

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Traffic Criminal Case No: 127 - 2013

STATE

-v-

ASHWIN VIKASH LAL

Before : RM Fotofili L.
For Prosecution : WPC Chand A. and Inspector Lenaitasi S. [Police Prosecution]
Accused : Mr. Samy A. [Legal Aid Commission]
Trial Date : 31st May 2019
Date of Judgment : 13th August 2019
Date of Sentence : 4th of February 2020

SENTENCE

1. **ASHWIN VIKASH LAL**, having pleaded not guilty and after your trial, I have found you guilty and convicted you of the following charge:

Statement of Offence

CARELESS DRIVING: Contrary to section 99 (1) and 114 of the Land Transport Act of 1998.

Particulars of Offence

ASHWIN VIKASH LAL on the 6th day of August, 2012 at Tavua in the Western Division drove a private motor vehicle registration number CH 677 on Kings Road Yasi Yasi without due care and attention.

2. You were a provisional license holder at the time. You had bought your vehicle 8 months prior to the incident. The vehicle was working fine on the day in question and there was no mechanical defect. You had checked the vehicle before driving out from your home too. You were and still are a teacher and you were on duty that day. You were also taking the exam papers to school. You were late and in a rush. The

weather was fine. There were pot holes on the road and you knew about that. In the morning rush, you drove over the pot holes but you could not control your vehicle. You drove the vehicle onto the oncoming lane and crossed over to the side of the road where pedestrians normally walk. You pressed the brake of the vehicle to avoid going to the side of the road but because of your speed, it was in vain. There was a brake mark of around 9 meters reflecting your attempt to slow or stop your vehicle before it went onto the other side of the road. Your vehicle went to the other side of the road and ploughed into the back of a male pedestrian who was around 50 years old at the time. You knocked the pedestrian onto the ground. The pedestrian was conscious but he could not stand up immediately. He had to be hospitalised for 4 days. He still feels pain to his back unto this day because of what you did. After ploughing your vehicle into the pedestrian, your vehicle continued moving and came back to the middle of the road and then it went back again to the side of the road [zig zag manner]. Eventually, your vehicle ended up in the culvert on the side of the road. Your vehicle had continued moving for at least 30 meters after having ploughed into that pedestrian. It was fortunate that no life was lost.

3. You have no previous conviction.
4. You have not spent any time in remand.
5. You are 30 years old. You are about to get married. You are teaching at a secondary school. You support your parents and your younger sister who is in year 8 or still in primary school. You have a loan which you have taken to assist in building your family house. You have come to accept the court's decision that you were driving carelessly on that day. It was not your intention to drive in that manner. You say that you will lose your job if a conviction is recorded and it will be detrimental to your future. You seek leniency and you promise not to reoffend.

MAXIMUM SENTENCE

6. The maximum sentence a court can impose for careless driving can be a fine of up to \$500 and or imprisonment for up to 3 months and up to 3 demerit points.

SENTENCING RANGE or SENTENCING TARIFF

7. The courts have not set any sentencing preference or tariff for this offence and ultimately, each case will determine its own sentence within the maximum imposable.
8. The **Sentencing and Penalties Act 2009** particularly section 4 (but not limited to) will guide me when deciding your sentence.
9. In this your sentence, I have also considered section 16 of the **Sentencing and Penalties Act 2009** in relation to whether or not a conviction should be recorded against you.

Starting Point

10. Considering the objective seriousness of the offence, I select 15 days imprisonment as our starting point.

Aggravating Factor

11. You injured a pedestrian. He has back pains until this day because of your manner of driving.
12. Your manner of driving was potentially lethal and it continued over an expanded area. This was during the busy time, in the morning rush hour.
13. You have the right to contest the charge or allegation. Generally, the fact that a defendant denies the allegation but is later convicted does not necessarily mean that their denial should be considered as an aggravating factor.
14. In your case, I found the evidence against you overwhelming. The sketch drawn by the traffic officer who attended the scene soon after, on its own, is strong circumstantial evidence that you did not control your vehicle properly and that the brake was working. You yourself in your evidence verified that you had checked the

vehicle that morning and it was working fine. The prosecution also called a direct eye witness and the pedestrian who was hit by your vehicle.

15. In light of the overwhelming evidence, your continued denial throughout the proceedings until judgment, that you were not guilty of the charge must be considered as an aggravating factor.
16. Your sentence is increased to 30 days imprisonment.

Mitigating Factors

17. You have come to accept that you are guilty of the charge. Although it is belated or after judgment, I accept your contrition.
18. You have no previous conviction.
19. You have a family to support.
20. You were a provisional driver at the time.
21. I reduce your sentence to 18 days imprisonment.

Suspended Term and Demerit Points

22. I can suspend your sentence whether in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**, if your sentence is below 2 years imprisonment.
23. Up to 3 demerit points can be awarded against you in relation to your driving license. It is discretionary and the circumstance of each case will determine whether any demerit points should be awarded [section 88 of the **Land Transport Act 1998**].
24. Ultimately, your sentence will be aimed at deterrence and is to punish you adequately.

SUMMARY

25. **You are sentenced to 18 days imprisonment.**
26. **I am inclined to wholly suspend this 18 days imprisonment, primarily due to your mitigating circumstances.**
27. **You are not to commit any other offence punishable with imprisonment in the next 12 months. If you do, you risk this 18 days imprisonment held in waiting being activated.**
28. **In addition, I order that you pay a fine of \$200 and this is to be paid in 28 days. You default and you risk up to 10 days imprisonment.**
29. **I also order 3 demerit points against you or your license account and the court registry will advise the relevant transport authority accordingly.**
30. **You are fortunate that you were not charged for a more serious offence considering the circumstance of your case.**
31. **Your manner of driving was grossly incompetent and potentially lethal.**
32. **The above outweighs the fact that you have no prior criminal or traffic violation and your economic and social wellbeing and employment prospect.**
33. **I am not persuaded to order any non-conviction in your favour. A conviction will remain against you.**
34. **We will recall this case later to review whether you have paid your fine. If you have paid your fine within the stipulated time, consider your bail obligations in this case discharged and your case will be closed and you do not need to reappear.**
35. **28 days to appeal.**



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Lisiate T.V. Fotofili

Resident Magistrate

Dated at TAVUA this 4th day of February, 2020.