

IN THE MAGISTRATE'S COURT AT LAUTOKA

Traffic Case No 2725 of 2013

BETWEEN

THE STATE

AND

PRAVEEN KUMAR BALA

RULING ON NO CASE TO ANSWER

1. The Accused in this case is charged with one count of dangerous driving occasioning death contrary to Section 97(2)(c),5(e),(8) and 114 of the Land Transport Act No 35 of 1998. The particulars of the offence are as follows;

Praveen Kumar Bala on the 07th day of November 2013 at Lautoka in the Western Division drove a motor vehicle registration number FL 740, on Kings Road Teidamu, Lautoka in a manner dangerous to another person, involved in an impact with a pedestrian namely Puna Chand that occasioned the death of the said Puna Chand.

2. The case was taken up for hearing on the 05th July 2016 and the Prosecution concluded its case on the 6th of July 2016. The Prosecution called 5 witnesses

and after the Prosecution case was closed the Defence sought time to file written submissions on no case to answer. Both parties filed their written submissions on the 15th July and this is the ruling on no case to answer.

3. Section 178 of the Criminal Procedure Decree states as follows;

“If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused.”

4. Therefore it appears that once the Prosecution closes its case the Court has to decide whether the Prosecution has made out a case against the Accused. In order to ascertain this I will first analyse the evidence adduced by the Prosecution.

Evidence of the Prosecution witness 1, Arun Wati

5. Arun Wati is the wife of the deceased. She said that on the 07th November 2013 her husband, Puna Chand called her on her phone to come to the road to collect groceries. She said that “I locked my house and I ran to the road.” She said that it takes about 5-10 minutes to go to the road. She further said that “I was on the opposite of the road and saw everything clearly.”
6. The witness further said that “the bus left. There was a vehicle coming from the Ba side and overtook and hit my husband on his hip.” That was the only piece of evidence that the witness gave regarding how the accident happened.
7. The witness also said that “he flew up and fell on the gravel with his head downwards and he started bleeding from his ears.” She said that she quickly went and called her neighbour and then crossed the road and lifted his head a bit. She said that “then I just lifted him up and I just quickly turned my head

- and noted the vehicle registration number.” However the witness did not mention the number of the vehicle.
8. The witness said that one driver came and helped her to take her husband to the hospital. She said that she lifted the husband with the help of one of her neighbours, the driver named Ami Chand and a Fijian man. She further said that she did not talk to any Police Officer at the hospital and no Police Officer met her at the hospital.
 9. The witness, Arun Wati was cross examined at length by the Defence. During the cross examination the witness said that her neighbour resides near the main road and now he is passed away. She said that his name is “Rajesh”. However later she again said that Rajesh is alive and it was his father that has passed away. But again during the cross examination she said that the name of the neighbour who came to help was “Ravin”.
 10. During the cross examination the witness said that her husband got hit on his hips. She said that her husband was on the side of the road and the point of impact was not inside the road itself.
 11. The Defence inquired about the presence of any security officers at the scene. But she denied that there were security officers from “Matrix Security” at the scene. She said that it was only Ami Chand who stopped the vehicle. She said that Ami Chand came out of his vehicle and helped to put her husband in the back seat.
 12. Although the witness did not give any evidence in respect of the identification of the vehicle during examination in chief, when she was shown a photograph marked as D 2 during cross examination, she gave evidence in the following manner;

- Q: And do you recognize the car that is parked in that photograph the one not on the track but one that is in the middle of the road the carriage way itself. Do you recognize that vehicle?
- A: That is the vehicle that had the accident.

13. During the cross examination the witness once said that she was on her drive way when the accident happened. But soon after, she again said that she was near the FEA post on the main road. She said that the accident happened right across the road from where she was standing. However during the cross examination she admitted that the accident happened further away from where she was standing when the D 2 photograph was shown to her.

