

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 78 of 2020**

**STATE**

vs.

**DAVNIT KRISHAN RATNAM**

**Counsel:** Mr. E. Samisoni for the State  
Mr. J. Reddy with Ms. S. Narayan for Accused

**Date of Hearing:** 17<sup>th</sup> July 2023  
**Date of Closing Submission:** 20<sup>th</sup> July 2023  
**Date of Judgment:** 15<sup>th</sup> August 2023

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**JUDGMENT**

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**Introduction**

1. On the 27th of February 2020, the Director of Public Prosecution charged the Accused, Mr. Davnit Krishan Ratnam, with one count of Manslaughter contrary to Section 239 of the Crimes Act. The Particulars of the offence are that:

*Statement of Offence*

**MANSLAUGHTER:** *Contrary to Section 239 of the Crimes Act 2009.*

*Particulars of Offence*

**DAVNIT KRISHAN RATNAM** on the 13 August 2019, at Nasinu in the Central Division, drove motor vehicle registration number JW 741 in a manner that caused the death of **VIKA RADINIBAU RALUVEISOBA** and at the time of driving, the said Davnit Krishan Ratnam was reckless as to the risk that his conduct would cause serious harm to another.

2. Consequent to the plea of not guilty entered by the Accused, the matter proceeded to the hearing. The hearing commenced on the 17th of July, 2023, and concluded on the same day. The Prosecution presented the evidence of five witnesses, and the Accused gave evidence for the Defence. Subsequently, the Court heard the closing submissions of the learned Counsel for the Prosecution and the Defence. In addition to their respective oral submissions, the Counsel for both parties filed their written submissions. Having considered the evidence presented during the hearing and the respective oral and written submissions of the parties, I now proceed to pronounce the judgment.

**Admitted Facts**

3. The Accused tendered the following admitted facts pursuant to Section 135 of the Criminal Procedure Act.
- a) *On the night of 13 August, 2019, Davnit Krishan Ratnam was driving a motor vehicle with the registration number of JW 741 along King's road.*
  - b) *The contents of the following document is not in dispute and may be tendered by consent:*
    - i) *The Post Mortem Report of Vika Radimihau Raluveisoba*

**Amended Admitted Facts**

- a) *The alleged offence occurred on 13 August 2019.*

- b) *That the deceased in this matter is Vika Radinibau Raluveisoba.*
- c) *On the night of 13 August, 2019, the accused Darnit Krishan Ratnam drove a motor vehicle with the registration number of JW 741 between 8pm – 9pm, along King's Road and was involved in an accident.*
- d) *It is agreed that the State will be permitted to lead the evidence that a motor vehicle accident occurred on the night of 13 August, 2019 along King's Road involving a motor vehicle with the registration number of JW 741.*
- e) *The contents of the following documents are not in dispute and may be tendered by consent however, the author of all documents will be made available for cross examination and they are subject to challenge:*
  - i) *The Post Mortem Report of Vika Radinibau Raluveisoba;*
  - ii) *The "Drugger" Breathalyzer Test Results of one "Ritesh Prasad";*
  - iii) *The Rough and Fair Sketch Plans including the Fair Sketch Plan Key;*
  - iv) *Fiji Police Road Accident Report dated 13/8/19 of the accident;*
  - v) *Land Transport Authority (LTA) Vehicle Test Sheet of JW 741 dated 14/8/19;*
  - vi) *The Curriculum Vitae of the Pathologist Doctor Daniella John.*

#### **Prosecution's Evidence**

4. The Prosecution alleges that the Accused, on the night of the 13th of August 2019, drove the car bearing the registration number JW741 (hereinafter referred to as the "car") along the

Nasinu and hit Vika Radinibau Raluveisoba causing her death. The first Prosecution witness, Suliasi Gadei, testified that he met the Accused when he was going to a carnival at Valelevu with his Uncle. The Accused was drinking alcohol when they met him. The Accused offered them to join and drink with him. Suliasi's Uncle drank with the Accused. The Accused had told them that he had a fight with his wife, which was why he was sitting there. The Accused then gave them money to go and buy more drinks. Suliasi and his Uncle went to the Supermarket and bought more drinks. The Accused drank the drinks they bought from the Accused's money. According to Suliasi, the Accused was drunk as he was talking a lot and behaved roughly.

