

**IN THE RESIDENT MAGISTRATE'S COURT**

**AT NADI**

**CRIMINAL JURISDICTION**

**Traffic Case No: 7965 of 2014**

**BETWEEN** : **STATE**  
**AND**  
**APISAI COABATI**

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

**Date of Sentence** : **29<sup>th</sup> day November, 2022**

**Corporal 4609 Bola Nadavo for the Prosecution**

**Accused present**

**Mr. Mudunivalu for Accused**

**JUDGMENT**

1. The accused in this case, **APISAI COABATI** has been charged for the offence of **Dangerous Driving** contrary to Section 98 (1) and 114 of Land Transport Act 35 of 1998.
2. Particulars of the offence states that:  
*Apisai Coabati on the 13<sup>th</sup> day of October, 2014 at Nadi in the Western Division drove a motor vehicle registration number EM 005 on Denarau Road, Nadi in a manner which was dangerous to the public having regards to all the circumstances of the case.*

### **3. BACK GROUND**

3.1 The accused in this case has first appeared in court on the 17<sup>th</sup> April 2015 when the charge has been read out to him. The accused has pleaded not guilty to the charge against him on the 4<sup>th</sup> of June 2015.

3.2 Accordingly, the trial has commenced on the 19<sup>th</sup> of July 2019 and the prosecution has called the following witnesses to give evidence.

**PW1 Saurat Ali**

**PW2 Sophia Khan**

**PW3 Abdul Nshad Ali**

**PW4 WPC 4895 Koini Rokondrau**

3.3 When the prosecution closed its case on the 10<sup>th</sup> of December 2019 the counsel for the accused has moved court to allow filing of written submissions on “No case to answer”.

3.4 However, on the 31<sup>st</sup> of March 2022, the learned defence counsel has informed court that they would not file submissions on ‘No case to answer’ and that the accused opt to give evidence as well as to call other witnesses.

3.5 Accordingly, on the 22<sup>nd</sup> of September 2022, the accused has given evidence under oath and has called the following witnesses on his behalf, before closing their case.

**DW2 – Isikeli Natiri**

**DW3 – Jale Satumo**

3.6 Both the parties have 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 **Dangerous Driving** contrary to Section 98 (1) and 114 of Land Transport Act 35 of 1998

4.2 Dangerous Driving is defined by s 98 (1) of the Land Transport Act as driving:

*"on a public street recklessly, or at a speed or in a manner which is dangerous to the public having regard to all the circumstances of the case including the nature, condition and use of the public street and the amount of traffic which is actually at the time or which might reasonably be expected to be on the public street".*

4.3 The elements of the offence which the prosecution must prove are:

- a) **The accused**
- b) **Drove *EM 005* on Denerau Road Nadi, which is a public street**
- c) **in a manner which is dangerous to the public;**
- d) **Having regard to the circumstances – nature, condition and use of public street and amount of traffic.**

4.4 In the case *of Lasike v State*, Fiji Court of Appeal Criminal Appeal No HAA 58 of 2002 (13th September, 2002) the Court of Appeal defined **dangerous driving** as follows:

*" Dangerous driving is the causing of a dangerous situation by a manner of driving which falls below the standard expected of a prudent driver."*

4.5 The standard for **dangerous** driving was also addressed in the case of *Kumar v State*, High Court of Fiji Criminal Appeal No HAA 14 of 2001 (12 April 2002), which involved a charge of dangerous driving

causing death. The High Court addressed the difference between careless driving and **dangerous** driving , stating as follows:

*"The next ground of appeal is that there was no evidence of dangerous driving . In court, counsel submitted, that even on Mr Buksh's version of the facts, the Appellant's driving was only careless.*

*The evidence which the learned Magistrate accepted was that the Appellant was negotiating a bend at a high speed on the wrong side of the highway. He was driving a cargo truck and in going to the wrong side of the road created a dangerous situation. In R -v- Gosney (1974) 3 ALL ER 220, it was held that a charge of dangerous driving is proved when the driver drives in a way which falls below the standard of a competent and prudent driver, and thereby causes a situation, which viewed objectively, is dangerous.*

