

IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CO66/2013

[2017] SCSC

THE REPUBLIC

versus

STEPHANY EDMOND

Accused

Heard: 6,7,8,9 Oct 2014, 28 Jan, 4 Mar, 30 June , 2 Aug, 2016, 25 Oct,
21 Nov 2016, 16 Jan, 24th Feb, 24 Mar 2017.

Counsel: V. Benjamin, State Counsel for the Republic
K. B. Shah and A. Pouponeau for the accused

Delivered: 27 July 2017

JUDGMENT

Dodin J

[1] The accused, Stephany Edmond stands charged with the following counts:

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

Stephany Edmond of Point Larue, Mahe, on the 1st day of November 2013 at Mont Buxton Mahe, unlawfully killed another person namely Melissa Dugasse.

Count 2. (Alternative to count 1)

Statement of offence

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

Particulars of offence

Stephany Edmond of Point Larue, Mahe, on the 1st day of November, 2013 at Mont Buxton, Mahe caused the death of another person namely Melissa Dugasse by driving a motor vehicle with registration number S12185 on the road recklessly or in a manner which was dangerous to the public.

- [2] The facts of the case as set out by the prosecution through their witnesses, established that on the 1st November, 2013, just after 6:30 am, the accused was driving bus registration number S12185 from the bus terminal in Victoria to Mont Signal via Mont Buxton. According to Jerry Etienne and Miguel Kilindo who were passengers on the bus, there were few passengers on the bus. Arriving at Mont Buxton they pressed the stop bell and the driver stopped the bus several meters further uphill after the designated bus stop. Both witnesses observed an elderly lady now identified as the deceased Melissa Dugasse, coming towards the bus when they were getting off the bus. Another witness, Walter Jeannevole was also standing at the roadside waiting for the bus to town and witnessed the 2 young men Jerry Etienne and Miguel Kilindo, get off the bus and the elderly lady Melissa Dugasse approaching the bus from the right side, waving to and calling the driver. All 3 persons identified the elderly lady as the deceased, Melissa Dugasse.
- [3] Jerry Etienne testified that he had started walking downhill away from the bus when he heard Miguel Kilindo shout: "la bis i tap li" (the bus hit her). Walter Jeannevole witnessed the right side of the bus hit the deceased and called out "drayver arête" (driver stop) but the bus did not stop as it continued on its way up the hill. All 3 witnesses observed the deceased rolled under the bus coming to rest on the road further down the hill. They observed the injuries on her body which were not there when they had observed her approaching the bus. They called for help and remained at the scene until the deceased had been taken away by ambulance. Although there were other vehicles that came along, none approached to where the deceased was as the road was blocked.

- [4] According to Doctor Paresh Bhaira, the cause of death of the deceased was subarachnoid haematoma as a result of road traffic accident. The injuries of the deceased also included fractures of the 3rd, 4th and 6th left ribs and several external bruises, cuts and scratches which were also consistent with road traffic accident as was observed by the eyewitnesses.
- [5] All the witnesses testified that no other vehicle was present or passed by on the road from the time of the incident until the deceased had been removed by ambulance and taken to hospital.
- [6] At the close of the case for the prosecution, learned counsel for the accused moved the Court to rule on a motion of no case to answer. The Court ruled that the accused had a case to answer on both counts and called upon the accused to make his defence after reading him his constitutional and legal rights.
- [7] In his defence the accused testified that on the day in question he was the person driving the bus at the specific time to Dan Lenn and back. He had seen the deceased on the bus stop many times before on Sundays presumably dressed to go to church. He maintained like the other witnesses that the bus was not being driven at speed as it was an uphill drive. At the spot where the incident occurred, he testified that he did not stop on the bus stop as there was a car parked on the bus stop. He did witness Jerry Etienne and Miguel Kilindo get off the bus but he did not see, Melissa Dugasse at all on that day. On his way back from Dan Lenn, he was stopped and told that he had hit the deceased. He saw the body of a woman on the road and later realised it was the body of Melissa Dugasse but denied that it was his vehicle or him at the wheel of the vehicle that hit Melissa Dugasse.
- [8] Roch Vidot testified that he does consultancy work at SPTC training SPTC drivers in driving techniques. He also had the opportunity to visit the scene of the accident and his observations were that due to the structure of the bus in question and the vegetation along that stretch of road on the right, it is possible that the driver might not have seen the deceased approaching from the right of the bus. However he further agreed that drivers must take necessary precautions when moving off after stopping such as ensuring that passengers are no longer getting off or getting on the bus, check their mirrors and the blind spots for persons close to the bus before engaging the appropriate gear to move off.

