

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 03/2008**

**[2013] SCSC**

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**THE REPUBLIC**

versus

**CHRISTOPHER GOBINE**

Accused

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Heard: 29/7/2009, 28/09/2010, 09/02/2011, 16/08/2012, 29/10/2012, 04/04/2013

Counsel: Mr. Vipin Benjamin, Assistant Principal State Counsel for the Republic  
Mr. Basil Hoareau Attorney at Law for the accused

Delivered: 8 November 2013

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**JUDGMENT**

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**Burhan J**

[1] The accused in this case Christopher Gobine has been charged as follows;

Count 1

Statement of Offence

Causing death by dangerous driving, contrary to Section 25 of the Road Transport Act.

The particulars of offence are that Christopher Gobine on 30th May 2007, at La Misere, Mahe caused the death of Nadege Marie Therese Francoise, by driving a motor vehicle No S 9775 on the public road in a manner which is dangerous to the public having regards to all the circumstances of the case.

Count 2

Statement of offence

Negligent Driving contrary to Section 24 (1) (b) and punishable under Section 24(2) of the Road Transport Act

The particulars of offence are that Christopher Gobine on 30<sup>th</sup> May 2007, at La Misere, Mahe drove a motor vehicle No S 9775 on the public road negligently having regard to all the circumstances of the case.

- [2] The accused denied the charges. Prosecution witness Jose Lalanne stated that on the 30<sup>th</sup> of May 2007 he had been driving along La Misere road around 2.15 in the afternoon when he noticed a white pickup carrying some fragile material in front of him and he had also noticed a black pick up following behind him. Near the residence of one Egbert Marday near the vicinity of the Vice President's (Mr. Belmont's house) the black pick up had overtaken his vehicle and the vehicle in front. Witness stated he had been travelling very slowly at the time as the white pick up in front of him too had been travelling slowly as it was carrying some fragile material.
- [3] Witness further stated that it was raining and the road was wet at that time. Witness stated the overtaking was normal but as the vehicle reached the small bend in the small plateau area the driver had lost control of the vehicle and it had spun and the back of his vehicle had hit a lady who was standing at a bus stop on the other side of the road. The lady had got flung onto a ditch. Thereafter the vehicle of the accused had gone into the terrace by some dustbins on the other side of the road.
- [4] He further stated that the three vehicles were going in the direction of Grand Anse and were on the left side of the road while the lady was standing on the right side waiting for a bus to go to town in the opposite direction.

- [5] Witness identified the accused as the driver of the black pick up that had hit the victim in this case. The accused had told him that his brakes had failed and had been distressed because of what had happened and had sat down on the grass verge crying. He further stated he had noticed a pick up coming in the opposite direction to which they were travelling which stopped on seeing the vehicle of the accused which was overtaking and which was on his lane. Witness Lalanne stated he was travelling very slow as there was a pick up in front and he had an intention to visit Mr. Egbert Marday whose house it appears was situated in close proximity to the scene of the accident.
- [6] Under cross examination witness stated that the road was straight and a slight curve but the area beyond the curve where the lady was standing could be seen. The accused had followed the normal procedure in overtaking but he had decided to overtake two vehicles his vehicle and the white pickup which was also travelling very slowly about 6 metres in front of him. He stated that there was a solid white line in the middle of the road. He further stated that even though there was a bend you could see about 30 metres ahead and at the time the accused committed himself to overtake the road was clear.
- [7] Mr. Marengo another witness called by the prosecution affirmed the fact that the accident had occurred in front of Mr. Belmont's house. He stated he was in the vehicle which was going in the opposite direction to which the accused was driving. He stated the accused had overtaken two vehicles when he realized that if he kept going he would crash on their vehicle and therefore the accused had braked and the back of his vehicle had skidded (pg 20 of the proceedings of 28<sup>th</sup> September 2010). The back of the vehicle had then hit the lady who was standing at the bus stand. Under cross examination he denied that because he was seated in the pickup he could not see what was happening in front.
- [8] Witness Dr. Afaq stated he had examined a patient by the name of Marie Theresa Francis on the 30<sup>th</sup> day of May 2007. She had been the victim of a road traffic accident but all attempts by them to revive her had proved futile and at 3.40 p.m. she was declared dead. Her post mortem report was marked as P5. He stated the stab wounds on the lungs were as a result of being pierced by the end of a fractured rib.
- [9] Witness Carol Larue stated that on the 30<sup>th</sup> of May 2007 she had proceeded to investigate the scene of an accident at La Misere with Sergeant Bell. She identified the photographs

produced by S.I. Tirant in respect of the scene of the accident, the vehicle driven by the accused and deceased victim. She further stated that the breathalyzer test read 0 and that she had served the accused with the notice of intended prosecution.

[10] Witness Jeffrey Henrietta who was driving the vehicle going in the opposite direction in his evidence corroborated the fact that the accused had overtaken two vehicles and he had to stop his vehicle to avoid the vehicle of the accused. Witness further identified photographs taken at the scene of the accident. He too stated both the vehicles the accused overtook were travelling slowly. He admitted the accused had not been overtaking in a reckless and dangerous manner or fast but had lost control of his vehicle due to the slippery condition of the road as it was raining.