*The test for a charge of Dangerous Driving is an objective one, as is the test for Careless Driving. The difference between the Careless Driving and Dangerous Driving is not the manner of driving, (which has the same test) but the situation that has been caused thereby. In other words, a person who drives carelessly, also drives dangerously, if viewed objectively, his/her manner of driving creates a dangerous situation. Thus a person who drives carelessly, drives dangerously if he/she thereby causes a death. Therefore, counsel's submission that the Appellant (on the version of the facts given by PW1) was only driving carelessly, has no validity."*

4.6 **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.*

4.7 **Section 58(1) of the Crimes Act** states that “A legal burden of proof on the prosecution must be discharged beyond reasonable doubt”.

## **5 Evaluation of Evidence**

- 5.1 Firstly it is necessary to keep in mind that none of the parties have disputed that a collision has occurred between vehicle number EM005 and CZ 006 on Denerau Road, Nadi on the 13<sup>th</sup> October 2014.
- 5.2 **PW1 Saurat Ali**, is the driver of CZ 006 and he has stated to court his version of how the accident took place.
- 5.3 According to his evidence, at the time of the accident PW1, his niece Sophia, her husband and the sons and PW1’s friend Ajay have been in his vehicle.
- 5.4 On the day of the accident PW1 had to go to the hospital, but before that he had to drop his friend Ajay at his workplace at Denerau.
- 5.5 While travelling on Denerau road, the witness had to turn to the right and therefore, he has given the signal to turn to the right. There have been 3-4 vehicles behind him that have slowed down and allowed him to turn. However, while he was turning his car to the right, another vehicle has come overtaking from the wrong side and has hit his

vehicle. That was all this witness could remember and he has regained consciousness only at the hospital.

**5.6** This witness has stated that he was a driver of 20 years' experience and that he had a speed of 60kmph when he went between the junction and the church. However, when the learned defence counsel suggested that the speed limit between the junction and the church was 50kmph the witness has admitted the same and said that he could not remember his exact speed.

**5.7** This witness has also admitted that a driver can overtake at a place with broken lines in the middle of the road and also admitted that the road going to Denerau past the church had broken lines.

**5.8** He has also mentioned at cross examination that he has turned his trafficator on about 30 - 40 meters before the place he wanted to turn.

**5.9** He has even looked behind through the side mirror but there had been no vehicles overtaking.

**6.1** **PW2** was the niece **PW1** has mentioned in his evidence. She could remember that on the day of the accident while at home she has become sick and has gotten into the car driven by **PW1** to go to hospital. However, before going to the hospital her uncle had to go and drop the boy who was uncle's son at his job site in Denerau.

**6.2** She stated that **PW1** has turned the trafficator and has just started turning to the right when a car that came from behind bumped into their car. Just before the collision her son has been standing on the seat and when she turned towards the son to pick him up, she has seen three other vehicles behind their car. However, she has not seen the car that has bumped into their car.

**6.3** Due to the impact of the collision, their car has tumbled and fallen into the drain on the left side of the road and the witness has received

injuries. She has momentarily seen the driver of the other vehicle before they were sent off to the hospital.

**6.4** Although this witness has stated that **PW1** has turned the signal on before he turned the car, upon cross examination by the learned defence counsel, she has admitted that she was sitting right behind the driver and that she was unable to see the speed meter,

**6.5** She admitted that she has never been a driver and that she was not sure where the traffic indicator was placed in her uncle's car.

**6.6** When she was questioned about the speed **PW1** was driving at the time of the accident, this witness stated that she did not see the speed meter.

**6.7** When she was asked about the distance between the place the trafficator was turned on and the place of accident, the witness has shown the distance between the clock in the Court room and its door, which was only about 15 feet. This contradicts the position of **PW1** that he turned the trafficator on about 30 - 40 meters before the place turned the car.