- [9] Mr Vidot further ventured that in his opinion, a driver would not see a person approaching the bus from the right side due to the vegetation and the blind spot but if the driver had not checked his blind spot or the mirror then he would consider the driver to have been negligent as if he had done so, he would have seen the person.
- [10] Andy Noel, an information system expert provided the Court with the GPS details of movement of SPTC bus S12185 for the 1st November, 2013. Suffice to note that the details provided matched the evidence of the other eyewitnesses regarding the movement of the bus and the stops from Victoria to the scene of the accident and towards Dan Lenn.
- [11] Delton Lenclume testified that he was a passenger on the bus driven by the accused on the 1st November 2013. He was seated on the left side east of the bus in the 2nd row. At the scene of the incident the bus did not stop at the bus stop but at the old bus stop as there was a car parked at the new bus stop., He observed 2 men get off the bus, another man was sitting on a rock on the left side of the road and on the right he observed an old lady coming in the alleyway some 7 metres from the bus. When the bus was starting on its way he was looking to the front. In cross examination he stated that for the bus to continue on its way it had to overtake the vehicle parked ahead. He also stated that for the driver to have seen that lady, he would have had to turn his head around.
- [12] Both counsel made substantial submissions addressing the evidence and the law in support of their respective case with extensive references to decided cases both by Seychelles and foreign courts. The submissions can be summarised as follows.
- [13] Learned counsel for the Republic's main submission rests on two main factors:
- i. Whether the accused had taken all precautions before setting off from the stop; and
 - ii. Whether the accused had shown due regard for life and safety of others.
- [14] Learned counsel submitted that on the evidence adduced before the Court, both questions must be answered in the negative. Learned counsel submitted that the accused did not stop on a dedicated and marked bus stop. Being a driver of a public vehicle, the accused should have realised that there were people and vehicles on the road to whom he owed a

duty of care and he failed to meet that duty of care in his manner of navigating his vehicle on the road that day by paying scant attention to other road users.

- [15] Learned counsel submitted that the harm to other road users which the accused failed to avert was at least foreseeable if not strikingly foreseeable. The way the accused drove fall far below what would be expected of a competent and careful driver. The accused as an SPTC bus driver held himself out as an expert of some sort in his field and hence a higher degree of negligence was expected of him in the performance of his function than would have been expected of an ordinary person. He failed to consider the risk which was apparent and was obvious and seen by other persons at the scene.
- [16] Learned counsel concluded that the accused was not driving at high speed but he had taken his vehicle outside the designated bus stop to the middle of the road and impacted against the old lady who was coming towards the bus, waving at the accused to stop, caused the victim injuries to which she succumbed, hence the Court cannot come to the conclusion that the accused's conduct was not inconsistent with that of a reasonable prudent driver. Learned counsel hence moved the Court to find the prosecution has prove the charges against the accused beyond reasonable doubt.

Cases relied upon by the prosecution: R v Hyles [1972]SLR 28, R v Adomako [1994] 3WLR 288, R v Joubert [1976] SLR 39, Kong Cheuk Kwan v R[1986] 82Cr App R 18, R v Marzetti [1970] SLR 20, R v Hoareau [1972]SLR 60, Kong Cheuk Kwan v The Queen Privy Council June 17, 18, July 10, 1985, Woon Poon Kong v Republic [1974] SLR 23, Evenor v Republic [1992] SLR 91, and Simpson v Peat [1952] 2QB 24.

- [17] Learned counsel for the accused submitted that prosecution has failed to prove beyond reasonable doubt that the accused's act has caused the death of a person amounting to culpable negligence and in the alternative count of causing death by dangerous driving, that the accused drove recklessly or in a manner which is dangerous to the public. Learned counsel submitted that if the bus had hit the lady as alleged by the prosecution, there would be some sign on the bus that it had made contact with Mrs Dugasse or there would have been some blood or flesh on the bus which evidence show there was none.

- [18] Learned counsel dispute the evidence adduced that the bus moved to the right to overtake the parked car maintaining that the car was parked in a lay bye. Learned counsel also disputed the competence of the forensic expert Dr Paresh Bhaira but did not put forth any basis for challenging his competence.
- [19] Learned counsel nevertheless submitted that if the deceased was at the side of the bus, it would have been difficult for the accused to have seen her despite making all the necessary checks. Learned counsel submitted that the accused was being a careful driver. He did all the checks, remained on the correct side of the road and ensured the safety of the passengers and anyone near the bus whilst on the other hand, the deceased was on the road and possibly at a position which would have made it difficult for the accused to have seen her despite him checking.
- [20] Learned counsel submitted that in order to find the accused guilty of either count, the Court must find that the degree of negligence and the risk of causing death by the accused's driving must be very high. In this case the accused's driving did not show any such high degree of risk of causing death. Learned counsel concluded that the prosecution has failed to prove the elements of manslaughter or the elements of causing death by dangerous driving as there was no evidence to show that it was the accused who unlawfully killed Mrs Dugasse and alternatively the evidence showed that the accused was not driving recklessly or in a manner which was dangerous to the public. Learned counsel hence moved the Court to dismiss the case against the accused and to acquit him.