14. The witness was not re-examined by the Prosecution.

Evidence of the prosecution witness 2, Ami Chand

15. The prosecution witness, Ami Chand said that on the 07th November 2013 at around 2.30 pm he was coming to Lautoka from Ba in his car. He said that he saw an accident near Teidamu roll. He gave evidence in the following manner;

“I saw a car parked on the right side and when I came near and saw a man lying in front. I went about 30 meters in front I stopped my vehicle. I wanted to come out and see what was happening. By the time I could get out of the car and come out. When I came on that side there was nobody else except for a car which was parked on the road. But by the time I was going to come out of my vehicle I saw a boy saying to reverse my car at the back. When I reversed my vehicle at the back and on the same time a security vehicle which was travelling from Lautoka and it was going towards Ba. And they stopped and they lifted the injured person and they put him in the back of my car and

the lady came and sat in front. I did not see her at the same time but maybe she was coming on the road. She came and sat in the front seat of the vehicle and she was crying loudly and then I quieted her. I told her that the man was still breathing and you be quiet and I am going and I brought them to the hospital and I left them there and I went to my work.”

16. Further the witness said that when he first saw the scene there was only one car and no one was standing near the accident scene. He said that when he was reversing his vehicle a van came from Lautoka side with security officers. The witness said that he didn't get down from the car and was sitting in the driver's seat. He said that the security guards lifted the man and put him on his back seat.
17. The witness said that then a lady came and sat in front. He said that “I didn't see her because I was looking at the accident side. I didn't see the left side who was coming down or who was there. I only concentrated on the accident side.”
18. He said that the vehicle which was parked at the accident scene was “a light brown sort of a cream colour”. The Prosecution showed the picture marked as D 2 to the witness without laying any foundation for identification of the vehicle and asked the following question;
- Q: Now witness have a look at this photograph. Mr Chand can you confirm is that the same vehicle that you saw on that particular day?
- A: Yes
19. It should be noted that the witness described that the vehicle is “light brown sort of cream colour” one, and recognized a white vehicle. He was merely

shown a photograph, without getting any explanation as to how a different colour vehicle was recognized as opposed to the "light brown sort of cream colour" vehicle that he mentioned. At least the witness was not asked about the registration number, model or make of the vehicle.

20. Be that as it may, the witness said that he did not see anyone inside the vehicle which was parked at the scene.

21. During the cross examination the witness said that he was not an eye witness to the incident. He said that the man was lying on the road and the security persons put the man into his car. Further he confirmed that there was no woman at the scene at that moment. Also he said that he was at the steering and the security men were in their uniforms.

Evidence of Prosecution witness 3, Snil Chand

22. Snil Chand gave evidence that the deceased, Puna Chand is his father. He said that he identified the body of the deceased at the Lautoka hospital on the 08th November 2013. The witness was not cross examined by the Defence.

Evidence of Prosecution witness 4, Sgt 1959 Rajendra Kumar

23. Sgt Rajendra said that on the 07th November 2013 he received instructions to attend to an accident report at Kings Road Teidamu, Lautoka. He said that he was the Investigating Officer of the said accident. The witness said that he went to Lautoka hospital to see the victim and he saw some people unloading the victim. He further gave evidence in the following manner;

"after I arrived at the hospital I met deceased's wife. She was crying at that time. I just asked her how the accident happened. She said I don't

know. Then from there I went to the scene. I asked her how the accident happened. She said I don't know then I went to the scene where the accident happened."

