which he had given to the police when facts were fresh in his mind with his evidence in court.
58. This court is allowed to take into consideration the inconsistencies or omissions between what Manoa told the court and his police statement when considering whether this witness was believable and credible. However, the police statement is not evidence of the truth of its contents.
59. It is obvious that passage of time can affect one’s accuracy of memory. Hence it cannot be expected for every detail to be the same from one account to the next.
60. If there is any inconsistency or omission, it is necessary to decide firstly whether it is significant and whether it affects adversely the reliability and credibility of the witness. If it is significant, then it is for this court to consider whether there is an acceptable explanation for it. If there is an acceptable explanation, for the change, then this court may conclude that the underlying reliability of the evidence is unaffected. If the inconsistency is so fundamental, then it is for this court to decide to what extent that influences the reliability of the witness evidence.

61. The seventh witness Sgt. 3844 Sanjeev Chandra informed the court that on 20th April, 2018, he was on official duty in uniform heading from Lautoka to Suva in the police mini bus with other police officers.
62. At Batiri, Sigatoka, the witness saw that there was a head-on collision between two vehicles. A grey fielder car heading towards Sigatoka was on its lane, whilst a red Toyota Hilux had entered the lane of the grey car.
63. The other police officers, with the witness, started assisting the injured and controlling the traffic. The witness contacted Sigatoka Police Station to arrange for the fire officers to come to the scene and rescue the passengers stuck in the car. Furthermore, the witness questioned the passengers in the red twin cab as to who was driving that vehicle.
64. When the witness approached the driver, he asked for the driver's license, which was handed over. Whilst having a conversation, the witness saw the accused had red eyes and was heavily smelling of liquor. From the driver's license, the witness came to know the full name of the accused. When the witness approached the accused, the accused said, "*Officer I am sorry, I just slept.*"
65. The witness arrested the accused and quickly transported him to the Sigatoka Police Station to conduct the breath analysis test.
66. At the police station, the accused cooperated and submitted his breath sample on the Dragger Alco test 7110. The machine generated three copies of the result, which were immediately signed by the witness. The result was 41 micrograms of alcohol, which was above the prescribed limit of 37 micrograms of alcohol. The witness served a copy on the accused, another copy was attached to the police file, and the third copy was kept at the police station for record purposes. The witness also signed a breathalyzer

certificate as an authorized operator, which was also served to the accused at the time.

67. The Fiji Police dragger 7110 slip dated 20th April, 2018, and Fiji Police Force certificate for use of dragger machine were marked and tendered as prosecution exhibits 1 (a) and 1 (b) respectively. The witness recognized the accused in court.
68. In cross examination, the witness agreed that from his observation, he assumed that the driver of the red twin cab was at fault because the accident scene showed how the accident had happened. The witness did not agree that the above assumption was made without asking the passengers of the red twin cab. The witness agreed his assumption was that the accident was caused by the driver of the red twin cab, so he approached the accused.
69. The witness agreed that a police officer should identify himself first before questioning a suspect. He also agreed that the police officers should state the reason why the suspect was being approached. The witness denied that in this case he had not identified himself as a police officer. When asked why he is in denial, the witness said, *"I was already in uniform, when I approached him, he already identified me."*
70. The witness agreed he did not inform the accused about the reason why he was being questioned. When questioned whether he had informed the accused about his right to remain silent, the witness stated, *"I agree, but he was informed before arresting."*
71. The witness further stated that the accused was given his rights before arrest. The witness disagreed that the statement made by the accused that he had slept was obtained by the accused without informing him about

his right to remain silent. The witness said, before he could say anything, the accused said, *“Sorry officer, I slept.”*

72. The witness maintained that the result of the Breathalyzer machine of 41 micrograms of alcohol was correct.
73. The eighth witness, Dr Daniella Eliora John informed the court that she is a graduate of the Fiji School of Medicine having graduated with an MBBS degree in the year 2010. Currently the witness is a Pathology Registrar at the CWM Hospital. In 2018 the witness was working in the Forensics Pathology Unit of the Fiji Police Force.
74. On 24th April, 2018, the witness had conducted three post mortems at the Lautoka Hospital mortuary. The deceased persons were Manoa Laqere, Lusiana Nawakatutu and Titilia Vunawena.
75. The post mortem report of Manoa Laqere was marked and tendered as prosecution exhibit no. 2 (a).
76. According to the witness this deceased was the driver of the vehicle which was involved in a head on collision with another vehicle.
77. The cause of death was due to:
 - a) Exsanguination (excessive loss of blood);
 - b) Ruptured left and right ventricular chambers;
 - c) Severe blunt chest trauma.
78. The other significant condition contributing to the death of the deceased were multiple traumatic injuries consistent with a motor vehicle accident.