Cases relied upon by the defence; Ragain v R [2013] SLR 619, R v Bateman [1925] 19 Cr App R 8, R v Morel CO 72/2014, Sedgwick v Republic SCCA 4 of 2017, R v Neerghen CO 20/2012, R v Marzetti [1970] SLR 20, R V Hoareau [1972-1973] SLR and R v Seymour [1983] 2 AC 493.

- [21] Section 192 of the Penal Code reads:

192. "Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed "manslaughter". An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm."

[22] Section 25 of the Road Transport Act reads:

25. “ A person who causes the death of another person by the driving of a motor vehicle on a road 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 road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, shall be liable on conviction to imprisonment for a term not exceeding 5 years.”

[23] Causing death is defined as follows by section 199 of the Penal Code:

“199. A person is deemed to have caused the death of another person although his act is not the immediate or not the sole cause of death in any of the following cases:-

(a) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;

(b) if he inflicts a bodily injury on another which would not have caused death if he injured person has submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living;

(c) if by actual or threatened violence he causes such other person to perform an act which causes the death of such person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;

(d) if by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;

(e) if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.”

[24] Section 206 of the Penal Code makes special provisions for persons in charge of dangerous things.

“206. It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or

stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety, or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.”

- [25] From the evidence adduced by the prosecution it has been established that on the 1st November, 2013, just after 6:30 am, the accused was driving bus registration number S12185 from the bus terminal in Victoria to Mont Signal via Mont Buxton. According to Jerry Etienne and Miguel Kilindo who were passengers on the bus, there were few passengers on the bus. Arriving at Mont Buxton they pressed the stop bell and the driver stopped the bus several meters further uphill after the designated bus stop. Both witnesses observed an elderly lady now identified as the deceased Melissa Dugasse, coming towards the bus when they were getting off the bus. Another witness, Walter Jeannevole was also standing at the roadside waiting for the bus to town and witnessed the 2 young men Jerry Etienne and Miguel Kilindo, get off the bus and the elderly lady Melissa Dugasse approaching the bus from the right side, waving to and calling the driver. All 3 persons identified the elderly lady as the deceased, Melissa Dugasse.
- [26] Jerry Etienne had started walking downhill away from the bus when he heard Miguel Kilindo shout: “*la bis i tap li*” (the bus hit her). Walter Jeannevole witnessed the right side of the bus hit the deceased and called out “*drayver arête*” (driver stop) but the bus did not stop as it continued on its way up the hill. All 3 witnesses observed the deceased rolled under the bus coming to rest on the road further down the hill. They observed the injuries on her body which were not there when they had observed her approaching the bus. They called for help and remained at the scene until the deceased had been taken away by ambulance. Although there were other vehicles that came along, none approached to where the deceased was as the road was blocked.
- [27] Even the defence witnesses placed the accused on the scene and as the driver of the bus at the time of the incident. Andy Noel, the information system expert provided the Court with the GPS details of movement of SPTC bus S12185 for the 1st November, 2013 which matched the time and place where the bus driven by the accused would have been at the time of the accident.

- [28]** Delton Lenclume observed Jerry Etienne and Miguel Kilindo get off the bus, Walter Jeannevole sitting on a rock on the left side of the road and on the right he observed Melissa Dugasse coming in the alleyway some 7 metres from the bus. He made a telling point in cross-examination that for the bus to continue on its way it had move to the right to overtake the vehicle parked ahead. He also stated that for the driver to have seen that lady, he would have had to turn his head around implying that from his observation, the driver had not done so to check his blind spot which Mr Vidot maintained was essential for safe and competent driving.
- [29]** The defence on the other hand put forth three different positions. The accused was adamant that it was not his bus that hit Melissa Dugasse and that he was not at all involved in the accident in question. To believed the accused the Court must by necessity find that all the prosecution witnesses as well as the defence witnesses Noel and Lenclume were not telling the truth. The second position adopted by the defence is that even if the witnesses testified to the fact the side of the bus hit Melissa Dugasse, the fact that there was no dent, scratch mark, blood or flesh on any part of the bus meant that the bus could not have hit caused the death of Melissa Dugasse. The third position is that even if the bus driven by the accused caused the injuries to Melissa Dugasse resulting in her death, the accused took all the necessary precautions required and expected of him whilst it was Melissa Dugasse who had ventured onto the road in a position where she could not have possibly been seen by the accused.
- [30]** Manslaughter is a crime of where the perpetrator's unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm. In this case vehicular manslaughter refers to the crime of killing another person, either intentionally or unintentionally or negligently, as the result of one's driving. An example of vehicular manslaughter is where an angry driver deliberately drives so as to hit a passer-by, ultimately killing the pedestrian. The laws associated with vehicular manslaughter essentially define one's vehicle as a deadly weapon. Consequently, the degree of the accused's negligence or recklessness must be very high indeed and not merely a simple lack of attention or lack of care.