24. The witness said that upon arriving at the scene he saw the vehicle which was involved in the accident was parked on the road and the driver was there and some other people were also standing on the road side. The witness said the driver was "Mr Bala". He identified the Accused person who was at the dock as "Mr Bala".
25. The witness said that he prepared a rough sketch plan. When the document was shown to the witness he identified it as his rough sketch plan. However the Defence objected it to be marked as the copy of the rough sketch plan which was disclosed to the Defence was different to the sketch plan which was intended to be marked by the Prosecution. Upon perusal of the document the Court has observed that there were some additions in the document which was identified by the witness. The prosecution admitted that the alterations have been made after the disclosures were served to the Defence.
26. However the Prosecution later agreed with the Defence to tender a copy of a rough sketch plan identical to what was disclosed to the Defence instead of the altered sketch. However, since the existence of a tampered rough sketch plan came into light, the evidential value of the sketch plan became questionable.
27. Be that as it may, Sgt Rejend further gave evidence that the registration number of the vehicle is FL 740. He said that there was a 0.5 meter gap between the vehicle and the point of impact as per his sketch plan. He said that the point of impact is where the body was. Later when he was asked again the witness said that the point of impact is where the deceased was bumped. He said that he concluded the point of impact as there was mud

fallen from the car and some blood on that spot. He said that the reason for the 0.5 meter gap between the vehicle and the point of impact may be that the car was reversed later. Further there was no evidence of brake marks.

28. The witness tendered a few photographs as P 2. It was transpired that the pictures were not taken by this witness but by one Sgt Rusila. By that time the defence had already marked one of those pictures as D 1. The Defence did not object for the pictures to be marked through Sgt Rajend. However the prosecution did not lead sufficient evidence to describe the pictures that were marked. Although at a prior stage it was mentioned in evidence that there were scattered groceries and mud fallen from the car were there on the road, none of those things were brought to the attention of the Court by describing those pictures. It was not clear as to what the Prosecution intended to prove by tendering those pictures as evidence without describing them.

29. The Prosecution witness, Sgt Rajend further said that the body of the deceased had landed on the grass patch after the impact according to his observations. He said that there was blood in the place where the body had landed too.

30. During the cross examination the witness said that the accident had been reported through phone. He said that when he went to the hospital he met Arun Wati. The witness said that when he asked about the accident Arun Wati told him that at the time of the accident she was at home and she doesn't know how the accident happened. Further the witness gave evidence on this point as follows during the cross examination;

Q: When you met Arun Wati at the hospital and she said when you asked her whether she had seen the incident then she said no. did it surprise you that Arun Wati then gave a statement where

she claims that she was standing across the road and waiting for her husband ?

A: After I read her statement then I saw altogether different statement what she told me and what giving in writing.

Q: As the Investigating officer in this matter did it in fact occur to you that here we have a person who claims to be an eye witness but she had actually told you as a senior police officer that she didn't see the incident and yet she goes and give this statement subsequently didn't it occur to you that a man is going to be charged for the serious offence and yet your main witness actually had given you a different version ? Did it concern you ?

A: I just attended the report. I just did the police duties what I supposed to do.

Q: You didn't make the decision to charge ?

A: No

Q: Do you know who made the decision to charge this ?

A: Our senior officer.

31. In response to a question put by the Defence Sgt Rajend said that although he came to know about the Matrix security persons he didn't take any action to find them to record their statements. He merely said that when he came to the scene the security officers have left the scene. The Investigating Officer did not deny the fact that there were security officers from Matirx Security present soon after the accident although he has failed to record their statements.

32. In contrary to what Sgt Rajend described as the point of impact he later said during the cross examination that the point of impact is where the deceased actually fell. He confirmed it as follows;

Q: Isn't it more likely that the point where the car stopped is where the car bumped him and where you said the point of impact whether the gentleman actually fell?

A: Yes

Q: That is the more likely scenario, isn't it ?

A: Yes

33. When the witness was asked about whether he had any evidence to conclude that the body landed 6 meters away according to his sketch plan, the witness answered in the following manner;

"Where I wrote the body landed when I saw the blood on the ground, people were standing on the road side I asked them why the blood is here they said the security officers were on there, they lifted the body, this is from the point of impact and they put on the road side."

Q: That is very important explanation; the people said that the security officers lifted him from the road and took him to that point isn't it correct?

A: Yes sir.

Q: And if that was the case, officer then your diagram is in fact not correct when it says that 'blood where body landed' that is not where body landed, it is the place where security officers carried him?

A: Yes sir.