79. In respect of the deceased Lusiana Nawakatutu, the witness stated that this deceased person was a passenger in a vehicle that was involved in a head on collision with another vehicle. The post mortem examination of Lusiana Nawakatutu was marked and tendered as prosecution exhibit no. 2 (b).
80. The cause of death was due to:
- a) Transection of the brainstem at the level of pons;
 - b) Intracranial haemorrhages;
 - c) Severe traumatic head injuries.
81. The other significant condition contributing to the death of this deceased was multiple traumatic injuries consistent with a motor vehicle accident.
82. In respect of the deceased Titilia Vunawena the witness stated this deceased was another passenger involved in the accident. The post mortem examination report of the deceased was marked and tendered as prosecution exhibit no. 2 (c).
83. The cause of death was due to:
- a) Exsanguination (excessive loss of blood);
 - b) Transection of descending portion of aorta;
 - c) Multiple traumatic injuries.
84. According to the witness, the injuries were caused as a result of a motor vehicle accident.
85. In cross examination, the witness agreed that the damage to the aorta of the deceased Titilia was caused when the moving vehicle came to a sudden stop. Upon further questioning, the witness stated that the whiplash effect would occur when there is a sudden, abrupt stop, either by colliding with something or by hitting something.

86. When it was suggested that the car in which all the deceased persons were travelling was moving at a very high speed and had come to a sudden stop, which would have caused the whiplash, resulting in the separation of the aorta, the witness stated that it's an abrupt stop that matters, regardless of the speed. According to the witness, a whiplash is caused when the head is thrown forward and then moved backwards.
87. The witness further clarified that whiplash is a sudden, abrupt movement that does not take into account how fast you are going. In respect of the deceased Titilia, the witness agreed that travelling at a high speed and then coming to an abrupt stop would cause the separation of the aorta.

DIRECTION ON EXPERT EVIDENCE

88. This court has heard the evidence of Dr. John who had been called as an expert on behalf of the prosecution. Expert evidence is permitted in a criminal trial to provide the court with information and opinion which is within the witness expertise. It is by no means unusual for evidence of this nature to be called the post mortem examination reports of all the deceased persons is before this court and what the doctor said in her evidence as a whole is to assist this court.
89. An expert witness is entitled to express an opinion in respect of his or her findings. When coming to my conclusion about this aspect of the case I have borne in mind that if, having given the matter careful consideration, I do not accept the evidence of the expert I do not have to act upon it. Indeed, this court does not have to accept even the unchallenged evidence of the doctor.
90. I have also kept in mind that this evidence of the doctor relates only to part of the case, and that whilst it may be of assistance to me in reaching my decision, I must reach my decision having considered the whole of the evidence.

91. The final witness, Sgt. 3980 Peni Vunisa, informed the court that on 20th April, 2018, he received instructions from the Traffic Officer that there had been a serious accident at Batiri, Lomawai. Since the witness was on traffic duty standby, he was appointed to be the investigating officer in this case.
92. It was nearly 6 am, when the witness arrived at the scene. At the scene, he saw that two vehicles had collided head-on. One vehicle was a grey hybrid car, and the other was a red twin cab, both facing different directions. The grey hybrid car, was facing Sigatoka, and the red twin cab, was facing Lautoka.
93. The witness was briefed that two passengers from the hybrid car were dead, and the driver was stuck in the car, suspected to be dead as well. Furthermore, two passengers from the hybrid car, who had sustained injuries, along with passengers from the twin cab, had been taken to the hospital. By this time, the driver of the twin cab had already been taken to the Sigatoka Police Station.
94. The witness drew a rough sketch plan at the scene of the accident. According to the witness, he drew the rough sketch plan based on what he had seen. He clearly saw the point of impact with debris present as well. There were no tyre marks or brake marks on the road. The rough sketch plan dated 20th April, 2018, was marked and tendered as prosecution exhibit no. 3 (a).
95. Later the witness drew a fair sketch plan. The fair sketch plan was marked and tendered as prosecution exhibit no. 3 (b).
96. The witness had also instructed other officers to take the details of the passengers taken to the Sigatoka Hospital, who were later transferred to the Lautoka Hospital for further treatment. The witness also sighted the medical reports of Peni Kalinisei and Losalini Bainimua.