[11] The evidence of S.I. Bell was that he had conducted investigations into the accident that occurred on the 30<sup>th</sup> of May 2007. He described the damage on the vehicle of the accused bearing registration number S9775. He identified the victim as Nadeige Marie Therese Francoise and identified the notice of intended prosecution. He stated that the sketch plan had been misplaced and could not be produced in court. The prosecution thereafter closed its case.

[12] The accused in defence chose his right to be silent. Both parties thereafter made submissions.

[13] I have considered the evidence of the prosecution. It is apparent from the evidence before court that the accident occurred when the accused was attempting to overtake two vehicles that had been in front of him. The evidence of the prosecution witnesses clearly indicate that both vehicles were going very slowly at the time the accused overtook them. The evidence of prosecution witness Lalanne is that he was following another vehicle which was a few metres ahead very slowly and the vehicle in front of him was also going slowly as it was carrying fragile material when he noticed the accused overtaking his vehicle.

[14] It could be gathered from the evidence of witness Lalanne that the overtaking was normal and the accused had lost control of his vehicle when he was negotiating the bend as it was raining and the road was a bit slippery. It is also apparent from the evidence of this

witness that at the time the accused committed himself to overtake, the road was clear and the road was visible for a distance of about 30 to 50 metres and there was a slight curve ahead and not a bend.

[15] Witness Henrietta who was driving the vehicle coming in the opposite direction stated he had stopped his vehicle on seeing the vehicle of the accused coming towards him. It is borne out in his evidence as well that the accused had lost control of his vehicle as the road was slippery as the rain was falling and that the accused was not driving recklessly or dangerously at the time he was overtaking, as the other vehicles were not travelling fast. In his evidence he states, he had not anticipated anything was going to happen until the vehicle of the accused went out of control due to the slippery conditions of the road.

[16] Having considered the evidence of the main prosecution witnesses it is clear that the evidence of the prosecution does not establish the fact that the accused was driving in either a reckless or dangerous manner with complete disregard to human life. It is apparent from the evidence of the prosecution that the accused had lost control of his vehicle not because he was driving recklessly or dangerously or at a high speed but had lost control due to the slippery conditions of the road. Therefore this court is satisfied that the prosecution has failed to establish the necessary elements of the charge contained in count 1.

[17] In the case of **R v Marzetti 1970 SLR 20** the accused was charged with manslaughter under section 195 of the Penal Code and dangerous driving under section 18(1) (b) and (2) of the Road Transport Act. Sauzier J held that the degree of negligence required to establish manslaughter, must go beyond a mere matter of compensation between subjects and show disregard for the life and safety of others as to amount to a crime against the state and conduct deserving of punishment and proceeded to find the accused not guilty of manslaughter. He also held that he was not satisfied that it had been proved that the accused was driving at a high and dangerous speed. He thereafter proceeded to consider whether the accused was guilty of negligent driving and stated:-

“The test, which is an objective test, may be stated as follows; Was the accused exercising that degree of care that a reasonable and prudent driver would exercise in the circumstances? If the circumstances show that the accused’s conduct was not inconsistent

with that of a reasonably prudent driver, the case has not been proved **Simpson v. Peat (1952) 2Q.B. 24.**”. Sauzier J, acting under section 159 (2) and 162 of the Criminal Procedure Code, proceeded to find the accused guilty of negligent driving contrary to section 18(1) (b) and (2) of the Road Transport Act and acquit him of the charge of manslaughter.

[18] In the case of **The Republic v Raymond Lebon 1980 SLR 1** Seaton CJ held:-

“Regarding the driving of the accused, in my view, the evidence appears to show not so much recklessness - which in the offence of causing death by reckless driving involves foresight of possible consequences and an indifference to risk- but negligence which may be defined as the doing of something which a person of ordinary care and skill under the circumstances would not do, or omitting to do something which a person under the circumstances would do.” The accused in the said case was acquitted of the charge of reckless driving and convicted on the count of negligent driving.

[19] Even though the evidence of the prosecution witnesses in this case does not indicate that the accused was driving in a reckless and dangerous manner and indicates that the accident happened as a result of the slippery conditions of the road, this court is of the view that a reasonable prudent man would not have overtaken at a place where there was a solid white line on the centre of the road. Further it is the view of this court however clear the road ahead would have been and however slowly the two vehicles in front were going, a reasonable prudent person would have not have attempted to overtake both vehicles at once. Therefore this court is satisfied that the accident occurred due to the accused not taking steps or failing to take steps a reasonable prudent person would and should have taken. For the aforementioned reasons this court is satisfied that the prosecution has proved all the elements of the charge of negligent driving set out in count 2 beyond reasonable doubt.

[20] The accused is therefore acquitted on the charge of causing death by dangerous driving contained in count 1 and found guilty of the charge of negligent driving set out in count 2 and convicted of same.

Signed, dated and delivered at Ile du Port on 8 November 2013

M Burhan  
**Judge of the Supreme Court**