

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO23/2014

[2017] SCSC

THE REPUBLIC

versus

ROBIN MICHEL OREDDY

Accused

Heard: 04/03/2016, 08/03/2016, 01/04/2016, 24/05/2016, 03/06/2016,
22/07/2016, 30/11/2016, 06/12/2016, 04/04/2017

Counsel: Mr. George Thachett, Assistant Principal State Counsel for the Republic
Mr. Nichol Gabriel Attorney at Law for the Accused

Delivered: 01 September 2017

JUDGMENT

Burhan J

[1] The accused Robin Michel Oreddy stands charged as follows:

Count 1

Manslaughter, contrary to Section 192 of the Penal Code (Cap 158) and punishable under Section 195 thereof

Particulars of offence are that, Robin Michel Oredy, 38 years self employed of Pascal Village, Beau Vallon, on the 1st of March 2014, at Upper St. Louis, Mahe, unlawfully killed another person namely Claudia Antoine.

Count 2 (Alternative to Count 1)

Causing death by dangerous driving contrary to and punishable under Section 25 of the Road Transport Act (CAP 206).

Particulars offence are that, Robin Michel Oredy, 38 years self employed of Pascal Village Beau Vallon, Mahe, on the 1st Of March 2014, at Upper St. Louis, Mahe, causes the death of another person namely Claudia Antoine by driving a motor vehicle having registration number S1246 on the road at a speed or in a manner which is dangerous to the public having regard to all the circumstance 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.

Count 3

Driving a motor vehicle with alcohol concentration above the prescribed limit contrary to Regulation 3 (1) read with Regulation 9 (1) (a) of the Road Transport (Sober Driving) Regulations (S.I. 109 of 1995) and punishable under Section 24 (2) of the Road Transport Act (CAP 206).

Particulars of offence are that Robin Michel Oredy, 38 years self employed of Pascal Village Beau Vallon, Mahe, on the 1st of March 2014 At Upper St. Louis, Mahe, drove a motor vehicle having registration number S 1246 on the road with alcohol concentration above the prescribed limit, namely 66 micrograms of alcohol in 100 millilitres of breath

- [2] The prosecution opened its case by calling witness Jennifer Adeline who stated that on the 1st of March 2014, she was attached to the Bea Vallon police station when she received a call around 3.19 in the morning, informing her of a fatal accident at Pascal Village. She had proceeded to the scene with Constable Malbrook and on reaching the scene, she had seen a casualty, a lady inside a silver colour Starlet bearing registration number S1246. The lady inside the vehicle was unconscious. The driver Mr Robin

Oredy was present at the scene and she identified him in open Court. She stated that the vehicle had hit against an electric pole and the electric pole had fallen on the front passenger seat in which the unconscious lady was seated. Thereafter the ambulance had come and taken the lady to hospital. She stated the vehicle was on its four wheels after the accident and facing towards Pascal Village. Witness identified the vehicle involved in the accident from the photographs taken at the scene produced as P9, photograph 1. She proceeded to explain each and every photograph in relation to the damage on the car. She identified the deceased in the photographs P11 as Claudia Antoine the person she had seen unconscious at the scene of the accident. They had taken the accused with them thereafter to the Central Police station and tested him for alcohol. He had not had anything to eat and drink on the way. The readings of the alcohol test were 66 and 71. She described the usual procedure in a breathalyser test and further stated she had witnessed the test being done on the accused by constable Flary Adeline. She marked the result of the 1st test as P1 and the 2nd test as item 3 (later exhibit P7).

[3] Thereafter Assistant Superintendent Jean Baptiste was called and he produced the documentation in relation to the vehicle involved in the accident namely a Toyota Starlet bearing registration number S1246 and the report of the vehicle testing station after the examination of the vehicle after the accident. He stated the vehicle was registered in the name of the accused as the owner. He further produced a report of the Survey Division done at the scene of the accident and after a voire dire, the statement under caution of the accused was produced as P4 through him.