**7.1** **PW3, Abdul Nishad Ali** is the husband of **PW2** who stated that his wife had a stomach pain in the morning on the day of the accident and had to be rushed to hospital.

**7.2** He has called **PW1** who is his wife's uncle to take them to the hospital and **PW1** has told that he was going to drop his cousin, Ajay and thereafter he will come to take **PW2** to hospital.

**7.3** However, **PW3** has informed **PW1** that his wife was very sick and requested him to come fast. Therefore, **PW1** has come straight to their house with Ajay, to pick them up and he was going to drop Ajay first before going to hospital.

**7.4** The vehicle was travelling in the left side of the road before it slowed down and **PW1** turned on the trafficator to the right. This witness has

looked behind at this point and has seen 3 vehicles stopped behind them.

**7.5** It is important to note that this witness has stated to court that at this point they were getting late to go to hospital and his wife was crying by this time.

**7.6** While the uncle was turning the car, another car has come from behind and has bumped into their car, making it fly up and have 6 tumbles before it hit one rain tree and fell into the drain. When the car tumbled 1<sup>st</sup>, this witness has been holding their second son and his wife holding their first son. But with the second tumble the windscreen has burst and his older son aged 9 years has been thrown out through it into the jungle. When the car fell into the drain this witness's face has bumped into the front seat head rest and his teeth were broken. After the car has stopped, people have taken them to hospital as everyone have received injuries.

**7.7** It was suggested to this witness by the learned defence counsel at cross examination that since **PW1** knew that **PW2** was very sick, he had to rush to drop Ajay first before he rushed to the hospital, to which the witness has replied that **PW1** was not rushing.

**7.8** Although he stated that he thought that **PW1** was driving at a speed of 15km, he admitted that he is not a driver and never had a driving licence.

**8.1** **PW4 WPC Koini Rakadrau** was the police officer who has gone to the scene after the accident was reported and has drawn the sketch plan at the scene, and also who recorded the statement of the accused.

**8.2** By the time she has reached the accident scene the passengers in car CZ006 have already been taken to hospital and only the accused, the driver of car EM005 has been waiting at the scene. She has seen both the cars in the drain and has found the point of impact by noting the



broken pieces of glass on the road. After she drew the Sketch Plan the driver of EM005 has placed his signature on it. She tendered the Sketch Plan to court marked as **Pr. Ex.1**.

- 9.1** When the accused gave evidence under oath, he stated that on his way to work at Port Denerau Marina on the morning of the accident, he has picked one Isikeli Natiri (**DW2**) from Sabeto and Jale Satumo (**DW3**) from Waimalika. Isikeli has sat on the front passenger seat while Jale has sat behind Isikeli.
- 9.2** While his car went past Narere village it has been travelling at a speed of 50kmph but when the car has reached the 80km zone it has picked up speed up to 70kmph. At that time there had been 3 cars that were going towards Denerau at a slower speed in front of the accused. There had been a distance of about 10 m between each of the cars.
- 9.3** Since the cars ahead of the accused have been moving at a slower pace and the road ahead was clear, the accused has started to overtake those cars one by one. None of the cars have signalled to turn and the accused has considered it as safe to overtake. After he has overtaken the second car and while he was proceeding to overtake the third, the third car has suddenly turned to the right without giving any prior signal. The accused has tooted his horn and has applied his brakes, but since the front car has already turned the accused has been unable to avoid the crash.
- 9.4** With the collision, both the cars have gone into the drain and thereafter the accused has managed to come out of their car with his passengers.
- 9.5** He has then approached the other car and has helped the passengers in it to get out. He has noticed that the driver in the other car has not been wearing the seat belt and he has told the driver that he did not turn on the signal before turning.

9.6 The accused stated that he told all that to the police when he gave his statement and he tendered to court the record of his caution interview marked as **De. Ex.1**.

9.7 It is noted that the accused's evidence in court corroborates his statement to police given right after the accident on the same day, as the answers he has given to questions 25 to 28 are as followed.