97. The medical report of Peni Kalinisei dated 4th May, 2018, was marked and tendered as prosecution exhibit no. 4(a). The medical report of Losalini Bainimua dated 14th June, 2018, was marked and tendered as prosecution exhibit no. 4 (b).
98. In cross examination, the witness agreed that after every motor vehicle accident, the vehicles involved in the accident are taken to the Land Transport Authority for inspection. The purpose of the vehicle inspection is to determine if there are any defects in the motor vehicles involved in the accident.
99. According to the witness, both vehicles were taken to the police station, and no LTA vehicle inspection report was tendered in court. The witness agreed that from his investigation, he did not find any evidence that the red twin cab had a mechanical defect.
100. The witness did not agree that the twin cab going onto the other lane could have been caused by a mechanical defect in the engine of the vehicle. The witness also disagreed that the red twin cab went into the other lane due to defective brakes.
101. The witness agreed that this was the reason why an LTA inspection report was needed to show that the red twin cab was road worthy. The witness never gathered evidence that the red twin cab was road worthy, and the witness could not negate the possibility that there were some defects in the red twin cab driven by the accused.
102. This was the prosecution case.

DEFENCE CASE

103. At the end of the prosecution case, the accused was explained his options. He could have remained silent but he chose to give sworn evidence and be subjected to cross examination. This court must also consider his evidence and give such weight as is appropriate.
104. The accused informed the court that on 19th April, 2018, from 8pm the accused was having grog at his friend's house opposite Lomawai Secondary School. As the night progressed he was joined by Taufua and Karalaini. The grog session ended at midnight.
105. After the grog session the accused along with Taufua and Karalaini went to buy 6 bottles of Fiji Gold beer at a shop near the Vatudradra Police Post. The accused drove his vehicle registration HT 438, a red Hilux twin cab. In 2018, he had a full driver's license. After buying beer the accused drove to a drinking spot near Adi's Handicraft.
106. Between the three of them they drank two bottles of beer, according to the accused he had 4 glasses of beer. After sometime, the accused drove to Kubuna village where their friends were drinking.
107. The accused said he drove in a normal manner from Adi's Handicraft to Kubuna village. At Kubuna village, the accused went to sleep in the vehicle while Taufua and Karalaini went to drink with the others.
108. After one hour the accused was woken up and told to take the group to buy more drinks. The following people as per his memory boarded his twin cab Karalaini, Taufua, Nai and Marika. The accused drove about 20 to 30 km from Lomawai village to Naidovi. The accused stated he drove in a normal manner.

109. At Naidovi, one of the boys went to withdraw some money from the ATM machine and from there they drove around supermarkets which were closed. On the journey back to Lomawai village they stopped at the Friendly shop which was also closed.
110. On the way back, after going past Kubuna junction the accused saw a vehicle coming towards Sigatoka from a distance away. As this particular oncoming vehicle came closer the accused noticed that the oncoming car was tilting towards his lane, like the left side of that car was getting closer to the middle lane.
111. According to the accused he flicked the lights to warn the oncoming vehicle but the other car continued to come at a very high speed. To avoid collision the accused turned his vehicle on the lane of the oncoming vehicle but this vehicle went back to its own lane and there was a head-on collision. The accused also stated that before changing the gear the twin cab engine stalled and the steering wheel got locked.
112. The accused passed out in the vehicle he regained consciousness after he was helped to sit beside the road.
113. The accused was in shock so he did not see the other vehicle, after a while a police mini bus came and he was taken to Sigatoka Police Station. At the police station the accused was breath tested and taken to the hospital. The accused denied all the allegations raised against him.
114. During cross examination, the accused stated that he considers himself to be a very seasoned and experienced motor vehicle driver. The accused agreed that it was not prudent of him to drive after the grog and brief drinking session. On the way back to the Lomawai village, all the windows in the twin cab was wound up. As a result he was not able to hear anything from the outside because the air conditioning was on inside the twin cab.

The accused did not hear Manoa shouting from the tray of the twin cab. The accused denied that his vehicle was swerving before the accident.