[4] Thereafter witness Corin Samantha Julie a teacher at Independence school testified that on the 1st of March 2014 in the early hours of the day, she was on her way from town along the Belombre road and she had turned and was driving into the road of Pascal Village, when she had heard a loud noise and she had turned and seen a car had hit an electricity pole. She had noticed earlier at St Loius, a car approaching their vehicle from behind and come close and she had thought the car was trying to overtake but was not sure as the car had fallen back and when they turned into the Pascal Village road, she had not seen the car. When she heard the loud noise she had already turned into the Pascal Village Road and had gone a bit into the road. She had told the driver to reverse and she had got down to see what happened. Witness had gone to the scene of the accident to the

driver's side and the driver was trying to come to and then she had gone to the other side to check the passenger. There was a lady who was stuck in the car as the body of the car was pressing against her. The driver tried to assist. The lady was trying to speak but no words were coming out. She stated she was unable to identify the driver but identified the scene of the accident and vehicle and the lady in the photographs. She further stated that at the time the vehicle was trying to overtake them, their vehicle had been going at a normal speed. However it is to be noted that thereafter she had lost sight of the vehicle and at the time of the accident had only heard a noise.

[5] Thereafter witness Geraldine Corolla stated she was working at the time of the accident in the CID and she had issued the accused with a medical examination paper and identified and produced it as P5. Mr. Jourdan Belle stated on the 2nd of March 2017, he was at the Central police station and stated he had issued a notice of intended prosecution on the accused. The notice of intended prosecution was marked as P6.

[6] Thereafter the prosecution called Flary Adrienne, a constable with six and a half years experience who stated that he had done the breathalyser test on the accused. He identified the accused in Court. He described in detail the manner in which the test was conducted. He had asked the accused whether he had eaten or drunk anything within the last 20 minutes. The accused had replied in the negative. Witness further stated, the machine he conducted the test with was working properly and had been calibrated and was still in the plastic which he had opened in front of the accused. The accused had been relaxed at the time he took the test. After taking the test the accused had signed on both printed out slips giving the readings. He identified his signature and that of the accused on both slips and stated the readings were 66 and 71. The witness Jennifer Adeline had failed to sign one slip. He had thereafter cautioned the accused and placed him in a cell. He admitted that witness Jennifer Adeline had by mistake not signed on the 2nd reading but he and the accused had signed it. The time between the two tests was 3 minutes. The machine after the 1st test calibrated itself and the time and date was on the machine itself. The test reports were produced as P1 and P7.

[7] Witness Dr. Parish Baria stated that as Dr. Marija who had conducted the post mortem on the deceased Claudia Antoine was not in the jurisdiction, he was producing the post

mortem report of the deceased. He produced the report as P8. He stated due to the impact the victim had sustained multiple fractures of the ribs, liver and spleen. These multiple injuries, internal bleeding and Hypovolemic shock were as a result of a physical impact by a car. The impact he stated was very severe because there were multiple rib fractures and injuries inside in the organs. He further stated the severe impact would have made the spleen and liver to rupture and massive haemorrhage, resulting in the patient dying of Hypovolemic shock. Under cross examination, he stated the deceased had injuries on her left side as well as on the front side where the liver is situated, indicating impact from the left side as well as the front. Thereafter Mr. Ralph Agathine gave evidence and identified the photographs he had taken in respect of this case at the scene of the accident at Pascal Village. He identified and explained each and every photograph in P 9. He had received a call on the 1st of March 2014 and arrived at the scene at 5.00 a.m.

