

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO.: HAC 144 OF 2012**

**STATE**

**-v-**

**MOHAMMED FARUN YAKUB**

**Counsel:** Mr. S. Nath for State  
Mr. F. Koya with Mr. M. Raratabu for Accused

**Date of Summing Up:** 16<sup>th</sup> August, 2016

**Date of Judgment :** 18<sup>th</sup> August, 2016

**JUDGMENT**

1. Accused is charged with Manslaughter under the Penal Code. The Information alleges that on the 8<sup>th</sup> day of December, 2009, the Accused unlawfully killed the deceased Suresh Chandra by an omission to exercise his duty of care over an inanimate object, Coral Sun Bus Registration Number CQ 432, when he switched on the said bus causing it to move forward and bump the deceased.
2. Assessors unanimously found the Accused not guilty. Having agreed with assessor's opinion I pronounce my judgment as follows.
3. Prosecution called 8 witnesses. At the end of the Prosecution case, Accused elected to give evidence under oath and called a witness.
4. Prosecution says that Accused started the bus that was parked on a ramp and he caused it be moved forward when people including the deceased were working in front of the bus and the Accused acted in such a grossly negligent way that his conduct deserves

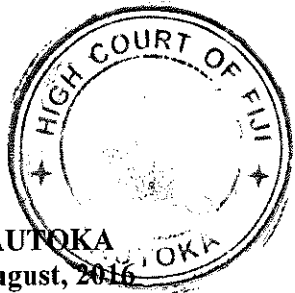
criminal sanction. The Prosecution says that the only reason the deceased was taken to hospital was because of the injuries received from this incident and that his death a few days later was directly caused by the Accused's gross negligent act.

5. Accused denies that he switched on the bus which was involved in the incident. Accused also denies that he was under a duty of care towards the deceased and that he had breached that duty and that he had been grossly negligent. Accused also denies that his act caused the death of the deceased Suresh Chandra.
6. The issues to be decided are:
  - Did the Accused person start the bus?
  - On an objective test, did he act unreasonably and was in breach of his duty of care towards the deceased?
  - If he acted unreasonably, was his conduct so serious that it justifies criminal punishment? And lastly
  - Did the deceased die as a result of injuries he received in this incident?
7. Five eye witnesses gave evidence. Prosecution called four eye witnesses and the other eye witness was called by the Defence. None of them had seen the Accused starting the bus or sitting on the driver's seat at the time of the accident.
8. Eye witnesses who have testified in this case are independent witnesses. They had been working 2-3 meters away from the bus when the accident occurred. One of the eye witnesses for the Prosecution was Shanil Kumar. He also received injuries in the accident. He was standing very closer to the bus which had been parked on the ramp. According to his evidence, the bus had suddenly come forward. When his leg got pressed by the bus he turned around to see the Accused at the door step of the bus, going from the steps to the driver's seat to stop the bus. Accused had stopped the bus. He admitted having said to police on the day of the incident that bus had started itself.
9. Shiu Sanjay Mani was another important eye witness for the Prosecution. He had informed the Accused to reverse the bus from the ramp. Having informed, he was going backwards to his Coaster. Then he heard people yelling. The bus started and bumped.

Accused was on the steps of the bus. He saw Accused trying to reverse the bus. When the Accused reversed the bus, he and other carpenter went and helped Suresh to come out. He didn't see how the bus got started.

10. Prosecution relies on circumstantial evidence to prove that the Accused person was responsible for starting the bus and that there is no other reasonable explanation other than that because the accused was the only person present in the bus at the time of the incident.
11. Witness Korovou had been a vehicle Examiner for the Land Transport Authority (LTA) of Fiji for 15 years. He had found no defects that could contribute to the accident when he inspected the bus on the day of the accident. According to his evidence, there's no vehicle that can start itself. A bus can move forward only if somebody switches on the main switch and the starter switch and operates the gear.
12. Examiner's evidence is not consistent with eye witness account of Shanil Kumar who said that the bus had started itself.
13. Defence Counsel vigorously challenged examiner's evidence. Examiner said in his evidence-in-chief that he inspected the engine of the bus when he visited the scene. However, he admitted that the engine number was extracted from the data base of the LTA. Under cross examination, he admitted that the bus had a modified engine. A Nissan engine had been mounted on a Mercedes bus. He revealed this important fact only when he was confronted by the defence Counsel in cross examination. He had come to know about this modification only when he perused the documents in the LTA data base. He does not know if the LTA had given approval to this modification or a fitness test had been carried out to check the roadworthiness of the bus.
14. According to examiner's evidence the main switch of this particular vehicle was located at the rear of the vehicle. When the main switch is switched on, current flows from the battery to the starter switch which is on the left hand side of the driver's seat. He said under cross-examination that whoever wished to be in charge of driving needed to go at the back or get someone else to start it off at the back.

15. Examiner had inspected only about five vehicles during his entire career. If he inspected the engine as he has said, he could have discovered the modification of the engine. Examiner's evidence is unreliable and is not sufficient for me to find that there was no mechanical defect in the bus.
16. Accused said that the engine of the bus turned off only when the choker, a switch on the engine, was pulled. Although the Examiner said that the modification of the engine is not a defect, Defence was able to create a reasonable doubt as to a mechanical fault.
17. Accused said that he did not at any time attend to starting the bus or sit on the driver's seat before Suresh was injured. The bus is an old one. It had been parked at the yard for more than a year for the repairs to be completed. Examiner's evidence that the bus had an expired third party insurance cover confirmed that it had not been driven for some time.
18. Accused had given a statement to police the day of the incident on the 8<sup>th</sup> of December, 2009. However, he was caution interviewed by Police in July 2010 and was charged for Manslaughter 2 years thereafter in October, 2012. He had stated to police that the bus had started itself and that he intervened to save the lives of the people who working in front of the bus. Prosecution failed to discredit his evidence.
19. I am satisfied that the Defence was able to create a reasonable doubt about whether the Accused was responsible for starting the bus or causing it to be moved forward. I give the benefit of that doubt to the Accused. I concur with the unanimous opinion of the Assessors and find the Accused not guilty of Manslaughter.
20. Accused is acquitted and discharged accordingly.
21. That is the judgment of this Court.



AT LAUTOKA  
18<sup>th</sup> August, 2016

Aruna Aluthge  
Judge

**Solicitors for State: Office of the Director of Public Prosecutions**  
**Solicitors for Accused: Siddiq Koya lawyers for Accused**