

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

*Traffic Case No. 1277 of 2016*

**STATE**

v

**RAJ KAMAL SHANDIL**

Appearance : **PC Lal** for the prosecution :  
**Accused** in person

Judgment : **15 February 2019**

**JUDGMENT**

1. The accused, *Raj Kamal Shandil*, was charged for *Careless Driving*, contrary to *section 99(1) and 114 of the Land Transport Act*.
2. The particulars of the offence are;-  
*"Raj Kamal Shandil on the 25<sup>th</sup> day of September 2015, at Labasa in the Northern Division, drove a motor vehicle registration number CK 586 along Labasa, Seaqaqa Highway, at Wailevu rice mill junction without due care and attention."*
3. On 18 April 2017, the Accused guilty plea was vacated and not guilty plea was recorded because he disputed the summary of facts. The case proceeded to trial on 7 August 2018.

4. At the trial, the Prosecution called two witnesses. The Accused exercised his rights to remain silent.

### **Law**

5. *Section 99(1) of the Land Transport Act 1998, 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 are;-

- a) *the accused,*
- b) *drives a motor vehicle CK 586,*
- c) *on a public street,*
- d) *without due care and attention.*

7. The burden of proof is on the Prosecution to prove all the elements of the offence beyond reasonable doubt.

### **Prosecution Evidence**

8. Roshni is the first prosecution witness. She stated that on 25 September 2015, between 10am to 10.30am she was standing on the road side at Wailevu rice mill with her mute son. Vehicle CK 586 came from town and came towards them. Her son pulled her and he ran to the side of the road. The vehicle was in extra speed and unable to stop. If a vehicle was coming on opposite side of the road there would be a collision. The vehicle came on the other side of the lane. The vehicle never stop to check if anyone is injured. He identified the accused in court as the person who was driving that vehicle. She went to the police and lodge a report.
9. In cross-examination, she stated that they were walking on the right hand side of the road and they cross to rest on the shadow of the rice mill. There was no

vehicle and the road was clear when he turned his vehicle. He was coming from town side

10. Amitesh Prasad is the second witness for the prosecution. On 25 September 2015, he was coming to town when this accident happened. It was around midday. Vehicle CK 586 was coming from town and turn into Lajonia road on the opposite lane. He nearly bumped the lady. He identified the accused as the driver. He was driving at a speed mode. The vehicle was speeding and nearly bumped her with less than a metre distance. The vehicle continued and no vehicle on the road.

### ***Defence Evidence***

11. The accused exercised his rights to remain silent and no adverse inference will be drawn against him. The burden is on the prosecution to prove the charge.

### ***Analysis and Determination***

12. The accused was positively identified in court by the witnesses of the prosecution as the driver of vehicle CK 586. Both the witnesses have stated that the accused was driving from town entering Lajonia road from the opposite lane of the road. That was confirmed by the accused when he was cross-examining Roshni. The accused stated that he admit that his vehicle went on the wrong side of the road. The witnesses stated that the accused drove the vehicle in a speed and almost hit the complainant with less than a meter distance.
13. The test for careless driving was discussed by Shameem. J, in ***Kumar v State [2002] FJHC 291; HAA 014.2001S (12 April 2002)***, that it was an objective test of driving in a manner that is below the standard of a reasonable, prudent, and competent driver.

14. The manner in which the accused was driving as discussed in paragraph 12 above, is below the standard of reasonable, prudent, and competent driver. Entering and driving on the wrong side of the road without any justifiable reason like overtaking or due to road block is not expected from any driver. The manner in which the accused was driving in this case shows that he was driving without due care and attention when he almost bumped Roshni on the roadside with less than a meter distance.
15. There was no evidence from the prosecution to say that the road where the incident happened was a public place. There is doubt on the element of public road as no evidence to confirm that it was a public road. Consequently, it affects the prosecution case as there are doubts.
16. In assessing the evidence in totality, I find that the Prosecution has failed to discharge the burden of proof as there are doubts on the element of public road as discussed above.
21. 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