

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Traffic Case No. 58 of 2018

STATE

V

RAJESH RAJ

Appearance : **Insp Naidu** for the prosecution
Mr Kohli. A for the accused

Ruling : **8 November 2019**

RULING

NO CASE TO ANSWER

1. The accused, Rajesh Raj is charge for *Dangerous Driving Occasioning Death*, contrary to *section 97(2)(c) and (8)* of the *Land Transport Act*.
2. The particulars of the offence are that on 29 June 2018, at Seaqqa, in the Northern Division, you drove a motor vehicle registration number IL 379 at Lomaloma along Labasa Savusavu highway in a dangerous manner having regard to all circumstances of the case thereby causing the death of Deo Kumari.

3. The Accused pleaded not guilty to the charge on 21 August 2018. The case proceeded to trial on 15 October 2019.
4. The Prosecutor called one witness and closed his case. The Counsel for the accused submitted an oral application of no case to answer.

Application

5. The Counsel for the accused submitted that this is a clear case of no evidence.

Law

6. Section 178 of the Criminal Procedure Act allow for such application to be made.

7. Section 97(2) (c) of the Land Transport Act, state;-

“(2) A person commits the offence of dangerous driving occasioning death if the vehicle driven by the person is involved in an impact occasioning the death of another person and the driver was, at the time of the impact, driving the vehicle-

(c) in a manner dangerous to another person or persons”

8. The elements of the offence are;-

- a. the accused,
- b. drove a vehicle,
- c. in a dangerous manner,
- d. resulted in an impact,
- e. and causing death to a person.

9. The test for no case to answer in the Magistrate Court was set in the case of **Abdul Gani Sahib v the State**

(unreported) Criminal Appeal No. HAA 0022 of 2005 (28 April 2005). The test are:

i. Whether there is relevant and admissible evidence in respect of each element of the offence.

ii. If there is evidence, whether it is so discredited that no reasonable tribunal could convict on it.

10. The burden of proof is on the prosecution to establish the above test.

Analysis and determination

11. Sunita Devi is the only witness for the prosecution case. Her statement was tendered by consent as prosecution exhibit 1. Thereafter, she offered no other evidence. By consent the Prosecutor tendered Maca Masitabua statement as prosecution exhibit 2 and the charging officer, Dharam Deo statement as prosecution exhibit 3. The Prosecutor closed his case.

12. All the exhibits tendered by the Prosecutor are photocopies. Since they were tendered by consent, I am of the view that there is no need to apply and go through the Lodendan test. I therefore accept all the exhibits tended as admissible evidence.

13. The statement of Sunita Devi stated that she was travelling in the vehicle IL 379 driven by her husband the accused on 29 June 2018. They were travelling on the Labasa Savusavu highway, she felt asleep. She was awoken when she felt the impact of the accident and their vehicle was upside down. She did not receive any serious injuries.

14. The statement of Maca Masitabua stated that she is a staff nurse at Savusavu hospital. On 29 June 2018 she

escorted one Deo Kumari in an ambulance to Labasa Hospital around 1.30pm. On their way she saw the patient started to have difficulty in breathing. After few minutes, she notice that the patient was not breathing. On arrival at the Labasa Hospital, the patient was pronounced death by the Labasa Hospital staff.

15. The statement of Dharam Deo stated that he was the charging officer for this case. He charged the accused for dangerous driving occasioning death. The charge was that on 29 June 2018, at about 9.30am, the accused drove motor vehicle IL 379 in a dangerous manner resulted in the death of Deo Kumari.
16. There are evidence that the accused was driving vehicle IL 379 on 29 June 2018, along the Labasa Savusavu highway when it involved in an accident. There are evidence on the death of Deo Kumari but no cause of death certificate tendered to prove the death of Deo Kumari. There is no evidence to say that Deo Kumari died as a result of accident caused by the accused. There is no evidence to relate, link, or connect Deo Kumari to the accident in this case. There is no evidence on the manner of driving of the accused to say that it was dangerous and the accused was at fault.
17. In assessing the evidence, there is no relevant and admissible evidence in respect of the elements of the accused driving in a dangerous manner and causing death to Deo Kumari. As such the Prosecutor failed to discharge the burden.
18. Accordingly, I allow the application. I find that there is no case to answer, as no conviction can be made on the prosecution evidence.

19. I therefore, rule for the case to be dismissed and accused is acquitted.

28 days to appeal



C.M. Tuberi

Resident Magistrate