[8] Thereafter Nicolas Oniare, a surveyor by profession stated that he was a land Surveyor by profession and had surveyed the scene of the accident. He identified his report as P10. He also identified the scene by way of the photographs. He admitted he had surveyed the scene about three months after the incident. He stated as he surveyed permanent features on the road there would have been very little change to the scene of the accident. Mr. Robin Omblime identified the photographs he had taken at the mortuary and explained each photograph to Court. The next witness Freddy Malbrooke stated he had gone to the scene of the accident on it being reported. At the scene he had noticed that a Toyota Starlet bearing registration number S1246 had hit against an electric pole and come to a stop. He had spoken to the driver of the vehicle Robin Oreddy the accused. He identified the accused in the dock. He had noticed in the front passenger seat a lady who was stuck in the position but was still conscious and responding. Firemen and ambulance had come to the scene. She was taken to the Victoria hospital. She had passed away around 4.00 a.m. He had thereafter drawn a sketch plan of the scene which he identified as P 12. He identified the position of the vehicle in the sketch plan and explained each photograph of the scene. He stated under cross examination he had not shown any broken glass on the sketch and the pole was wooden but bent and also stated there were no brake marks.

[9] Mr Jason Rusteau the vehicle testing manager stated that he had been the vehicle testing manager for the past 6 years. He had examined the car S1246 a Toyota Starlet and noted

the damage was mainly on the left hand side. Witness described the damage caused to the vehicle. He stated the vehicle had been travelling at a speed considering the damage it had sustained as the left side hub was broken, the left hand lower arm side had been bent quite extensively and therefore there had been a bit of speed in the vehicle at the time of the impact on the electric pole. His report P 13 indicates in detail the extensive damage on the said vehicle.

[10] Thereafter the prosecution closed its case. The accused made an unsworn statement from the dock. He stated that he expressed his sincere condolences to the family of the deceased Claudia. He had met her and were together for two years and they were happy. On the said day he had collected her and since it was a Friday, he picked her up to go for a ride in the car. After dropping her at home around 4.00 p.m. he had gone again and picked her up at around 8.00 pm and driven around and he had met his nephew at Dockland and they had been there till 2.a.m. Thereafter she had said she was hungry and he had stopped at the taxi stand and brought a burgher. She had come back as the queue was long and they had decided to go back home. When they reached the Chapel near Pascal Village, a dog had crossed the road and when he had swerved to avoid the dog, he had lost control of the car and the car hit the pole. After the accident he noticed that Claudia had lost consciousness and was not answering him but was breathing. He noticed after some time she was bleeding from her nose. He had told her to stay awake and to think of the plans with the kids as they had plans to go to the beach the next day. Thereafter people had tried to assist by opening the door but could not. His niece had called for help and the police had come. He had wanted to see his wife the next day but they had refused. He further stated that he was okay on the side of the family. The family had not wanted to go for a case but the State had decided to put the matter to Court.

[11] Thereafter both parties tendered written submissions.

[12] The accused in his unsworn statement admits the fact that he was driving the vehicle that day and his girlfriend Claudia Antoine (the deceased) was with him in the front passenger seat at the time of the accident. The accused further admitted the vehicle was his vehicle and this was further established by the evidence of Mr. Jean Paul Baptiste and the evidence of Jennifer Adeline. The evidence of officer Freddy Malbrooke, the

photographs taken by officer Ralph Agathine marked P 9 and the evidence and report of vehicle examiner Jason Rousteau, establishes beyond reasonable doubt that vehicle S1246 a Toyota Starlet owned and driven by the accused was the vehicle involved and damaged in the accident that resulted in the death of Claudia Antoine. The evidence of Dr. Parish Baria and the post mortem report marked P8 further establishes that Claudia Antoine died as a result of the injuries sustained to her as a result of the said accident.

[13] The accused's defence is that he was driving from Victoria to Beau Vallon when a dog ran across the road and he attempted to swerve to avoid the dog when he lost control of his vehicle. Even if this be true, the manner in which the vehicle was damaged and the fact that the vehicle had ended up on the other side of the road and come to a stop only after hitting an electric pole which was on the opposite side the side of the road, clearly indicates that the vehicle was been driven at high speed and out of control at the time it collided and had stopped only after hitting an electric pole on the opposite side of the road which was by the side of another by road going to Pascal Village as clearly seen in photograph P 9 (1). Further the evidence of Mr. Jason Rusteau and his report P13 in respect of the damage caused to the vehicle, indicates that the impact was of severe nature indicating that the vehicle was being driven at speed at the time it collided with the electric post, inflicting severe injuries on the victim which according to Dr Parish Baria were due to a severe impact which injuries resulted in her death.

