IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO24/2011

[2017] SCSC 241

THE REPUBLIC

versus

JOHN MOREL
Accused

Heard: 14, 15 June, 2012, 20 Sept, 13 Oct, 2016, 1 and 12 Dec 2016.

Counsel: C Jayaraj, Principal State Counsel for the Republic
B Hoareau, E Chetty for the accused

Delivered: 17 March 2017

RULING

Dodin J

[1] The accused John Danny Morel stands charged as follows:

> ***Count 1***
> ***Statement of Offence***
> *Manslaughter contrary to Section 192 of the Penal Code and punishable under Section 195 of the Penal Code.*
>
> ***Particulars of Offence***
> *John Danny Morel of Mont Buxton, Mahe on the 1st May 2011 at Anse Faure, Mahe unlawfully killed another person namely Chantal Noel.*

Count 2 (alternative to Count 1)
Statement of Offence
Causing death by dangerous driving contrary to Section 25 of the Road Transport Act (Cap 206).

Particulars of Offence
John Danny Morel of Mont Buxton, Mahe on the 1st May 2011 at Anse Faure, Mahe caused the death of another person namely Chantal Noel by driving motor vehicle having registration number S12629 on the road recklessly or at a speed or in a manner which is dangerous to the public.

Count 3
Statement of Offence
Manslaughter contrary to Section 192 of the Penal Code and punishable under Section 195 of the Penal Code.

Particulars of Offence
John Danny Morel of Mont Buxton, Mahe on the 1st May 2011 at Anse Faure, Mahe unlawfully killed another person namely Gabriel Bibi.

Count 4 (alternative to Count 3)
Statement of Offence
Causing death by dangerous driving contrary to Section 24 of the Road Transport Act (Cap).

Particulars of Offence
John Danny Morel of Mont Buxton, Mahe on the 1st May 2011 at Anse Faure, Mahe, caused the death of another person namely Gabriel Bibi by driving motor vehicle having registration number S12629 on the road recklessly or at a speed or in a manner which is dangerous to the public.

Count 5
Statement of Offence
Driving a motor vehicle with alcohol concentration above the prescribed limit contrary to Regulation 3 (1) and 9 (1) (a) of the Road Transport (Sober Driving) Regulation 1995 of S.I 109 of 1995 punishable under Section 24 (2) of the Road Transport Act.

Particulars of Offence
John Danny Morel of Mont Buxton, Mahe on the 1st May 2011 at Anse Faure, Mahe drove motor vehicle having registration number S12629 while his breath contained a proportion of alcohol which exceeded the prescribed limit of 35 micrograms of alcohol per 100 millilitres of breath, his breath readings being 67 and 75 micrograms of alcohol per 100 millilitres.

Count 6

Statement of Offence
Driving a motor vehicle on a road recklessly or negligently or at a speed or in a manner dangerous to the public contrary to Section 24 (1) (b) of the Road Transport Act (Cap 206) and punishable under Section 24 (2) of the Road Transport Act.

Particulars of Offence
John Danny Morel of Mont Buxton, Mahe on the 1st May 2011 at Anse Faure, Mahe drove motor vehicle having registration number S12629 on a road recklessly or negligently or at a speed or in a manner dangerous to the public.

[2] At the close of the prosecution's case Learned counsel for the accused moved the Court to rule that the accused has no case to answer on for all counts and to acquit him of all charges against him.

[3] Learned counsel for the accused submitted that in order for the case to proceed any further the prosecution must establish a *prima facie* case. The Court must find that there is a case on the face of it. It is the Defence's contention that the prosecution has failed to meet this burden.

[4] Learned counsel submitted that it is incumbent on the prosecution to bring the required evidence to satisfy the requirement of the charge. Therefore, the Court must consider evidence before it and only if is satisfied will it require the accused to elect his position before conducting his defence. The Court in this instance ought to consider the various scenarios before it.

[5] Learned counsel submitted that crucially in this instance the Court was presented with evidence about the state of the vehicle the accused was in. Testing of the vehicle in the possession of the accused was done and report was provided. The clear indication given by the expert was that the car was badly damaged. The evidence suggests that the car was in a compromised state before the accident.

[6] Learned counsel submitted that if this is the case there is no way the accused could be expected to be in control of the car. The evidence further suggests that the brakes of the accused were completely immobile so there was no way to perform a brake test. So the brake test couple with r/h front upper arm joint, r/h front stabilizer bar link and r/h front

shock absorber lower bracket have seen damaged would indicate the accused could not have been in control of his car. Learned counsel submitted that under these circumstances the Court cannot accept the accused has a case to answer. There is sufficient doubt of the state of the car prior to the accident for the Court to surmise that the accused was not at fault for the accident. If the car is not responsive there cannot establish a *prima facie* case. No Court would convict the accused on the evidence adduced. On that basis Learned counsel moved the Court to hold that the accused has no case to answer and acquit the accused on all counts.