5. The Accused then asked Suliasi and his Uncle to join him to go to Suva in his car. They got into Accused's car and drove it towards Suva. The Accused was driving at high speed, which Suliasi noticed on the speed meter as 100. Suliasi and his Uncle requested the Accused to drive slowly. Then this accident happened when the Accused tried to overtake a taxi driving in front of them towards the same direction. The Accused initially drove straight to the taxi, saying that he could hit the taxi. Once the car reached closer to the taxi, the Accused turned it to overtake the taxi and then hit the girl who was standing in the middle of the road to cross the road.
6. The Accused did not stop the car and drove forward after hitting the girl. Suliasi and his Uncle asked the Accused to stop the vehicle when they reached Centre Point. Once the Accused stopped the car at Centre Point, Suliasi and his Uncle got out of the car and returned to the incident, where they found the girl was already taken to the hospital and Police had already reached the scene. Suliasi then informed the Police about the Accused.
7. Cpl. Binay arrested the Accused near the Shah's Supermarket on the night of the 13th of August 2019. He reached the accident scene once he received the information about it. He received the information regarding the whereabouts of the suspect from the public. He then proceeded and arrested the Accused. The Accused was first brought to the Valelevu Police Station and then escorted to Totogo Police Station as Valelevu Police Station had no facilities to conduct a breathalyzer test. He handed over the Accused at the Totogo Police Station and

proceeded to the CWM hospital to inquire about the victim. The Accused told Cpl. Binay that his name was Ritesh. Moreover, Cpl. Binay explained in his evidence that he knew the Accused as he was under the Police Custody a few weeks before this accident.

8. Cpl. Ajay had conducted the Accused's breathalyzer test at Totogo Police Station. According to Cpl. Ajay, the Accused informed him that his name was Ritesh Prasad. Accordingly, Cpl. Ajay entered the name of Ritesh Prasad into the test machine. Cpl. Ajay tendered the two results of the breathalyzer test of the Accused, confirming the level of alcohol in the Accused on the night of 13th of August 2019. Furthermore, Cpl. Ajay identified the Accused in the Court as the person he tested on the night of 13th of August 2019 as Ritesh Prasad.
9. Mr. Ritesh Prasad, in his evidence, explained that he owned the car and kept it with the Accused's father as he had no proper place to park it securely. Retired Police Officer George Bower gave evidence explaining the Fiji Police Accident Report he made and the Accused's name as recorded in the Report. The name of the Accused in the Fiji Police Accident Report is Davnit Krishan Ratnam.

### **Defence's Evidence**

10. In his evidence, the Accused admitted that he met a few boys while sitting under a tree on the night of the 13th of August 2019. These boys came with drinks and asked him if he had any cigarettes. The Accused did not drink with the boys; they drank their drinks while sitting with him. The Accused then gave them money to buy more drinks for them. After that, the Accused asked them to go for a ride to Suva in his car. While with these boys, his wife called him on his mobile phone. He had a fight with his wife in the evening, which was the reason for him to wait under the tree as he wanted to calm down. He told the boys about the fight he had with his wife,
11. Only two of the boys got into his car. He then drove the vehicle towards Suva. When he passed Nasinu and came towards Caubati junction, he tried to overtake a taxi which was driving in front of him towards the same direction. He had to increase the speed but not over

speeding to overtake the vehicle. While he tried to overtake the taxi, he suddenly saw the girl standing in the middle of the road and fell into his car. He wanted to stop, but he felt scared as people started to gather. He then drove to Shah's Supermarket and tried to call the Police. According to the Accused, he did not undergo a breathalyzer test that night. No one asked his name while he was escorted and stayed in Police Custody at Totogo Police Station.

### Elements of the Offence

12. Section 239 of the Crimes Act states that:

*"A person commits an indictable offence if—*

- a) the person engages in conduct; and*
- b) the conduct causes the death of another person; and*
- c) the first mentioned person—*
  - i) intends that the conduct will cause serious harm; or*
  - ii) is reckless as to a risk that the conduct will cause serious harm to the other person.*

13. Accordingly, the main elements of the Manslaughter are that:

- i) The Accused,
- ii) Engaged in a conduct,
- iii) The said conduct caused the death of the deceased,
- iv) The accused, either intended that the conduct will cause serious harm, or was reckless as to a risk that the conduct will cause serious harm to the deceased.

14. The nature and the result of the conduct constitute the *actus reus*; meanwhile, the manner and/or the circumstances under which the said conduct was performed or carried out mainly

determines the *mens rea*. Accordingly, the offence of Manslaughter under Section 239 of the Crimes Act arises from a conduct of the Accused that he performed or carried out either with the intention that the conduct will cause serious harm or reckless as to the risk that conduct causes serious harm.