*“Q 25 . Can you explain how the accident happened?”*

*A. I was on my way to work at Denerau Island this morning. When I came past the church namely the House of Prayer, there was a bend before the long stretch. Upon reaching the stretch, 3 vehicles were in front of me and the distance was like 10m away and to my estimate, these 3 vehicles were travelling 50kmph. I saw that the opposite lane was clear, and I thought it was safe to overtake. The third vehicle before me was the vehicle registration number CZ 006 and when I came towards it, I thought that it was safe to overtake it as there was no brake lights to indicate that they were stopping or traffic indicator on to show that they were trying to go through the junction on the right. Just as I was taking past, this vehicle suddenly turned to the right junction. I applied the brakes, and I sounded the horn but it was too late, I bumped into the said vehicle and it was impossible to avoid the accident.*

*Q 26. What did you do after the accident?*

*A. I got off the vehicle with the other passengers and helped the victims out from the other car.*

*Q 27. Who is at fault here?*

*A. I think it is the other driver's fault.*

*Q 28. Why do you think that it is the other driver's fault?*

*A. Because he never turned the right traffic indicator on and there was also no brake lights to alert the other drivers that he was trying to stop or turn right.”*

- 10.1** **DW2 Isikeli Natiri** has been sitting on the front passenger seat of the car driven by the accused and he had a good view of the road ahead them. According to him too this accident has happened on Denerau road at the 80km speed zone, and the witness could see from the speedometer that their driver has been travelling at 70kmph.
- 10.2** Their driver has started overtaking three cars that were moving towards Denerau ahead of them. Since he was sitting on the front passenger seat, **DW2** has clearly seen how the third car in front of them suddenly turned to the right and cut into their lane without giving any indication, after their car has just overtaken the second car.
- 10.3** When the third car suddenly turned, the accused has applied brake and also pressed the horn but within seconds their car has collided into the other car. Thereafter, both the cars have gone into the drain.
- 10.4** After the accident this witness too has come out and has helped the occupants in the other car. When he approached the other car, he has not seen the trafficator blinking in it and also has noted that the driver and the passenger who he helped to come out were not wearing the seat belts.
- 11.1** **DW3 Jale Satumo** has been sitting behind **DW2** in the car driven by the accused at the time of the accident and he too has corroborated the evidence of both the accused and **DW2**, by saying that after their car overtook the second car and was proceeding to overtake the third car, the third car suddenly turned into their lane without giving the indicator.

- 11.2** He too stated that their driver applied the brake and pressed the horn but it was too late and their car has hit the front car. Due to the impact both the cars have gone into the drain.
- 11.3** After the accident, this witness too has approached the other car to help the victims and has helped the lady who was sitting behind the driver to come out. He too has not seen any traffic indicator turned on, in the other car when he approached it. Also has noted that the Lady has not been wearing the seat belt.
- 12.1** While **PW1** and two passengers that were travelling in his car stated that **PW1** turned on the traffic indicator to right before turning, all three witnesses for the defence vehemently stated that **PW1** never turned the signal on before he suddenly turned his car to the right.
- 12.2** Although both **PW2** and **PW3** have stated that their uncle had slowed down and turned the signal on before turning to the right, they both have been sitting on the backseat and it is not very clear whether they had a clear view or a clear state of mind to note all that had happened right before the accident took place. Both of them have admitted that **PW2** was very sick and had to be rushed to hospital due to her stomach pain. **PW1** was taking them to the hospital but before going to hospital he had to first drop off another passenger at his workplace. **PW3** was very clear in stating that **they were getting too late to the hospital and his wife was crying** in pain right before the accident happened. So, accepting that **PW2** had a clear state of mind to note that the 3 cars behind their car have stopped and that **PW1** turned on the trafficator before turning, does not look very safe.
- 12.3** Although **PW3** stated that their driver was not rushing, the circumstances at that time clearly shows that **PW1** has been highly pressured with his obligations that morning to drop one passenger at his workplace on time, before rushing his niece, who was in pain, to

hospital. Therefore, there is a possibility for **PW1** not to have taken all the precautions that morning while driving, which he would have taken in normal circumstances.