115. The accused also denied that he was tired after drinking grog from 8pm till midnight and briefly drinking with the others. The accused again denied that he was tired that's why he had taken a nap. The accused agreed that he swerved his vehicle on to the oncoming lane as a result there was a head-on collision. At the Sigatoka Police Station the accused cooperated with the police and had submitted to a breathalyser test but he did not receive the result slip. The accused denied all the allegations put to him.
116. In re-examination, the accused stated that the left tyre of the oncoming vehicle was almost on the middle lane the accused then went on to say "*left tyre was on my side of the road*". He further stated that when the other vehicle was coming on to his lane, he swerved the vehicle to the other lane to void a collision. He had flicked the lights to warn the other driver but this was not helpful since the other vehicle kept coming.
117. This was the defence case.

ANALYSIS

118. The prosecution alleges that at around 4 am on 20th April, 2018, the accused was driving his red twin cab, registration no. HT 438, to Lomawai village from Naidovi. At this time, there were some passengers inside the twin cab and some were seated on the tray. At the time of driving, the accused had 41 micrograms of alcohol in his blood which is above the legal limit of 37 micrograms.
119. The accused had been drinking grog from 8pm until midnight, and thereafter beer. After the beer was finished, the accused drove about 20 to

30 km with the group to buy more. They were unable to buy any, so they were going back to Lomawai village. The prosecution submitted that the accused knew he was under the influence of liquor, yet he drove the vehicle that early morning to buy more beer. Being an experienced motor vehicle driver, the accused knew that he was tired and had too much to drink, and therefore he should not have driven his vehicle at all, putting not only himself but others at risk as well.

120. The prosecution also submitted that the accused knew he was taking a risk when he drove the vehicle early that morning. While driving, the accused fell asleep on the Batiri Queens Highway. The vehicle driven by the accused went onto the opposite lane and collided head on with the oncoming vehicle, registration number JM 229, which was correctly in its lane.
121. The force of the collision was such that the driver of the oncoming vehicle and two passengers in that vehicle died. Furthermore, two other passengers in the same vehicle were injured and both were hospitalized for some time. At the crime scene, when the accused was approached by Sgt. Sanjeev Chandra the accused said, *“Officer I am sorry, I just slept”*. The prosecution also relies on the rough and fair sketch plan, which depicts a horrific accident caused by the accused. The accused was not only intoxicated but he left his lane and entered the other lane, which is below the standard of a prudent driver.
122. Finally, the prosecution stated that the accused’s admission to the police officer at the accident scene that he had slept while driving speaks volumes about his conduct leading to the accident while in a state of intoxication exceeding the legal limit. This collision substantially contributed to the death of the three deceased persons who were in the oncoming vehicle and also caused grievous bodily harm to Losalini Bainimua and Peni Kalinisei.

123. The prosecution further stated that the accused knew there was a substantial risk in driving the vehicle under the influence of alcohol and he also knew that it was not justifiable to take the risk of driving, but he did so, regardless. The accused slept at the wheel whilst the vehicle was moving, and then his vehicle went onto the wrong lane, colliding with the oncoming vehicle. The prosecution argues that the evidence adduced shows that the accused was reckless and that he had created a dangerous situation at the time of the impact.
124. On the other hand, the defence says this court should consider the fact that there was nothing reckless or dangerous about the driving of the accused at all. He acted in a manner that was demanded by the situation. It was the driver of the oncoming vehicle who was to be blamed. This driver was driving his vehicle at high speed despite being warned by the accused, by flicking the lights of his vehicle, the other driver persisted in his below the standard driving.
125. To avoid a collision, the accused had to move into the other lane, but unbeknown to the accused, the other driver swerved into his lane again and then collided with the accused twin cab. Furthermore, when the accused went onto the other lane, before he could change gear, the engine of his vehicle stalled, which locked the steering wheel. Hence, the mechanical fault in the vehicle led to the accident.
126. The defence also submitted, that this is a clear case of an accident beyond the control of the accused and not as a result of the accused's driving. The defence further stated that the accused should not be blamed, he was driving normally but due to the substandard driving of the oncoming vehicle driver and the unforeseen mechanical defect, there was a head on collision.
127. The accused was also injured. The defence is asking this court to look at the evidence objectively. Furthermore, the prosecution did not produce the

LTA vehicle examiner's report, which would have shown the defect in the vehicle driven by the accused.