34. Although the Prosecution did not lead any evidence regarding any damages caused to the vehicle in order to establish that there was an impact, during the cross examination Sgt Rajend was asked by the Defence about the damages caused to the vehicle. The witness said that there was "one small dent on bonnet, on the front part of the bonnet one small dent."

35. Further the witness gave evidence during cross examination as follows;

Q: Officer in your 27 years in the force have you attended many vehicle accidents?

A: Yes sir.

Q: Have you seen accident where people; what happens to cars, bonnets and all when people are driving at speed and hit someone?

A: Yes the vehicle will get big damage.

Q: When you see accident when people hit at speed?

A: Vehicle will sustain big damages.

Q: Having look at this particular vehicle was there would you confirm that there was absolutely minimal damage to the vehicle?

A: Yes

Q: Can I take you to the document that has been marked as P2 the photographs and in particular look at photograph No 5 you see there is a shadow of a tree on the car in the front do you see any visible damage on this car ?

A: looking at the diagram you can't see any visible damage.

36. During the cross examination the Investigating Officer said that he did not see the Accused driving. However during re-examination he said that the Accused was standing near the car and when he asked him who was the driver, the Accused had told to him that he was the driver.

Evidence of Prosecution witness, 5 Dr Ramaswamy Ponnu Swamy Gounder

37. The Prosecution called Dr Gounder via Skype as the Defence requested the expert witness to be called for cross examination. The witness said that he

conducted the post mortem of Puna Chand on the 8th November 2013 at 8.05 hours. The witness said that there was a sutured laceration in the occipital area on the right side measuring 2.8 cm in dimension. He said that in external examination there were multiple fractures of the posterior part of the parietal bones and occipital bones. Further he said that there were bilateral subarachnoid haemorrhages over the parietal and occipital areas of the brain. The witness also said that on slicing of the brain there was mild haemorrhage in the lateral ventricles of the brain bilaterally. Further he said that there were no other injuries found on the body.

38. The witness further said during the examination in chief that "if he was hit by a vehicle in great force, on great impact he would have sustained injuries in the other part of the body particularly the lower limb and if was thrown out he would have fallen and sustained other injuries to the body as well. Wounds like scratches and lacerations." However the doctor confirmed that there were no other injuries apart from the head injury that he has described.
39. Further the witness said that if the impact was severe he would have received more injuries. The witness reiterated that the impact was not severe. The prosecution tendered the Post Mortem report as P3.
40. During the cross examination Dr Gounder said that the laceration is caused from a fall and the fractures are caused due to a mild fall. Further the witness said that the deceased man have fallen down and sustained injuries. He said that, had the Police Officer not told him that it was a motor traffic accident his clinical assessment of the injury would have been other accidents and not necessarily motor vehicle accident. He confirmed that he would have not put it as motor vehicle accident if the Police officer did not tell him that.

41. The witness confirmed during the cross examination that there was no evidence of severe impact. He did not exclude that the injuries were caused due to an impact of a motor traffic accident until he was re-examined.
42. But during re-examination the witness said that if he was hit by a vehicle he would have received more injuries. Finally the witness said that the injuries are not consistent with a motor vehicle accident as there were no other injuries.

Law and analysis of evidence

43. I have considered the written submissions filed by both parties. It appears that the Defence is to some extent misconceived about the law relating to no case to answer. It should be noted for the purposes of clarity that at this stage the Court is not expected to decide whether the Prosecution has proved the elements of the offence beyond reasonable doubt. There is no such requirement. Apart from discussing about proof beyond reasonable doubt, the written submissions talk about two offences under the Crimes Decree which has no relevance to this case.
44. Be that as it may, as it was clearly enunciated in the decision in *Fiji Independent Commission Against Corruption V Kumar* [2010] FJHC 313; HAC 181.2008 (13 August 2010) the Court is duty bound to determine whether the Prosecution has made out a case against an Accused person even if an Accused makes shoddy submissions or no submissions at all on no case to answer.
45. I will now briefly discuss the law relating to no case to answer. As it was mentioned at the very outset Section 178 of the Criminal procedure Decree provides for the court to ascertain at the close of the Prosecution case whether the Prosecution has made out a case sufficiently for the Accused to reply. If

the Court is of the opinion that the Prosecution has failed to do so the Court must acquit the Accused. If not the Court must proceed to explain the charge to the Accused and must proceed as provided by Section 179 of the Criminal procedure Decree.

