

REGINA *v.* INDAR DATT

[Criminal Jurisdiction (Carew, P.J.) May 3rd, 1954]

Manslaughter, falling asleep—culpable negligence.

On 3rd January, 1954, a taxi driven by the accused after colliding with a service bus ran over the bank of the Rewa River near Nausori. A passenger in the taxi was drowned. The accused was charged with manslaughter.

The only negligence proved at the trial was the fact that the accused had fallen asleep at the wheel.

HELD.—The conduct of the accused in continuing to drive when overcome by sleep amounted to culpable negligence and the accused was therefore guilty of manslaughter.

Justin Lewis, Crown Counsel, for the Crown.

S. Hasan for the accused.

CAREW, P.J.—Other than that some speed was necessary to cause the taxi to capsize after the locking of the steering, negligence on the part of the accused has not been clearly established by the prosecution witnesses. Evidence of his negligence is, however, to be found in a statement made by the accused to the police on 3rd January. In this statement he admitted that his "car went and bumped the bus because he went off to sleep as he had been awake the two previous nights."

On being charged the accused made a statement. He said that he had been "drinking liquor till late and that was how he had gone off to sleep and had met the accident." These two statements were admitted in evidence. I accept the accused's explanation of the cause of the accident which he made in his statements. The accused did not give evidence in his own defence nor did he call any witnesses.

The only question to be determined is whether the accused's conduct in continuing to drive when he was overcome by sleep amounted to negligence; and, if so, whether such negligence was of that high degree known as gross or culpable, which is necessary to constitute manslaughter.

In my opinion the conduct of the accused in continuing to drive when overcome by sleep amounted to gross or culpable negligence which resulted in the collision and the subsequent death of his passenger.

The accused is found guilty of manslaughter contrary to section 218 of the Penal Code.