

**IN THE RESIDENT MAGISTRATE'S COURT**

**AT NADI**

**CRIMINAL JURISDICTION**

**Traffic Case No: 365 of 2018**

**BETWEEN** : **STATE**  
AND  
**SHINTARO TSUCIDA**

**BEFORE** : **NILMINI FERDINANDEZ**  
**RESIDENT MAGISTRATE**

**Date of Sentence** : 28<sup>th</sup> day of February, 2022

IP Chand for the Prosecution

Accused present

Mr. J. Sharma for Accused

**JUDGMENT**

1. The accused in this case, **SHINTARO TSUCIDA** has been charged for the offence of **Driving Motor Vehicle** whilst there was present in the blood a concentration of alcohol in excess of the prescribed limit contrary to Section 103(1)(a)(2) and 114 of Land Transport Act 35 of 1998.
2. Particulars of the offence states that:  
*Shintaro Tsuchida on the 31<sup>st</sup> day of August, 2018 at Nadi in the Western Division drove a motor vehicle registration number JA 803 on Wailoaloo Road whilst there was present in 100 millilitres of his blood a concentration of 94.6 milligrams of alcohol which was in excess of the prescribed limit.*

### 3. BACK GROUND

- 3.1 The accused in this case has first appeared in court on the 29<sup>th</sup> November 2018 when the charge has been read out to him and the accused has pleaded not guilty to the charge against him.
- 3.2 The offence in this case has occurred together with the offence in the Miscellaneous Traffic case no. 23/18 and therefore, on the 15<sup>th</sup> May 2020 the parties have agreed to take up the trials in both the cases together.
- 3.3 Accordingly, the evidence for both the cases were recorded at the trial in this case (Traffic case no. 365/18) and the same evidence were adopted in the Miscellaneous Traffic case no. 23/18 too.
- 3.4 Trial commenced on the 15<sup>th</sup> May 2020 and the prosecution has called the following witnesses to give evidence.
- PW1 4903 Anish**
- PW2 PC3802 Shareef Khan**
- PW3 A IP 3844 Sanjeev**
- 3.5 After the prosecution closed its case, the counsel for the accused has informed court that the accused opt not to call any witnesses and closed their case.
- 3.6 Upon the grant of 21 days by court, the counsel for the accused has filed their closing Submissions in writing. However, the Prosecution has informed court that they would rely only upon the evidence in the hearing and would not make any submissions.

### 4. THE LAW

- 4.1 The accused in this case has been charged for the offence of **Driving Motor Vehicle whilst there was present in the blood a concentration of alcohol in excess of the prescribed limit** contrary to Section 103(1)(a)(2) and 114 of Land Transport Act 35 of 1998.

- 4.2 Section 103(1)(a) of the Land Transport Act provides that;  
*103. - (1) A person who -*  
*(a) drives or attempts to drive a motor vehicle or is in charge of a motor vehicle while more than the prescribed concentration of alcohol is present in his blood commits an offence.*
- 4.3 According to Sec.114 of Land Transport Act, the maximum penalty for the first offence under Section 103(1) (a) is a fine of \$2000 or 2 years imprisonment and the mandatory disqualification of Driving Licence for from 3 months to 2 years.
- 4.4 Elements that need to be proven by the prosecution regarding a charge under Section 103(1)(a) **are**;
- a.) The accused has driven or has attempted to drive a motor vehicle.
  - b.) More than the prescribed concentration of alcohol has been present in his blood at that time
- 4.5 Section 57 of the Crimes Act states that;
1. *The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.*
  2. *The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.*
- 4.6 Section 58(1) states that "A legal burden of proof on the prosecution must be discharged beyond reasonable doubt".

