

IN THE MAGISTRATE COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 1069/08

BETWEEN: **STATE**

AND: **PRANIL PRASAD**

Prosecution: **PC Dinesh**
Accused: **Mr S.K. Ram**

Hearing: **30th November 2012 & 8th April 2013**
Ruling: **28th June 2013**

Ruling

Background

1. The accused person was charged for the offence of Occasioning Death by Dangerous Driving contrary to section 97(2)(c) of the Land Transport Act 1998. The said offence alleged to have occurred on 28th November 2008 at Vatukoula.
2. The particulars of the offence was as follows:

Praneel Prasad s/o Latchmi Prasad on 26th day of November 2008 at Vatukoula in the Western Division drove a motor vehicle registration number DQ 972 on Loloma 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 Sadiq Khan s/o Jamal Khan.
3. This matter proceeded for hearing and after prosecution closed its case defendant counsel made an application for no case to answer on the basis that the particulars of the offence did not disclose any offence known in law.

4. Both parties were required to file submissions on the issue of no case to answer however on record I note that only accused counsel filed the same. I've carefully considered the submissions from counsel and the prosecution evidence placed before the court.

Issue

5. Whether the proceedings should be declared a nullity or whether there is no case to answer for accused person?

Law/Analysis

6. Section 178 of the Criminal Procedure Decree states that *"if at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused."*

7. In the case of State v Mahend Prasad HAA 019 of 2008, at paragraph 17, the Court had this to say when dealing with the issue of case to answer "...The test to be applied in the Magistrates Court, was explained in Abdul Ghani Sahib v The State [2005] FJHC 95; HAA 0022 of 2005; 28 April 2005, as:

'In the Magistrates Court, both tests apply. So the Magistrate must ask himself firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and second whether the prosecution evidence, taken at it's highest, a reasonable tribunal could convict. In considering the prosecution at its highest, a reasonable tribunal could convict. In considering the prosecution case, taken at its highest, there can be no doubt at all that where the evidence is entirely discredited, from no matter which angle one looks at it, a court can uphold a submission on no case. However, where a possible view of the evidence might lead the court to convict, the case should proceed to the defence case.'

8. The law and the principle on no case to answer is well established as briefly mentioned above. When determining the said issue the court would have to assess the prosecution evidence and firstly see whether there is sufficient evidence to meet all the requisite elements of the offence. The second criteria being using the objective test whether

taking the evidence of prosecution at its highest a reasonable tribunal could convict.

9. I've considered the evidence of prosecution on record nonetheless when considering submissions by accused counsel regarding the particulars of the offence it will be unnecessary at this juncture to refer in detail or mention in brief the prosecution evidence.

10. The first issue that is to be resolved is the particulars of the offence. In this matter the accused is charged under section 97(2)(c) of the Land Transport Act 1998 and as follows:

"(2) 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;

(b) At a speed dangerous to another person or persons; or

(c) In a manner dangerous to another person or persons."

11. Following on from above it follows that the elements of the offence are:

i. The Accused (Praneel Prasad) was driving a vehicle;

ii. Vehicle was involved in an impact;

iii. The impact caused the death of deceased (Sadiq Khan);

iv. At the time of the impact accused was driving in a manner that was dangerous to a person or persons.

12. The gist of defendants submission is that the particulars of the charge do not disclose an offence in law therefore the proceedings itself is rendered void ab initio or a nullity.

13. In the case of Kaukimoce v State Criminal Appeal Case HAA 26 of 2008, Justice Mataitoga (as he was then) stated:

"The failure to include an essential element of the offence in the manner of the wording by the charge cannot be saved by the provisions of section 119 and 122 of the CPC. This is because without the inclusion of all the essential elements in the charge, it would in law be a nullity. The defect is not one of lack of particularity which

prejudices the person charged, rather the fact that on the wording of the charge as laid, there is no offence disclosed.

Section 119 and 122 CPC would save a charge which does not give sufficient or clear information with regard to certain elements of an offence charged. It would not save a charge that is lacking in an essential element, because without the inclusion of that essential element the charge discloses no offence."

14. That being the position it means that in any offence, the particulars must contain all the elements of the offence. If any element is missing from the particulars than it becomes an incurable defect making the whole proceedings a nullity or void ab intio.
15. Further in the case of Crane v DPP (1921) 2 AC 299 at page 336 Lord Parmoor said:

"a trial void ab initio cannot result either in acquittal or conviction."
16. This current case is comparable to the case submitted by accused counsel which is the case of Maria Fontana v State Criminal Appeal No. HAA 17 of 2011 and Criminal Appeal No. AAU0072 of 2011. In Maria Fontana (supra) both the High Court and the Court of Appeal agreed that it is unarguably correct decision in law and in fact that a nullity doesn't give rise to a need for any verdict.
17. When assessing the particulars of the offence in this case it is apparent that an essential element which is accused was involved in an impact was missing. The missing element in the particulars was an incurable defect and made the charge non - existent in law.

Conclusion

18. The charge is defective as it is unknown in law hence the whole proceedings is declared a nullity.
19. Accused is therefore discharged.
20. Parties at liberty to appeal within 28 days.

Samuela Qica
Resident Magistrate

28th June 2013