[7] Learned counsel for the Republic submitted that the evidence adduced by the prosecution more than established a *prima facie* case against the accused on all counts. Learned counsel submitted that the essential elements of manslaughter namely that two persons were unlawfully killed and the deaths were proved and that there was gross negligence on the part of the accused wherein he overloaded passengers for which the vehicle was not licensed and that the accused was under the influence of alcohol which was above the legal limit.

[8] Learned counsel submitted that apart from the elements that a person was unlawfully killed and that a death took place the prosecution proved the degree of negligence that is required to establish the offence of manslaughter is that such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment *(R vs Marzetti, 1970, SLR 20).* Moreover a person engages in performing an unlawful act which a sober and reasonable person would recognise as exposing another person to the risk of harm as a consequence is guilty of manslaughter. Further, there is nothing in the Penal Code that requires the unlawful act of the accused to be a direct cause or a substantial cause or a major cause or any other description of cause, or the death. As long as the unlawful act is a cause and something more than de minimis that is sufficient. The proper way is to consider the accused's unlawful act is a cause rather than the cause or a substantial cause of death. *(Republic vs Mothe, SSC 7/1999*).

[9] Learned counsel submitted that with reference to the charges, at this stage the Court would consider a submission of no case to answer may properly be upheld when there is no evidence to prove an essential element of the offence charged or when the evidence

for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it *(R vs Stiven, 1971, SLR 112).*

[10] The prosecution has proved with reference to all counts that it has established sufficient case to put the defendant to answer the charges. On manslaughter, there is evidence that the accused was driving the pickup van S12629 on 1st May 2011 with overloaded passengers in a vehicle that was not licensed to carry passengers; the accused was driving under the influence of alcohol. And the post mortem reports say that the two victims were passengers in the vehicle and they were killed in a road accident with serious internal injuries which were fatal. There is evidence to show that the accused was disregardful of others life to the extent of putting them in the risk of harming their lives.

[11] Learned counsel submitted that the charge of causing death by dangerous driving involves the element of indifference to risk and the death of the victims were caused by this indifference namely the overloading and driving under the influence of alcohol beyond the legal limit. The offence contrary to Sober Driving Regulation 3 (1) r/w 9 (1) (a) has been proved by the Breathalyzer test. Thus it is submitted by the prosecution that the accused has a case to answer.

[12] This Court has to determine the following issues so as to determine whether the accused has a case to answer;

i. Whether all the elements of the offences have been proved to the extent that a *prima facie* case has been established against the accused; and if so,

ii. when considering the evidence as a whole would it be sufficiently strong that a reasonable Court would convict on the same evidence.

[13] In determining whether the accused has a case to answer the Court must make an assessment of the evidence as a whole and not just focus on the credibility of individual witnesses or on evidential inconsistencies between the witnesses. Where the prosecution's evidence fails to address a particular element of the offence at all, then no conviction could possibly be reached and the Court should allow the application of no case to succeed. Where there is some evidence to show that the accused committed or must have committed the offence but for some reason such evidence seems unconvincing, the matter is better left for the end of the trial where the evidence would be

weighed and the Court would reach a verdict after assessing the witnesses' credibility together with all available evidence.

[14] In addition to the above, where the evidence available to be considered has been so compromised by the defence or by serious inconsistencies in the prosecution's testimonies, the Court is entitled to consider whether the evidence adduced taken as its highest would not properly secure a conviction. If the Court determines that in such a circumstance a conviction could not be secured, the submission of no case must also succeed.

[15] In the case of *R v Galbraith [1981] 1 WLR 1039* Lord Lane C.J. stated thus:

> *"How then should a judge approach a submission of 'no case'? If there has been no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury ... There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge."*

See also the cases of *Green v. R [1972] No 6, R v. Stiven [1971] No 9 and R v. Olsen [1973] No 5*.

[16] The prosecution led evidence from the following witnesses who testified as follows.

[17] Josette Dorothy Bibi testified that she attended a weeding on a Saturday 1st May 2011 and was returning in the morning with about 17 people in pickup going towards town. The accused John Morel was driving. The witness said she was at the back of the vehicle. At about 8 am she heard a noise under the vehicle as if something had broken in the vehicle

and that after the noise the vehicle changed direction. She felt pain and became unconscious.

[18] Ginette Ferley testified that on 1st May 2011 she was attending a wedding at Au Cap since evening of 30th. She left Au Cap at 7:30 am and was going towards Victoria. All of a sudden the vehicle lost control and the vehicle went off the road. She was at the backside of the vehicle. She was admitted to the hospital. She said the vehicle was being driven at normal speed.

[19] Ronald Ernesta testified that on 1st May 2011, he was in the truck at around 8:30 am. He was sitting in the backside. He left the wedding to go back to town. The vehicle suddenly went off the road and he fell out. The vehicle was going at normal speed and was not going fast. Before the vehicle went off the road and turned upside down he heard a noise as if something had broken under the vehicle but he did not know what had broken.