## **5 Prosecution's Evidence**

- 5.1** PW1 PC 4903 Anish, is the police officer who has arrested the accused in this case after testing him on the roadside breathalyser device called Alcotest 5820.
- 5.2** According to his evidence at the trial, he was a member in the police team that were assigned to do random breath tests along Wailoaloa Road on the 31<sup>st</sup> day of August 2018.
- 5.3** He has resumed duty on that day at 7pm and around 11pm has started, with some other police officers, to randomly check vehicles that travelled on Wailoaloa Road.
- 5.4** He has explained at cross examination how the police team has placed the Traffic Signs at the place where they were conducting the Random breath tests and how their two vehicles, one Highway police patrol car and one Booze bus, have been parked by the side of the road at that time. Accordingly, there have been two signs of "SLOW DOWN" and two signs of "RANDOM BREATH TEST AHEAD". The sign boards have been placed on both sides of the road with the board with "SLOW DOWN" sign placed first and the "RANDOM BREATH TEST AHEAD" sign placed about 10 steps after that.
- 5.5** When this witness has given the signal to stop the vehicle with Registration number JI 803, it has failed to stop at their check point and thereafter, this witness together with Cpl Sanjeev has followed the said vehicle in the Highway Patrol car which is equipped with Highway lights and siren and has managed to stop it at a distance away from the check point. At this point the learned defence counsel has shown the witness a print of the google map of the scene of the offence on which the witness has been directed to mark as 'A' the place where the check point was and as 'B' the place where the police have managed to stop the vehicle.

The same was tendered to court as evidence by the defence marked as **De. Ex.1.**

- 5.6** After stopping the vehicle this witness has approached its driver and has demanded his Driving Licence and while having a quick conversation with him, he has smelt liquor from the breath of the driver, wherefore the witness has proceeded to test the driver on Alcotest 5820 machine.
- 5.7** Whilst the prescribed limit of alcohol per 100ml of breath is 35 micrograms, the result of the test on the driver has been 40 micrograms of alcohol per 100ml of breath.
- 5.8** The witness stated to court that he has arrested the driver since the alcohol level in his blood has been above the prescribed limit, and thereafter he has handed him over to Cpl 3844 Sanjeev to be tested on the Dragger 7110 breathalyser machine that was fixed in the Booze bus.
- 5.9** The witness has identified the accused in court as the driver of the vehicle who he has arrested that night.
- 5.10** This witness has been cross examined at length on many topics such as the Dragger 7110 machine, the place where the booze bus is parked and whether it gets very hot inside the booze bus during the daytime, etc. However, this witness has not spoken much in his examination in chief about the Dragger 7110 or the booze bus other than mentioning that after being tested by him on the roadside testing device, the accused has been handed over to another officer to be tested on the Dragger 7110 machine and the witness does not seem to have much knowledge on the said machine.
- 6.1** The next witness **PW2 PC 3802 Shareef Khan** is the police officer who has recorded the statement of the applicant at the Caution Interview.
- 6.2** He has interviewed the accused in this case, who he has identified in court, in the morning of the 1<sup>st</sup> of September 2018. He has tendered to

court the Statement of the accused at the Caution Interview he has recorded marked as **Pr.Ex.1**. Upon perusal of the case record it is evident that the accused has not challenged the said record of the caution interview, wherein he has admitted consumption of alcohol.

- 9.1 **PW3 AIP 3844 Sanjeev** is the police officer that has tested the accused on the Dragger 7110 machine.
- 9.2 According to him he has been authorized by the Commissioner of Police to conduct Radar Operations, Traffic bookings and breathalyzer operations in the area and on the 31<sup>st</sup> of August 2018 he has opted to conduct random breathalyzer tests along Wailoaloa road, Nadi.
- 9.3 At about 2300hrs the police team that consisted of him, PC Anish, Cpl Rajesh and Sgt Rohit has set up their operations check point on Wailoaloa road and has resumed conducting random breathalyzer tests.
- 9.4 While conducting the breathalyser operations at their check point the witness has signalled to stop the vehicle with registration number JA803 and when the said vehicle has failed to stop at the check point, the witness with PC Anish has followed the said vehicle and has managed to stop it few meters away from the check point.
- 9.5 After PC Anish has tested the driver on the roadside test device namely the Alcotest 5820 and because his test has given a result above the prescribed limit, he has been arrested by PC Anish and has been handed over to this witness to be further tested on 'Dragger 7110'.
- 9.6 This witness has stated that he is the operator who is authorized by the Commissioner of Police to operate the 'Dragger' machine and has explained to court how he has conducted the said test.
- 9.7 According to him, the accused has cooperated well with the police during the test and in fact, has even admitted drinking couple of beers at the Traveller's Bamboo Club.