46. The criteria, which the Court must consider evidence in ascertaining whether a case is made against the Accused has been discussed in a long line of cases and the law is well settled in Fiji. Basically the Courts in Fiji have adopted two tests to ascertain this. Justice Nazhat Shameem in *Abdul Gani Sahib V The sate* discussed the tests that are applicable in considering whether there is a no case to answer. Accordingly the court has to consider;

- a. Firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence and;
- b. Secondly, whether on the prosecution case, taken at its highest, a reasonable tribunal could convict.

47. Before I proceed to analyse the evidence based on the above tests I will reproduce the Sections under which the Accused is charged with for convenience. The Accused is charged for an offence contrary to Section 97(2)(c), 5(e),8 and 114 of the Land Transport Act.

48. Section 97(2)(c) of the Land Transport Act reads as follows;

“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 in a manner dangerous to another person or persons.”

49. Section 97(5) (e) of the Land Transport Act reads as for the purposes of this section the circumstances in which a vehicle is involved in an impact occasioning the death of a person include if the death is occasioned through an impact with anything on or attached to the vehicle.

50. In view of the offence that the Accused is charged with, there must be relevant and admissible evidence adduced in respect of the following elements implicating the Accused;

- a) The identity of the Accused
- b) The Accused drove a vehicle
- c) The vehicle was driven in a manner dangerous to other persons
- d) The vehicle/anything on or attached to the vehicle involved in an impact
- e) The impact occasioned death of another person

51. The date time and the place of the alleged accident were undisputed. Therefore now I will proceed to consider whether the Prosecution has adduced relevant and admissible evidence in respect of each element.

Identity of the Accused

52. Only the Prosecution witness, 4 Sgt Rajend identified the Accused. He said when he arrived at the scene he saw the Accused standing near the vehicle which was parked there. He described that person as Mr. Bala. The witness identified the Accused as Mr. Bala.

The Accused drove the vehicle

53. There was no dispute that the registration number of the vehicle involved in the alleged incident was FL 740. But none of the witnesses said that they have seen the Accused driving the vehicle.
54. The Prosecution witness 4, Sgt Rajend said that "I asked him who was the driver and he confirmed that he was the driver." However it should be noted that this admission manifestly amounts to a confession to a police officer as it was disclosed by the Accused upon questioning by a police officer without any right being given to the Accused person. Thus I decide that it cannot be considered as a piece of admissible evidence which implicates the Accused in respect of the element that the Accused drove the vehicle.
55. Further there was no evidence as to who was the registered owner of the vehicle. Sgt Rajend did not give evidence on whether he arrested the Accused, whether the Accused was charged, or whether a statement was recorded from the Accused. Therefore the Prosecution has failed to adduce any evidence in respect of this element.

The vehicle was driven in a manner dangerous to other persons

56. What is meant by dangerous manner has been discussed in *State V Ganesh* [2009] FJHC 207; HAM 030.2008 (17 September 2009) by Justice Gounder. In that case His Lordship has endorsed that the Courts in Fiji still adopts the decision in *R V Gosney* [1971] 3 All ER 220 where it says that "In order to justify a conviction there must be not only a situation which viewed objectively was dangerous but there must also have been some fault on the part of the driver causing the situation."