DETERMINATION

128. I would like to once again remind myself that the burden to prove the accused guilty beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused. Even if I reject the version of the defence still the prosecution must prove this case beyond reasonable doubt.
129. There is no dispute that during the early morning of 20th April, 2018, the accused was the driver of the vehicle HT 438. There was a collision and as a result of the impact three passengers died and two passengers got injured in the oncoming car.
130. The prosecution argued that the accused was intoxicated, and whilst driving, he had slept at the wheel. As a result, the accused's vehicle went onto the other lane and collided head on with the oncoming vehicle. The prosecution further stated that the accused was reckless because he was aware of a substantial risk that serious harm could occur due to his driving. It was unjustified for the accused to take that risk, but he did so nevertheless.
131. In accordance with section 21 (2) of the Crimes Act the following questions arise in regards to recklessness:
 - a) Was the accused aware of a substantial risk that serious harm will occur due to his conduct? and
 - b) Having regard to the circumstances known to him, it was unjustifiable to take the risk?

132. I would like to remind myself in accordance with the direction given by Lord Diplock in *R v Lawrence (Stephen)* [1981] 1 All ER 974 at page 982 about reckless (motor) manslaughter as follows:

"In my view, an appropriate instruction to the jury on what is meant by driving recklessly would be that they must be satisfied of two things:

First, that the defendant was in fact driving the vehicle in such a manner as to create an obvious and serious risk of causing physical injury to some other person who might happen to be using the road or of doing substantial damage to property; and

Second, that in driving in that manner the defendant did so without having given any thought to the possibility of there being any such risk or, having recognised that there was some risk involved, had nonetheless gone on to take it. It is for the jury to decide whether the risk created by the manner in which the vehicle was being driven was both obvious and serious and, in deciding this, they may apply the standard of the ordinary prudent motorist as represented by themselves. If satisfied that an obvious and serious risk was created by the manner of the defendant's driving, the jury are entitled to infer that he was in one or other of the states of mind required to constitute the offence and will probably do so; but regard must be given to any explanation he gives as to his state of mind which may displace the inference."

133. In view of the above, this court can draw reasonable inferences from proven facts about the conduct of the accused, to determine whether the accused was aware of a substantial risk that serious harm would occur due to his conduct when it was not justifiable for him to take that risk. It is open to this court to apply the standard of the ordinary prudent motorist.
134. The defence contends that the accused's driving was not reckless or dangerous because he had acted to avoid a collision since the other vehicle

was entering his lane. It was the driver of the other vehicle who had created a dangerous situation. The accused had warned the other driver by flicking his vehicle lights, but it was the other driver who did not adhere to road safety rules. Furthermore, before changing the gear the twin cab engine stalled and the steering wheel got locked which resulted in the head on collision

LESSER OFFENCE

135. As per section 162 (1) of the Criminal Procedure Act when a person is charged with an offence and the court is of the opinion that he is not guilty of that offence but guilty of a lesser or alternative offence, the court may find the accused guilty of that lesser offence (see *State v Ilimo Tulevu - Ruling [2016] FJHC 561; HAC65.2014 (7 June 2016)*).

136. In this regard, I have once again directed my mind to the evidence adduced. If this court is not satisfied beyond reasonable doubt that the evidence is sufficient to establish the offences of manslaughter as charged, then I should consider whether the accused had committed lesser or alternative offences of aggravated dangerous driving occasioning death. The elements of this offence as relevant to this case are:
 - a). The accused;
 - b). drove a vehicle;
 - c). that vehicle got involved in an impact occasioning the death of the other persons; and
 - d). the accused at the time of the impact was driving the vehicle;
 - e). under the influence of intoxicating liquor; or
 - f). in a manner dangerous to the other persons.

137. In respect of the element of dangerous driving I have borne in mind the following:

Megaw LJ in *R v Gosney (1971) 3 All ER 220, pg 224* has defined dangerous driving in an inclusive manner, where it was held that:

“We would state briefly what in our judgment the law was and is on this question of fault in the offence of driving in a dangerous manner. It is not an absolute offence. In order to justify a conviction there must be, not only a situation which, viewed objectively, was dangerous, but there must also have been some fault on the part of the driver, causing that situation. ‘Fault’ certainly does not necessarily involve deliberate misconduct or recklessness or intention to drive in a manner inconsistent with proper standards of driving. Nor does fault necessarily involve moral blame. Thus there is fault if an inexperienced or a naturally poor driver, while straining every nerve to do the right thing, falls below the standard of a competent and careful driver. Fault involves a failure; a falling below the care or skill of a competent and experienced driver, in relation to the manner of the driving and to the relevant circumstances of the case. A fault in that sense, even though it might be slight, even though it be a momentary lapse, even though normally no danger would have arisen from it, is sufficient. The fault need not be the sole cause of the dangerous situation. It is enough if it is, looked at sensibly, a cause. Such a fault will often be sufficiently proved as an inference from the very facts of the situation.”