- 9.8 He has tendered to court as evidence the printed result of the Dragger Machine marked as **Pr. Ex.4** according to which the result has been 43 micrograms of alcohol in 100ml of breath.
- 9.9 It is noted that when this witness was questioned at cross examination about where the Dragger machine was kept and how it was maintained, he has stated, amongst many other things, that the Dragger 7110 machine has a switch that can be turned on and off as well as a power plug, so that it can be installed anywhere and be used and that this machine is kept in the vehicle with the air conditioner on and that they remove it when the vehicle is not operational.
- 9.10 When he was further questioned at length about service and calibration of this machine, he has stated that this machine is calibrated every year by the experts, that it does not need any other servicing by the operators and that the police do not use any equipment that are not calibrated. He also informed court that the Certificate issued by the experts after calibrating the device is safely kept in their records office because it is a very important document which could be produced if required by court.

## **10 Evaluation of evidence**

- 10.1 It is an accepted fact that the applicant in this case has driven his motor vehicle with the registration number JA 803 on Wailoaloa Road on the night of 31<sup>st</sup> August 2018. It is also accepted that the accused has consumed few glasses of beer. The accused has only disputed the fact that there had been a concentration of more than the prescribed concentration of alcohol in his blood at the time he has been driving his vehicle.
- 10.2 Whilst PW1 stated that Alcotest 5820 machine on which he has tested the accused has given a result of 40 micrograms of alcohol per 100ml of breath of the accused, PW3 has stated that the result given by Dragger

7110 after testing the accused was 43 micrograms of alcohol per 100ml of breath.

- 10.3 According to Regulation 3 of the Land Transport (Breath Test and Analysis) Regulations 2000, **for the purpose of section 103(1)(a)**, the prescribed concentration of alcohol is 80 milligrams of alcohol in 100 millilitres of blood.
- 10.4 Regulation 3 of the **Land Transport (Breath Tests and Analyses) Regulations 2000 (Legal Notice No. 63 of 2000)**, further provides that the reading on a breath analyzing instrument in micrograms of alcohol per 100 milliliters of breath needs to be multiplied by 2.2 in order to arrive at the number of milligrams of alcohol in 100 milliliters of blood.
- 10.5 Accordingly, in order to convert the reading on Dragger 7110 into blood alcohol level, the reading of 43 micrograms need to be multiplied by 2.2 and the result would be 94.6 mg (43 x 2. 2 )of alcohol in 100ml of the accused's blood, which would be above the prescribed limit of 80mg in 100ml of blood.
- 10.6 According to the available evidence and the above calculation, it is proved that at the time the accused has been driving his vehicle on Wailoaloa road a concentration of more than 80mg of alcohol has been present in 100ml of his blood.
- 10.7 Accordingly, this court is satisfied that the prosecution has been successful in proving beyond reasonable doubt all the essential elements of the charge against the applicant in this case.
- 10.8 Although the learned counsel for the applicant has cross examined the three witnesses for the prosecution at length on different lines in order to challenge the evidence of the prosecution, their evidence on the essential elements of the charge have remained unchallenged.
- 10.9 On the other hand, the accused has opted to remain silent and has not called any witnesses to give evidence on his behalf. It is prudent to understand that making mere suggestions to the prosecution's witnesses at cross examination, without placing acceptable evidence before court



that would sufficiently challenge the strong evidence against the accused, would not create a reasonable doubt.

## **11 Conclusion**

11.1 Therefore, this court is satisfied that the prosecution has managed to prove **beyond reasonable doubt** that the accused has committed the offence of **Driving Motor Vehicle whilst there was present in the blood a concentration of alcohol in excess of the prescribed limit** contrary to Section 103(1)(a)(2) and 114 of Land Transport Act 35 of 1998.

11.2 Accordingly, I find the accused guilty for the offence of **Driving Motor Vehicle whilst there was present in the blood a concentration of alcohol in excess of the prescribed limit** and convict the applicant for the same.

12 28 days to appeal.

DATED at Nadi on 28<sup>th</sup> day of February 2022.



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Nilmini Fernandez  
**RESIDENT MAGISTRATE**