57. State V Ganesh (Supra) is a case where the State has appealed against an acquittal following submissions on no case to answer. The Respondent in that case was also charged for occasioning death by dangerous driving contrary to Section 97(2)(c) of the Land Transport Act. In that case there was no dispute that the Accused drove a motor vehicle and even caused death of a person due to the impact. The only issue was whether the Accused drove the vehicle in a dangerous manner. The Court upheld the decision of the Magistrate stating that "there was no evidence led by the Prosecution to prove that there was fault on the part of the Respondent which created a dangerous situation to others on the road. In this regard the learned Magistrate was correct in law and fact to find that there was no evidence of an essential element of the charged offence."
58. In view of the above decision I have considered whether the Prosecution has adduced admissible and relevant evidence in respect of the element of driving in a dangerous manner. None of the Prosecution witness gave evidence about the manner in which the vehicle was driven. The Prosecution witness, 1 Arun Wati merely said "there was a vehicle coming from Ba side and overtook and hit my husband on hip". She did not describe which vehicle overtook what. At least the Prosecution did not ask as to how the vehicle hit her husband. The witness did not utter a single word about the speed of the vehicle, the side of the road that the accident happened, the manner in which the vehicle came or how exactly it happened. The Court cannot presume or speculate things. Besides, even if it is presumed that the alleged accident occurred when the vehicle was overtaking another vehicle, the Court cannot conclude that it was a dangerous act as overtaking is not an illegal or dangerous act without evidence to the contrary.
59. The Prosecution witness 4, Sgt Rajend gave evidence that the vehicle had only a small dent on the bonnet. He further said that if the vehicle was travelling at a high speed the vehicle would have suffered more damages. The witness

confirmed that the vehicle has suffered minimal damages. His evidence was also suggestive of the fact that the vehicle was not driven at a high speed.

60. The prosecution witness 5, Dr Gounder while giving evidence reiterated that the injuries were not caused due to a severe impact. He said that it could be from a mild fall. He said that if there was a severe impact the deceased would have suffered more injuries. His evidence too was suggestive of the fact that there was no severe impact.
61. The prosecution failed to adduce any direct or indirect evidence to establish that the vehicle was driven in a dangerous manner. Further there was no evidence whatsoever led in respect of the fault of the driver which is the most crucial element in ascertaining whether the vehicle was driven in a dangerous manner. Therefore I am not satisfied that the Prosecution adduced any relevant or admissible evidence implicating the Accused in respect of this element.

The vehicle/anything on or attached to the vehicle involved in an impact

62. The Prosecution witness 4, Sgt Rajend gave evidence that there was mud fallen off the vehicle at the point of impact and there was a small dent on the bonnet of the vehicle. Further the Prosecution witness 1, Arun Wati pointed out the point of impact on the vehicle when she was shown the photograph marked as D 2 during cross examination by the Defence. Further the Prosecution witness 1, Arun Wati said that her husband's hip was hit by the vehicle. Therefore it can be noted that there was some evidence in respect of this element.

The impact occasioned death of another person

63. The prosecution witness 5, Dr Gounder gave evidence regarding the Post mortem. He said that the cause of death was subarachnoid haemorrhage. However he said that in a motor traffic accident depending on the severity of the impact the deceased could get multiple injuries. He said during the cross examination that the injuries suffered by the deceased in this case need not necessarily have caused by a motor traffic accident. Initially he did not exclude the fact that the injuries could have been caused due to an impact with a vehicle and he maintained the position till the end of the cross examination.
64. However during re-examination of the witness he positively confirmed that the injuries are not consistent with a motor vehicle accident. He said that if the deceased was hit by a vehicle he would have received more injuries. He said that he mentioned about a motor vehicle accident in the Post Mortem Report only because he was told by the Police Officer.
65. The prosecution did not call any other expert witness to give evidence on cause of death.
66. Therefore the prosecution failed to lead any relevant and admissible evidence in respect of the element that the impact with the vehicle occasioned the death.