138. Accordingly, *Gosney* (supra) has enunciated an objective test in order to determine dangerous driving. The court first needs to determine whether there was a dangerous situation. Then it is required to consider whether there has been some fault by the driver, causing this dangerous situation. If the conduct of the driver, that contributed to cause the dangerous situation, falls below the care or skill of a competent and experienced driver, it would constitute the element of fault.

139. The Court of Appeal in *Kumar v State* [2002] FJCA 12; AAU0014U.2002S (30 August 2002) has adopted the principle enunciated in *Gosney* (supra), where the Court of Appeal held that:

“The distinction between the offences of dangerous driving causing death and careless driving causing death has been the subject of many decisions in various jurisdictions. In Fiji the decision in Sambhu Lal v. Regina Fiji Court of Appeal Criminal Appeal No. 49 of 1986 having analysed the law followed the English decision in R.v. Gosney [1971]3 All ER 220 (the law in England then being the same as in Fiji). At p.224 of Gosney it was stated:

“In order to justify a conviction there must be not only a situation which viewed objectively was dangerous but there must also have been some fault on the part of the driver causing the situation.”

The Court in Gosney went on to note that the fault involved may be no more than slight. These observations were accepted by the Court of Appeal in Fiji which accepted a summing up which included the direction:-

“So long as there is fault on the part of the driver which creates a dangerous situation he can be guilty of causing death by dangerous driving and it matters not whether the driving was careless, dangerous or reckless.”

140. The prosecuting agencies these days would only prosecute for motor vehicle manslaughter “in a very grave case” see *R v Governor of Holloway Ex p Jmnings* [1983] R.T.R 1) and this was one such case. Dr. John gave an account of the serious injuries sustained by the three victims resulting in their deaths.
141. After considering the evidence adduced by the prosecution, the lesser or alternative offences of aggravated dangerous driving occasioning death is not available.

142. In respect of the defence of mechanical defect of the accused's twin cab I have taken into consideration the observations of James J. in the case of *Burns vs. Bidder* [1967] 2 QB 227 at page 241 about the defence of mechanical defect raised by an accused:

"Likewise in my view a sudden removal of control over the vehicle occasioned by a latent defect of which the driver did not know, and could not reasonably be expected to know would render the resulting failure to accord precedence no offence, provided he is in no way at fault himself..."

143. I would like to once again remind myself that the burden to prove the accused guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused. Even if I reject the version of the defence still the prosecution must prove this case beyond reasonable doubt.

144. In this case, there are two different versions, one given by the prosecution and the other by the defence. This court must consider all the evidence adduced to decide whether the prosecution has proven beyond reasonable doubt that the accused committed the offences alleged. It is not for this court to decide who is acceptable between the prosecution witnesses and the accused.

145. This court has kept in mind the following factors when determining the credibility and reliability of a witness such as 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] see *Matasavui v State* [2016] FJCA 118; AAU0036.2013 (30 September 2016, *State v Solomone Qurai* (HC Criminal - HAC 14 of 2022).

146. Brennan J in *Liberato and Others v The Queen* ((1985) [1985] HCA 66; 159 CLR 507 at 515 has discussed the appropriate approach to be taken where there are conflicting versions of evidence given by the prosecution and the defence witnesses. Brennan J held that:

“When a case turns on a conflict between the evidence of a prosecution witness and the evidence of a defence witness, it is commonplace for a judge to invite a jury to consider the question; who is to be believed? But it is essential to ensure, by suitable direction, that the answer to that question (which the jury would doubtless ask themselves in any event) if adverse to the defence, is not taken as concluding the issue whether the prosecution has proved beyond reasonable doubt the issue which it bears the onus of proving. The jury must be told that; even if they prefer the evidence for the prosecution, they should not convict unless they are satisfied beyond reasonable doubt of the truth of that evidence. The jury must be told that, even if they do not positively believe the evidence for the defence, they cannot find an issue against the accused contrary to that evidence if that evidence gives rise to a reasonable doubt as to that issue. His Honour did not make clear to the jury, and the omission was hardly remedied by acknowledging that the question whom to believe is “a gross simplification.”

