

**IN THE MAGISTRATE'S COURT AT LABASA**  
**CRIMINAL JURISDICTION**

Traffic Case No. 745 of 2015

**STATE**

V

**RAGNESH CHAND**

Counsels : **WCPL Qolitabua** for the Prosecution  
**Mr Paka. A** for the Accused

Judgment : **1 May 2018**

**JUDGMENT**

1. The accused, Ragnesh Chand was charged for *Careless Driving*, contrary to *section 99(1) and 114 of the Land Transport Act*.
2. The particulars of the offence are;-  
*"Ragnesh Chand on 29<sup>th</sup> day of March 2014, at Labasa in the Northern Division drove motor vehicle registration number EF 462 along Labasa/Wainikoro road at Soasoa without due care and attention and bumped one Saula Bukai."*
3. On 10 July 2018, the Accused pleaded not guilty to the charge. The Counsel for the defence informed the court that there will be no voir dire. A trial date was set for 7 November 2016.



4. On 7 November 2016, the Accused did not appear. The Prosecution make an application under *section 171 of the Criminal Procedure Act* for the trial to proceed in absence of the accused. Trial in absentia was granted as no information is before the court on his non-appearance. The Accused was present in court when the trial date was set and is aware of the trial date and he chose not to appear. The trial proceeded where the Prosecution called three witnesses. Will take the absence of the accused that he is exercising his rights to remain silent and no adverse inference will be drawn against the accused.
5. *Section 99(1) of the Land Transport Act* state:-  
"A person who drives a motor vehicle on a public street without due care and attention commits an offence and is liable on conviction to the prescribed penalty."
6. The elements of the offence that the Prosecution must prove beyond reasonable doubt are:-  
a. *the accused,*  
b. *drives motor vehicle EF 462,*  
c. *on a public street,*  
d. *without due care and attention.*
7. The first prosecution witness is Ilisapeci Rakaria the mother of the victim. She stated that on 28 March 2014, his son Saula Bukai was returning from the shop with his elder brother. They were walking on the right hand side of the road when one twin cab heading towards Labasa hit his son Saula at the Soasoa junction. She was outside and when she looks at the side of the road at the same time the accident happened. The twin cab took pass two vehicles and hit her son. Her son spinned and thrown to the grass at the edge of the road. Her son was lying down and she went to see her son. She brought her son and the twin cab came and parked in front of her. The twin cab driver asks to take her son to the hospital. She cannot recall the registration number of the vehicle and the driver of the twin cab is not present in court.



8. The second prosecution witness is Saula Bukai the victim. In his evidence, he stated that on 29 March 2014, he was returning from the shop with his brother on the right hand side of the road. All of a sudden a vehicle came on his side and hit him and he cannot recall what happened after that.
9. The third prosecution witness is WPC 3511 Ashwin. He is the investigating officer for this case of careless driving of Ragnesh Chand on 29 March 2014 at Soasoa. He visited the scene, record the statement, and draw the rough sketch plan. He tendered the rough and fair sketch plan (*prosecution exhibit 1 and 2* respectively). When they reached the scene, the victim was already taken to the hospital.
10. The evidence of the prosecution was not challenged or discredited. There is confusion on the date of the accident from the mother of the victim who stated that it was on 28 March 2014. The victim and the investigating officer stated that it was on 29 March 2014, and that is consistent with the date of the offence in the charge.
11. On the identity of the accused, the mother of the victim is referring to the driver of the twin cab, she never stated that the driver's name is Ragnesh Chand. The investigation officer never stated that he met Ragnesh Chand during the course of his investigation. Neither of the prosecution witnesses stated that they can identify the accused at any time even if the accused is present in court. None of the witnesses stated that they know or can identify the accused as Ragnesh Chand. That brings doubt on the identity of the Accused. There is also doubt on the element that it was Ragnesh Chand who was driving the twin cab registration number EF 462. The Accused caution interview and the charge statement was not tendered as part of the prosecution evidence for reason well known to the prosecution. That is a bad decision and great mistake as the caution interview and charge statement can assist in clarifying that it was Ragnesh Chand who was driving vehicle EF 462 at the time of the accident.
12. The burden of prove is on the prosecution to prove her case beyond reasonable doubt. In analysing and assessing the whole evidence that are



before the court, as a trier of facts, I find that the prosecution has failed to discharge the burden of prove in this case as there are doubt on the identity of the Accused and on the element that it was Ragnesh Chand who was driving the vehicle registration number EF 462 at the time of the accident. Accordingly, the prosecution case failed.

13. There is no obligation on the accused to prove his innocent.
14. In my judgment, I find the Accused not guilty as charged, and I acquit the Accused accordingly.

**28 days to appeal**



C. M. Tuberi  
RESIDENT MAGISTRATE