[20] Jean Morel, the father of the accused testified that on the 30th April 2011 his son asked for the twin cab pickup registration number S12629 to go to a wedding. The vehicle appeared to be in good condition. He heard about the accident that occurred on 1st May 2011 involving his son near Katiolo. He said when he went to Anse Aux Pins Police Station he saw the vehicle was damaged. The vehicle was a licensed vehicle but it was not specifically licensed to carry any specific number of passengers. It was generally used to carry workers to and from their places of work.

[21] Police Officer Kevin Daniel Isaac testified that on 1st May 2011 he was on duty from 7:00 hours and at about 10:45. He went to Seychelles Hospital to conduct breathalyzer test on one John Morel who was at the casualty with Dr. Mohammed. He explained the procedures of conducting breathalyzer. He conducted the breathalyzer in the room of the doctor and in the presence of Lance Corporal Beauchamp. He used a Lion Alco Meter. He asked the accused whether he had consumed any alcohol within the last 20 minutes. Then the first test was done 10:49 hours and the test no. was 0367 the reading was 67 mg/100 ml of breath. The second test was conducted 10:52 hours. The reading of that test no. 0368 was 75 mg / 100 ml of breath. The result was shown to Mr. Morel for his signature after the witness signed and in the presence of Corporal. He said the printout

was taken from the machine and he showed the signatures. He then issued the Notice of Intent to prosecute the accused.

[22] PC Lindy Mellie produced the photographs as exhibits.

[23] Police Officer Jeffrey Jean Baptiste testified that he was on duty on 1st May 2011 at the Anse Aux Pins and at about 8:15 received a phone call about the accident. When arrived at the site he saw a vehicle S12629 had gone off the road and a lot of people were there. Some of those injured were taken to hospital. He learnt that the driver was one John Morel, the accused. He drew the rough sketch of the accident scene and showed it to the accused. Later he made a fair sketch plan. He noted that the side wall of the road was broken up to 3 meters due to the accident. He was present when the vehicle was removed to Anse Aux Pins Police Station

[24] Mr. Rousteau testified that on 18th May he was instructed to examine the vehicle and he saw vehicle S12629 which was damaged all around and which was a Mitsubishi pickup. He testified that the right side were all damaged. Right hand side rim had been damaged. He could not test the brake condition since the vehicle was completely immobile. Initially he was of the opinion that if the vehicle had been driven at normal speed, so much of damage could not have occurred but when he became aware that the evidence of the passengers was that the vehicle was not going fast and there was a noise immediately before the vehicle went off the road he agreed that there was a high likelihood that the driver lost control because something suddenly broke causing the driver to lose control of the vehicle.

[25] In cross-examination he agreed that if the upper arm, ball joint, and shock absorber broke and the vehicle was loaded, the driver would lose control of the vehicle which would have veered to the right. Furthermore if the driver had applied the brakes when these parts broke, the situation would become worse. He also agreed that these parts could break without the driver knowing that they were about to break as their position would not allow a person to see their state until they break. If the vehicle is loaded, there would definitely be a noise when these parts break.

[26] The evidence of the doctors and the pathologist report were not contested and it was not disputed that the death of Chantal Noel was a direct result of the accident whilst the death of Gabriel Bibi was precipitated by the accident although it might not have been the sole cause as he was suffering from other ailments.

[27] Having considered all the evidence adduced, it is obvious that the vehicle was not being driven at high speed; that the vehicle did not hit any obstacle which broke the mechanical parts before it veered off the road and hit a low wall after the parts had broken; that the driver could not have known that the ball joint, upper arm and shock absorber were about to break. It is also clear that the vehicle did not have a limit on the number of passengers it could carry as it was designed to carry such loads. The evidence clearly does not support the prosecution's view that the vehicle was overloaded with passengers or that it was not licensed to carry passengers. The vehicle was indeed loaded with passengers but there is no evidence which established that it was overloaded or could only carry a certain number of persons.

[28] The evidence therefore leads this Court to the one and only conclusion that there was a sudden unforeseeable mechanical failure which caused the driver to suddenly lose control of the vehicle which veered onto the right side of the road, hit a low wall and overturned off the road causing the death of Chantal Noel and also contributed to the cause of death of Gabriel Bibi.

[29] Consequently I am satisfied that the accused has no case to answer with respect to counts 1, 2, 3, 4 and 6. With regards to count 5, I find that there is sufficient evidence by means of breathalyser test records to establish a *prima facie* case that the accused was likely under the influence of alcohol when he was tested at the Seychelles Hospital despite the evidence showing that such influence did not affect his driving ability at the time he was driving.

[30] I therefore acquit the accused of counts 1, 2, 3, 4, and 6. I call on the accused to make his defence on count 5 accordingly.

Signed, dated and delivered at Ile du Port on 17 March 2017

G Dodin
Judge of the Supreme Court