Conclusion

67. In the circumstances it is clearly evident that the Prosecution has not adduced relevant and admissible evidence implicating the Accused firstly, in respect of the element that it was the Accused who drove the vehicle at the time of the accident. Secondly, there was no admissible or relevant evidence that the

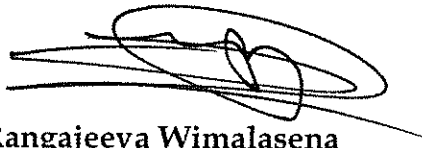
- Accused drove the vehicle in a dangerous manner. Thirdly, there was no evidence adduced that the impact with the vehicle occasioned the death.
68. Thus it is clearly discernible that the evidence adduced by the Prosecution is not sufficient to pass the first test to decide whether the Prosecution has made out a case.
69. In fact the Court need not consider whether the Prosecution has led evidence to pass the second test once the first test is failed. Yet I will briefly consider whether the evidence adduced by the Prosecution could pass the second test too in the interest of justice. As it was summarized above, the Prosecution witness 2, Ami Chand and the Prosecution witness 4, Sgt Rajend have extensively contradicted the evidence of the Prosecution witness, Arun Wati. Further it was brought to the attention of the Court that Arun Wati has made inconsistent statement to the Police in regards to many salient points although she refused that she stated those things to the Police. She further said in response to the questions put to her that her husband called her at 2.25 pm to come to the road and the accident happened at 2.30pm. However when she was confronted that she has stated in her statement that it was at 2 pm when she was called, she said that Police never asked about the time. She said it was one "Rajend" who wrote the statement. However later she admitted that it was another lady officer named "Saleshni" who recorded her statement.
70. Secondly, she changed her evidence in several instances even during when she gave evidence in Court. Most importantly the Prosecution witness 2, Ami Chand positively confirmed that Arun Wati came to the scene later and he contradicted her evidence. As per Arun Wati's evidence it was not the security officers who loaded her husband into Ami Chand's car. In contrary to what she said Ami Chand confirmed that he did not get down from the car to load the injured person into his car.

71. I have observed the demeanour of the Prosecution witness 2, Ami Chand. I am more convinced to believe his evidence over Arun Wati's evidence as she gave evidence in an inconsistent manner without much confidence.
72. The Investigating Officer, who is the Prosecution witness 5 further contradicted Arun Wati's evidence by saying that she told him soon after the incident that she did not see what has happened. However his evidence too was inconsistent as he contradicted his own evidence and the sketch plan during cross examination. It should be noted that having different rough sketch plans, although with minor changes greatly diminishes the reliability of such evidence. The Court has to attach sufficient weight to such tampering of evidence in evaluating the reliability of such evidence. It appeared that the original rough sketch plan has been tampered with for reasons best known to the witness and the Prosecution did not make any attempt to clear the doubts created regarding the sketch plan as a result of the alterations made at a subsequent stage. It appears that the Investigating Officer has contradicted his own sketch plan by giving evidence in the above manner. Although he admitted that his sketch plan was incorrect he did not give any explanation as to why he drew it in that manner if he had evidence, otherwise. At least the Prosecution did not re-examine the witness in this regard to explain as to why the witness went back on the findings of his own investigation. It should be noted that the Investigating officer gave very contradictory, vague and unreliable evidence in respect of his own sketch plan.
73. Finally, the Prosecution witness 5, Dr Gounder too did not give any evidence to buttress the Prosecution case. Although Arun Wati said that her husband got hit on his hip and he flew up and landed on the gravel Dr Gounder confirmed that there were no other injuries whatsoever on the hip area or on any other part of the body. Further the witness gradually changed his evidence to the point where he finally excluded that the death was caused due to an impact of a motor vehicle accident.

74. It should be noted that even if the Prosecution case is taken at its highest no reasonable Court could convict the Accused as the evidence of the witnesses were manifestly unreliable and was discredited by cross examination.

75. In the circumstances I decide that the Prosecution has failed to make out a case against the Accused sufficiently to require the Accused to make a defence. Accordingly I dismiss the charge and acquit the Accused from the charge of dangerous driving occasioning death.

28 days to appeal



Rangajeeva Wimalasena

Resident Magistrate

Lautoka



22.07.2016