15. The alleged conduct of the Accused must be a *sine qua non* of the death of the Deceased, which is the causation of the death. The causation is the relationship between the alleged conduct committed by the Accused and the resulting effect of that act: the victim's death. (*vide Hettige JA in Nacagilevu v State [2016] FJSC 19; CAV 023.2015 (22 June 2016)*).
16. Goff LJ in **David Keith Pagett (1983) 76 Cri. App. R. 279** ) explained the scope of the causation, where he held that:

*"It is usually enough to direct them simply that in law the accused's act need not be the sole cause, or even the main cause, of the victim's death. It being enough that his act contributed significantly to that result."*

17. Hence, the Prosecution is only required to establish that the Accused's conduct significantly or operatively contributed to the Deceased's death. There is no need to establish that his action was the sole or the main cause of death.

### **Evaluation of the Evidence**

18. In view of the evidence given by the Accused, the admitted facts and amended admitted facts filed by the Accused, there is no dispute that the Accused drove the car on the 13th of August 2019 along the King's Road between 8 pm. to 9 pm and involved in an accident where the car hit the deceased when the Accused tried to overtake a vehicle that was going in front of his car. The Accused further admitted that he did not stop his car after the accident and drove continuously towards Centre Point. He was eventually arrested by Cpl. Vinay at Shah's supermarket. Moreover, the Accused did not dispute that he was escorted to Valelevu Police



Station and then to Totogo Police Station. In addition to that, the Accused admitted the Post Mortem Report of the Deceased made by Doctor Daniella John and its contents.

19. Besides the above admissions, the Accused denied that he consumed alcohol and drove his car at high speed, as claimed by Suliasi. Accordingly, there is no dispute of the *actus reus* of this offence where the Accused admitted that his conduct of driving the vehicle caused the death of the Deceased. Hence, the dispute that Court has to determine whether the Accused drove the car having consumed alcohol and whether such conduct of the Accused caused a risk of causing serious harm to the Deceased.
20. In order to determine the above dispute, I shall now proceed to evaluate the evidence presented by the Prosecution and the Defence. In doing that, the Court must first look into the credibility or the veracity of the evidence given by the witness and then proceed to consider the reliability or accuracy. In doing that, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (*vide; Matasavui v State [2016] FJCA 118; AAU0036.2013 (the 30th of September 2016, State v Solomone Qurai (HC Criminal - HAC 14 of 2022).*)
21. I shall first turn to the credibility and reliability of the evidence given by Suliasi, where he claimed that the Accused invited them to join him to drink when they met the Accused on the night of the 13th of August 2019. During the cross-examination of Suliasi, the learned Counsel for the Accused suggested to Suliasi, asking him whether he was telling the Court that out of nowhere, the Accused invited Suliasi to drink and then started to explain his personal issues. In doing that, the learned Counsel for the Accused tried to imply that the account given by Suliasi was improbable.
22. Nonetheless, the Accused, in his evidence, admitted that he met a few boys while sitting under the tree and shared his dispute with his wife with them. He further said that he gave these boys money to buy more drinks. Hence, apart from drinking with Suliasi and his uncle,



the Accused admitted that he met them and gave them money to buy more drinks. Irrespective of the learned Counsel's effort to discredit the evidence of Suliasi suggesting the event explained by him was improbable, the Accused in his evidence actually confirmed the evidence of Suliasi to the extent that they met on that night and the Accused gave money to buy more drinks.

23. During the cross-examination, I observed that the learned Counsel for the Accused challenged Cpl. Binay, alleging that he did not arrest the Accused at Shah's supermarket. It is an established assumption that usually, a lawyer forms their questions during the trial base on the instruction received from the client. However, making an extremely degrading situation for the learned Counsel for the Defence, the Accused took a starkly different position, contradicting his own lawyer's cross-examination, and testified, admitting that Cpl. Vinay arrested him. I reproduce the answer given by the Accused during his evidence-in-chief:

*"Vinay, who arrested me from the point of pick up until the cell lock up, nobody..."*

24. Accordingly, there is no dispute that Cpl. Binay arrested the Accused at Shah's supermarket and escorted him to Totogo Police Station. Accordingly, I accept Binay's evidence as credible and reliable. On that basis, I accept the evidence of Cpl. Ajay confirming that he conducted the Accused's breathalyzer test on the night of 13th of August 2019 at Totogo Police Station, though the test report contains the name of Ritesh. Retired Police Officer Mr Bower confirmed the driver of the car was Davnit Krishan Ratnam, though it was initially recorded as Ritesh Prasad. Accordingly, I find the evidence of Cpl. Vinay, Cpl. Ajay, and Mr. Brower credible and reliable. On that basis, I further find the evidence given by Suliasi is credible and reliable. Consequently, I hold that the Accused's claim that he did not consume alcohol and never undergone a breathalyzer test at Totogo Police Station was false and untrue.