[14] It is the contention of the defence that based on the evidence of witness Corine Julie when the vehicle of the accused was trying to overtake her vehicle, her vehicle had been going at a normal speed, therefore it is the contention of the defence that the vehicle of the accused too would have been going at the same normal speed as it had not overtaken her vehicle. However it is to be noted that thereafter witness Corine Julie states, she had lost sight of the vehicle behind her as her vehicle had turned into another road and at the time of the accident she had only heard a noise and therefore, it is the view of this Court that this witness would have not known what speed the vehicle of the accused was travelling, at the time it hit the electric pole.

[15] In addition to the above evidence, the evidence of officer Flary Adrienne and Jennifer Adrienne and the breathalyser test results confirms the fact that the accused was driving having an alcohol concentration of above the prescribed limit of 35 micrograms of alcohol in 100 millilitres of breath. The evidence indicates his readings were 66 and 71 as per the test reports marked P1 and P7 respectively well above the prescribed limit. I find the evidence given by officer Flary Adrienne very cogent in nature and acceptable to Court. Though subject to lengthy cross examination there were no contradictions or omissions of a material nature in his evidence. I am satisfied of his expertise and competency in conducting the breathalyser test and therefore will proceed to accept his evidence. The failure of the witness Jennifer Adeline to sign the 2nd test report is not fatal as the accused and the officer taking the breathalyser test officer Flary Adrienne have signed the said document P7.

[16] 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. Having considered all the aforementioned evidence, I am inclined to hold that the evidence in this case does not establish the degree of negligence required to establish manslaughter.

[17] I will next proceed to consider the alternative Count 2, where the accused is charged for causing death by dangerous driving contrary to and punishable under Section 25 of the Road Transport Act (CAP 206).

Section 25 reads as follows:

“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”

- [18] In the case ***DPP v Newbury and DPP v Jones [1976] 2 All ER 365***, it was held that in judging whether an act of the accused was dangerous, the test was not whether the accused himself recognised the act to be dangerous but whether sober and reasonable people would recognise its danger. Therefore as the test was an objective test, it was not necessary for the prosecution to prove that the accused knew that the act was unlawful and dangerous.
- [19] In the Seychelles too in ***Mervin Sedgwick v The Republic Criminal Appeal SCA 22/2014*** Fernando JA referring to the case of ***DPP v Milton (2006) R.T.C. 21 DC*** held that section 25 envisages an objective test. He further elaborated in paragraph 17 what “dangerous” meant and gave several examples of driving that may support an allegation of dangerous driving. One such example was driving in an intoxicated state which fits the facts of this case as the accused was driving with an alcohol concentration above the prescribed limit. In addition considering the manner in which the vehicle was being driven by the accused and that it went out of control, on him suddenly swerving (even it be believed that a dog ran across the road) and ended up on the opposite side of the road and stopped only after having hit an electric pole are facts that clearly indicate, a standard of driving “far below “that expected of an ordinary competent and careful driver and it would definitely be obvious to an ordinary competent and careful driver that such driving was indeed dangerous.
- [20] Having considered the evidence in this case, I have no hesitation in accepting the evidence of the prosecution and am satisfied beyond reasonable doubt that all the elements of the offence of dangerous driving have been proved by the prosecution beyond reasonable doubt and the accused had been driving his vehicle on the road in a manner which was dangerous to the public. I am also satisfied for the aforementioned reasoning and on consideration of the breathalyser tests marked P1 and P7 that all the elements of Count 3 too have been proved beyond reasonable doubt. I therefore proceed to find the accused guilty on Counts 2 and 3 and proceed to convict him of same.

Signed, dated and delivered at Ile du Port on 01 September 2017

M Burhan
Judge of the Supreme Court