**12.4** Since **PW1** was travelling towards Denerau on the main road, being a prudent driver he had a duty not only to give the signal that he was turning to the right, but also to check behind him through his mirrors to see whether there were any vehicles overtaking. He should have turned only when he was sure that there were no oncoming traffic or vehicles that might try to overtake him. If he had checked his back and waited for the accused to pass, this accident would not have happened.

**12.5** On the other hand, according to all the available evidence the accused has managed to overtake two other vehicles before attempting to overtake the car driven by **PW1**. The accident has taken place at the 80km speed limit zone and at a place with broken lines in the middle of the road that allows drivers to overtake other vehicles.

**12.6** It is also obvious that the accused must have been traveling in high speed as he was in the process of over taking other vehicles. But there is no evidence available to prove that he was exceeding the speed limit of 80kmph. The accused and his witnesses have unanimously stated that their car was travelling at 70kmph at the time of the accident.

**12.7** It is so very unfortunate that the passengers in **PW1**'s vehicle had to experience injuries and the vehicle had to be written off. However, it is clear from the evidence of both **PW2** and **PW3** that their children have been standing on the seats and were not secured with seat belts while they were travelling. And this has caused their older child aged 9 years to be thrown out of the car through the broken windscreen. It is not clear how the windscreen broke but normally it happens when the head of a passenger hits the windscreen, which is another indication that the passengers were not wearing seat belts.

- 12.8 **PW3** stated that when his face bumped into the head rest of the front seat his teeth were broken, which proves that even **PW3** has not been wearing the seat belt at the time of the accident. It is revealed from the evidence of the defence witnesses, that the driver and the lady passenger in the other car have not been wearing the seat belts. Therefore, it is clear that **PW1** and his passengers have created a dangerous situation for themselves while they travelled in that car. It could be due to the reason that they were in a hurry to rush to the hospital to get medical attention for **PW2** soon.
- 12.9 Therefore, it is not very safe to totally believe and rely upon the evidence of the prosecution's witnesses in deciding whether the accused is guilty of the charge of Dangerous Driving.
- 13.1 The accused in this case has not been charged for Negligent Driving but for Dangerous Driver under Section 98 of the LTA.
- 13.2 As pointed out by the Court of Appeal in *Lasike v State*, (supra), **Dangerous driving** means **causing a dangerous situation by a manner of driving which falls below the standard expected of a prudent driver.**
- 13.3 Therefore, mere negligence on the part of the accused at the time of the accident is not sufficient enough to prove the charge of **Dangerous Driving** that has been levelled against the accused. Prosecution needs to prove that the accused has been driving recklessly or has caused a dangerous situation by his manner of Driving that falls below the standard expected of a prudent driver.
- 13.4 There were no evidence whatsoever which indicated that the accused was under influence of alcohol that morning or that he had been driving in a dangerous manner throughout his journey that morning from Sabeto to Denerau.
- 13.5 On the contrary, all the witnesses for the defence were consistent in vouching that the accused has been driving at a speed of 70kmph at a

speed limit zone of 80kmph and that he has been overtaking some vehicles that were moving at a slower pace at a place where overtaking vehicles was allowed. There was no evidence that he was overtaking while there were oncoming traffic or when the road was not clear. Therefore, this court is unable to be satisfied that the accused was driving recklessly or has created a dangerous situation through the manner of his driving.

**14 Conclusion**

**14.1** Therefore, this court is satisfied that the prosecution has not managed to prove **beyond reasonable doubt** that the accused has committed the offence of **Dangerous Driving** contrary to **Section 98** of Land Transport Act 35 of 1998.

**14.2** Accordingly, I find the accused not guilty for the offence of **Dangerous Driving** and acquit him for the same.

**15** 28 days to appeal.

**DATED at Nadi on 29<sup>th</sup> day of November 2022.**

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**Nilmini Ferdinandez**  
**RESIDENT MAGISTRATE**