25. In view of the reasons stated above, the Prosecution has established beyond reasonable doubt that the Accused had consumed alcohol on the night of 13th of August 2019 before he drove the car.
26. I now turn to *mens rea* of this offence. According to section 239 of the Crimes Act, the Prosecution has to establish that the accused's alleged conduct had a risk of causing serious harm to the Deceased. Irrespective of the said risk, he was reckless in continuing the said conduct, thus causing the Deceased's death.
27. The House of Lords in **DPP v Newbury (1977) A.C. 500, H.L.** had discussed the *mens rea* pertaining to the dangerous act, where Lord Salmon held that:

*"I agree entirely with Lawton LJ that that is an admirably clear statement of the law which had been applied many times. It makes it plain (a) that an accused is guilty of manslaughter if it is proved that he intentionally did an act which was unlawful and dangerous and that the act inadvertently caused death and (b) that it is unnecessary to prove that the accused knew that the act was unlawful or dangerous. This is one of the reasons why cases of manslaughter vary so infinitely in their gravity. They may amount to little more than pure inadvertence and sometimes too little less than murder."*

28. The House of Lords in **Newbury (supra)** enunciated an objective test to determine the Accused's *mens rea*. The objective test is whether all sober and reasonable people would recognize that the act was dangerous, and it is unnecessary to establish whether the Accused recognized its danger. (*vide State v Ratuwaga [2021] FJHC 180; HAC135.2019 (10 March 2021)*)
29. I find it would be more practical to adopt an objective test outlined in **Newbury (supra)** based on a sober and reasonable man *mutatis mutandis* to determine whether the conduct of the Accused had the risk of causing serious harm to the deceased as stipulated under Section 239 of the Crimes Act.

30. The next issue is whether drinking and driving itself reckless conduct. Apart from mere drinking and driving, does it require the Prosecution to prove certain other conduct of the Accused, such as over speeding, indifference to weather conditions, dangerous overtaking, or reckless disregard for pedestrians' life *etc.*
31. Certain conducts in our ordinary life are inherently capable of causing a risk of harm to others. Driving a motor vehicle alone on a busy road carries an inherent risk or danger of damaging other vehicles or causing serious harm to other people using the road as pedestrians. (*vide Blackstone's 2020 Ed p. 25; Hill v State [2018] FJCA 123; AAU109.2015 (10 August 2018)*) Such risks or dangers have been mitigated with a set of laws, rules and regulations governing the manner of driving motor vehicles. Section 103 (1) of the Land Transport Act is one such law stipulated to maintain the driving of the drivers with due care and attention. Section 103 (1) of the Land Transport Act has prescribed that it is an offence if a person 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 or her blood. According to Regulation 3 of the Land Transport (Breath Test and Analysis) Regulations 2000, the prescribed concentration of alcohol is 80 milligrams of alcohol in 100 millilitres of blood.
32. The legal regime in Fiji has found a driving a vehicle while having over 80 milligrams of alcohol in 100 millilitres of blood is a prohibited act, thus making it illegal conduct. Such an action could undermine the driver's capacity to drive the vehicle with care and proper attention, thus exposing the public and other vehicle users to the inherent risk associated with driving a motor vehicle. According to Cpl. Ajay, the breath analysis test confirmed that the Accused had 171.6 milligrams of alcohol in 100 millilitres of his blood.
33. In his evidence, the Accused confirmed that the road was busy as there were cars in front of his car, and the lights coming from the oncoming vehicles in the opposite lane obstructed his view. Under such circumstances, he tried to overtake the vehicle in front of him by increasing the speed of his car and did not see the Deceased standing in the middle of the road until he knocked her down. The Accused was driving his vehicle under the influence of alcohol along

a busy road, and his vision was obstructed by the lights coming from the oncoming vehicles. As a consequence of this evidence, I find that any sober and reasonable bystander, who knew the above circumstances explained by the Accused at that material time, will find the driving of the Accused after consuming alcohol in that manner had a risk of causing serious harm to the Deceased, who was waiting in the middle of the road to cross the road. Irrespective of such risk, the Accused was reckless in continuing to drive the car in that manner and hit the Deceased, causing her death.

34. Accordingly, I find the Prosecution successfully proved that the Accused committed this crime of Manslaughter as charged in the Information beyond a reasonable doubt.
35. In conclusion, I hold the Accused guilty of this offence of Manslaughter contrary to Section 239 of the Crimes Act and convict of the same accordingly.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe", written over a dotted line.

**Hon. Mr. Justice R. D. R. T. Rajasinghe**

**At Suva**

15<sup>th</sup> August 2023

**Solicitors**

Office of the Director of Public Prosecutions for the State,

Jiten Reddy Lawyers for the Accused.