[31] In the case of Leslie Ragain v Republic CR SCA No: 02/2012 the Court of Appeal (A F T Fernando Justice of Appeal) stated thus:

*“In order to prove constructive manslaughter there must be evidence to establish that the accused intentionally performed an ‘act’ and that ‘act’ is unlawful and that ‘act’ resulted in the death of a person. According to **section 10 of the Penal Code** “...a person is not responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.” For an act to be ‘unlawful’ it should be dangerous to be treated as criminal. In **R V Andrews (1937) A. C. 576**, the House of Lords held that only acts which are inherently criminal can form the basis of a constructive manslaughter charge. This is because certain acts are lawful if done properly, but unlawful if done dangerously or negligently, the most common example being, driving offences. It is an objective test that is applied to determine whether an act is dangerous. “Liability will be incurred for constructive manslaughter only if the act which causes death is criminal in itself, rather than becomes criminal simply because it is performed in a negligent and dangerous fashion. This point is particularly important in connection with deaths arising out of road traffic offences. If the criminality of an act could be provided merely by proof of negligence it would mean that anybody who killed another in the course of speeding, drink driving, or driving carelessly would be automatically guilty of manslaughter.”*

The accused in that case who had in fact pleaded guilty to the alternative charge of manslaughter and was appealing only against sentence was acquitted.

[32] In this case, I do not find the accused to have been driving with the necessary criminal intent to meet the standard required to establish the offence of manslaughter. I therefore find him not guilty of the offence of manslaughter and I acquit him of that count accordingly.

[33] Reckless, dangerous or negligent driving arise where a person drives a motor vehicle on the road in a manner that falls below the standard expected of a reasonably prudent driver in the same circumstances. A person is to be regarded as driving dangerously if

- i. the way he/she drives falls far below what would be expected of a competent and careful driver, and it would be obvious to a competent and careful driver that driving in that way would be dangerous; or
- ii. if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

[34] In the case of *Tirant v. The Republic [1982] SLR 28* the Court stated:

“Negligent driving in criminal law means a non-intentional failure to conform to the conduct of a reasonable driver, endowed with ordinary road sense and in full possession of his faculties.

The offence of negligent driving is committed when a driver fails to reach the objective standard of a reasonable man, and does not necessarily involve an enquiry into the responsibility of other users of the highway for causing the accident. A person may be held guilty of negligence although his driving was not the sole cause of the accident.”

[35] In this case, the evidence overwhelmingly shows that it was the accused who was driving the bus that was involved in this accident despite the denial of the accused. It has also been established by the evidence led that the right side of the bus hit the deceased who fell and rolled under the bus as the bus moved off and did not stop despite the eyewitnesses shouting to the accused to stop the bus. The injuries caused to the deceased were extremely serious indeed. The internal injuries which led to her death immediately after the accident were haematoma of the right galea aponeurotica, 13 x 10 cm; sub-arachnoidal haematoma of the left brain hemisphere; fracture of the 2nd and 4th right side ribs; fracture of the 3rd, 4th and 6th left ribs as well as 13 external injuries which were detailed by the post mortem report.

[36] Even if I were to believe the accused’s testimony that he never saw waiving or heard the deceased calling to him nor did he hear the witnesses Jerry Etienne, Miguel Kilindo and Walter Jeannevole calling to him to stop the bus, it does not absolve him of his responsibility to discharge his duty of care to other road users. In fact his ignorance of his surroundings whilst driving his vehicle on the public road and his complete disregard to the commotion around his vehicle show that his driving at the time was not to the standard expected of a reasonably prudent driver in the same circumstances.

[37] I find that the degree of negligence and the risk of causing death by the accused’s driving was indeed quite high having regard to all the circumstances of the case and as a result of his gross negligence and highly dangerous manner of driving he caused the death of another person namely Melissa Dugasse. I therefore find that the prosecution has discharged its burden of proof with respect to the second count beyond reasonable doubt. I find the accused guilty of the offence of causing the death of Melissa Dugasse by

dangerous driving contrary to section 25 of the Road Transport Act and I convict of that count accordingly.

Signed, dated and delivered at Ile du Port on 27 July 2017

G Dodin
Judge of the Supreme Court