147. This court has also taken into account the observations made by the Court of Appeal in *Rokocika v The State* [2023] FJCA 251; AU0040.2019 (29 November 2023) regarding what the accused told the court. At paragraph 45 the Court of appeal had stated as follows:

The Liberato direction covers three points on the spectrum of belief regarding what the accused has said — positive belief (first aspect), positive disbelief (third aspect), and neither actual belief nor rejection of the accused’s account (second aspect): Park v R [2023] NSWCCA 71 at [102]–[103].

148. I have also kept in mind the observations made by Prematilaka RJA sitting as a single judge of the Court of Appeal in *Josaia Naikalivou vs. The State*, AAU 017 of 2022 (26th March, 2024) at paragraph 9 as follows:

In Murray v The Queen (2002) 211 CLR 193 at 213 [57] Gummow and Hayne JJ, in the High Court of Australia made it clear that it is never appropriate for a trial judge to frame the issue for the jury's determination as involving a choice between conflicting prosecution and defence evidence: in a criminal trial the issue is always whether the prosecution has proved the elements of the offence beyond reasonable doubt. In R v Li (2003) 140 A Criminal R at 288 at 301 it was again held that the issue can never be which of the cases is correct or who of the complainant and the accused is telling the truth. This seems to be what exactly the trial judge had done in the judgment.

149. Before moving any further, I would like to mention that I have disregarded the evidence of Sgt. Sanjeev Chandra that the accused told him that he had slept whilst driving. This response from the accused was in breach of the accused's Constitutional right to remain silent. Sgt. Chandra, who was on duty and in uniform, ought to have given the accused all his rights before the accused was arrested. I do not accept that the accused had responded before his rights were provided. It is only this aspect of Sgt. Chandra's evidence that I have disregarded.
150. After carefully considering the evidence adduced by the prosecution and the defence, I believe all the prosecution witnesses as credible and reliable, except the evidence of Alisi Nai and Luisa Taufa. Their agreement in cross examination that the accused did not drink at Lomawai village because he was sleeping during the duration of the drinking does not reflect the truth of what had happened. These two witnesses are related to the accused, and it was obvious to me that they were not telling the truth in this respect during cross examination.

151. I accept the evidence of Sgt. Chandra that the accused had cooperated and a breath test analysis was properly carried out, which gave a reading that the accused was driving his vehicle with alcohol level over the prescribed legal limit. Moving on, Sgt. Vunisa also drew a rough sketch plan of the accident scene as he had seen, which was not disputed by the accused. I accept the vehicle of the accused had gone into the lane of the oncoming vehicle and collided head on.
152. The absence of the LTA vehicle examination report does not affect the prosecution's case in view of the charges laid. Here the accused is clearly at fault upon the evidence adduced.
153. Manoa Nariri, an eye witness, the nephew of the accused, also told the truth in court when he said the vehicle driven by the accused went into the other lane and collided with the oncoming vehicle. I accept Manoa had told the police officer writing his police statement that the accused's vehicle was swerving before impact but this was not written down. I also accept Manoa's evidence that he was seated at the front of the tray on the left side, and he had seen what happened. In respect of there being no mention in the police statement of the word "shouting" the witness said he had called out to the accused.
154. The defence counsel had referred to two inconsistencies/omissions between what Manoa had told the police when facts were fresh in his mind with his evidence in court. The inconsistencies/omissions were not significant to adversely affect the credibility of this witness.
155. The Court of Appeal in *Mohammed Nadim and another vs. State [2015] FJCA 130; AAU0080.20 (2 October 2015)* had made the following pertinent observations about the above at paragraph 16 as follows:

[16] The Indian Supreme Court in an enlightening judgment arising from a conviction for rape held in Bharwada Bhoginbhai Hirjibhai v State of Gujarat (supra):

“Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all-important “probabilities-factor” echoes in favour of the version narrated by the witnesses. The reasons are: (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen; ... (3) The powers of observation differ from person to person. What one may notice, another may not. It is unrealistic to expect a witness to be a human tape recorder;”

156. Another pertinent observation was also made by the Court of Appeal in *Joseph Abourizk vs. The State*, AAU 0054 of 2016 (7 June, 2019) at paragraph 107 in the following manner about deficiencies, drawbacks and other infirmities in evidence by taking into account the comments made by the Indian Supreme Court in *State of UP v. M K Anthony* (1985) 1 SCC 505:

‘While appreciating the evidence of a witness the approach must be to ascertain whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, then the court should scrutinise the evidence more particularly to find out whether deficiencies, drawbacks and other infirmities pointed out in the evidence is against the general tenor of the evidence. Minor discrepancies on trivial matters not touching the core of the case should not be given undue importance. Even truthful witnesses may differ in some details unrelated to main incident because power of observation, retention and reproduction differ with individuals...’

157. I accept the evidence of Manoa Nariri as reliable and credible. The inconsistencies/omissions are not significant and material which did not go to the core or the root of the evidence, and therefore, no adverse inference can be drawn against this witness. In any event this lapse can be attributed to passage of time, as human memory fades over time. Manoa was also able to offer an acceptable explanation for the inconsistency/omission which is acceptable.
158. The opinion of the Pathologist is also credible, along with, the undisputed medical reports of the two injured passengers. The prosecution witnesses were also able to withstand cross examination, and they were not discredited. These witnesses were able to answer the questions asked, and they were not evasive. I have no doubt in my mind that they told the truth of what had happened.
159. On the other hand, the accused did not tell the truth. He told the court that it was the oncoming vehicle that was coming into his lane, so he had to flick the lights of his vehicle to warn the other driver before moving into the other vehicle's lane to avoid a collision. This is unbelievable and a fabricated story.
160. Furthermore, the accused also did not tell the truth when he said that before he could change the gear, the engine of his vehicle had stalled, locking the steering wheel. This is another fabricated story. I accept the evidence of Sgt. Vunisa that there were no brake marks or tyre marks on the road, which shows the accused just drove through without stopping his vehicle.
161. On a holistic assessment of the evidence, there was no reason for the accused to enter the lane of the oncoming vehicle when he was correctly in his lane heading towards Lomawai village. The accused said before the accident he was driving in a normal manner and he had seen the oncoming vehicle from a distance. If this was the truth then he should have

continued in his lane, there was no reason for the accused to drive into the other lane. There is no credible evidence that the oncoming vehicle had come into the lane of the accused vehicle. The evidence is that the oncoming vehicle came close to the center line of the road and then went back into its lane. In view of the above, the evidence of the accused lacks reliability and credibility. What the accused told the court is a fanciful afterthought to divert attention away from himself and onto the oncoming driver.

162. In regards to the absence of the LTA Inspection report the state has been able to satisfy to all the elements of the offences beyond reasonable doubt which shows the accused was at fault. The accused was intoxicated at the time of driving. He created a dangerous situation by driving his twin cab into the lane of the oncoming vehicle and then colliding head on. The accused was reckless he was aware of a substantial risk that serious harm would occur due to his conduct when it was not justifiable for him to take that risk. However, he took the risk regardless. The accused's driving fell below the standard of a reasonable and prudent driver when he drove into the other lane and collided with the oncoming vehicle. The force of the collision was so excessive that three people died in the oncoming car almost instantly. Furthermore, according to the sketch plan the twin cab was facing the oncoming vehicle at the time of the impact indicates the accused had made a sharp turn towards the other vehicle, this creates a doubt whether there was any locking of the steering wheel. The absence of the LTA Inspection report does not affect the prosecution's case.
163. The accused had created a dangerous situation by driving onto the other lane whilst intoxicated and as a result of the impact two passengers in the oncoming vehicle also sustained grievous bodily harm.
164. The defence has not been successful in raising a reasonable doubt in the prosecution case in respect of all the five counts the accused is charged with.

CONCLUSION

165. This court is satisfied beyond reasonable doubt that the accused on 20th April, 2018, drove a motor vehicle registration no. HT 438 in a manner that caused the death of Manoa Devo, Lusiana Nawakatutu and Titilia Vunawena and at the time of driving the accused was reckless as to the risk that his conduct would cause serious harm to the above mentioned victims.
166. Furthermore, as a result of the above head on collision Losalini Bainimua and Peni Kalinisei sustained grievous bodily harm and at the time of the impact the accused was driving the vehicle in a manner dangerous to Losalini and Peni.
167. For the above reasons, the accused is found guilty of three counts of manslaughter and two counts of dangerous driving occasioning grievous bodily harm as charged and he is convicted accordingly.
168. This is the judgment of the court.


Sunil Sharma
Judge



At Lautoka

07 March, 2025

Solicitors

Office of the Director of Public Prosecutions for the State.
Messrs Iqbal Khan and Associates for the Accused.