

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 28/2013

[2018] SCSC 142

THE REPUBLIC

versus

TERRENCE STRAVENS

Accused

Heard: 19, 21 May 2015, 21 June 14 December 2016, 27 July, 19 Oct, 23 Nov, 14 Dec 2017

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

Delivered: 2 February 2018

JUDGMENT

Dodin J

[1] The accused Terrence Stravens stands charged with the following offence:

Statement of Offence

Causing death by dangerous driving contrary to section 25 of the Road Transport Act CAP 206

Particulars of Offence

Terrence Stravens of Foret Moire on the 3rd of April, 2013 near Sunrise Guest House, Mont Fleuri, Mahe caused the death of Paul George Bibi of Les Mamelles, Mahe by driving a motor vehicle registration number S8095 on the road recklessly or at a speed in a manner which is dangerous to the public.

- [2] On the 3rd April, 2013, just after 12 noon, the accused was driving a white Scenic Renault car, registration S8095 along the Mont Fleuri road going towards Victoria in the company of Francis Charles Labiche who was in the front passenger seat. Suddenly the car swerved onto the pavement near the entrance of a shop. At the same time, one Paul George Bibi, the deceased, was walking out of the shop and he was hit and fell on the pavement in front of the shop. He was taken to the Seychelles Hospital by ambulance but died of injuries suffered on the same day. Test showed that the Accused was not under the influence of alcohol or other substance at the time of the accident. There is no direct evidence of speed. The only eyewitness who was questioned on the speed of the vehicle stated that the accused was driving normally and not at speed. Dr Aurora, the forensic expert, expressed the opinion that the vehicle was not travelling with great speed but had sufficient velocity which he estimated to be not less than 40kph.
- [3] The Accused was initially also charged with the offence of manslaughter but at the close of the case for the prosecution, the Court ruled that the accused had no case to answer on the charge of manslaughter but that he did have a case to answer on the count of causing death by dangerous driving. The prosecution called 8 witnesses whose testimonies are summarised hereunder.
- [4] SI Maxime Tirant testified that on the 7th April, 2013, he received instruction to go to a scene where there had been a fatal road traffic accident at Mont Fleuri. He was accompanied by Constable Ferley. At the scene he was shown markings which he was told were blood marks and the position of two takeaway boxes as well as the position of the vehicle which he was told was a car registration number S8095 belonging to Mona Khan of Foret Noire. He took measurements and drew a sketch plan as he was not satisfied with the sketch plan that was drawn up by the investigating officer because some measurements were missing. He then went to Mrs Khan's house at Foret Noire and took car S8095 to the vehicle testing station. The car was released to Miss Lindy Orphe, the daughter of Mrs Khan on the 26th April, 2013.

- [5] Lindy Orphe testified that on the 3rd April, 2013, she was going home when she came across the accused and her uncle Francis Labiche in her mother's car, a white Scenic Renault. The car was going towards town. Later when she was having lunch at home, she got a call from the accused who informed her that there has been an accident near Sunrise Guest House. She immediately went to the scene and saw the car parked on the pavement on the left side facing town direction. The car's windscreen was cracked, left headlight damaged and bumper loose on left side. The police was already there as well as the accused and her uncle who appeared to be in shock. She took them to hospital and then they went to the police. Some days later the police took the car away and she went to retrieve the car a week later from the vehicle testing station.
- [6] Paul Bastienne testified that on the 3rd April, 2013, he was doing some work at Dominic Chang-Waye's house at Mont Fleuri. Another man he knew by the name of Taffy was also there. He heard a noise and looked in the direction of the road. At the same time, Taffy said "*la sa boug I tap lo mon loto*" (eh this man hit against my car). They both went to the road and saw car S8095 parked on a platform where there used to be a shop and its windscreen had a small crack. He saw a man lying on the ground facing up. There was blood flowing from the back of his head. He saw the accused talking on the phone, then the accused came to the man and raised him in a sitting position and asked him if he was okay. The other people there told the accused not to touch the man and the accused let the man fall back on the ground. A woman who was there called the ambulance.
- [7] Francis Charles Labiche testified that on the 3rd April, 2013 he was going to work on the accused's boat in his niece's car S8095, being driven by the accused. They were travelling along the Mont Fleuri road towards town when the accused said the brakes had failed and the accused swerved onto the pavement to avoid hitting a pick-up truck parked in front of them near a shop. At the same time a man walked out of the shop onto the pavement and was hit by the car which kept going and hit against another car and then onto a small wall where it stopped and the engine cut out. The accused got out and went to look at the victim, then the accused called the ambulance. He also observed the man lying on the ground and had blood on his face. There was not much traffic on the road at the time and the car was being driven normally and not at a high speed. He testified that he had known the accused for a long time and the accused has always been a good driver.

- [8]** Trevor Ferley testified that on the 3rd April, 2013, in the afternoon, he was informed by Sergeant Gamatis that there was an accident at Mont Fleuri opposite Sunrise Guest House. They proceeded to the scene where they met the accused and a friend, another man called Taffy and there were also some members of the public standing around. The accused said someone crossed in front of him and had been hit and he had already called the ambulance which had come and taken the victim away. He took some measurements and drew a sketch plan and made a fair one on the same day but SI Payet was not satisfied with the sketch plans and told him to go back and relook at the information. He also examined the vehicle S8095 and noticed a cracked windscreen, a dent on the mudguard. He also examine a green taxi mark KIA belonging to Taffy. He then went to the Seychelles Hospital and asked to see the victim but permission was denied as the man was in the ICU. He went back to Mont Fleuri Police station.
- [9]** Inspector Ronny Julienne testified that on the 3rd April, 2013 he was informed that a car driven by the accused had hit one Paul Bibi at Mont Fleuri. He dispatched Constable Ferley to the scene. The accused was brought to Mont Fleuri Police Station and breathalyser tests were administered which recorded 0mg of alcohol. The accused was cautioned and read his constitutional rights. He requested for a lawyer. Mrs Amesbury, attorney-at-law, told him not to say anything. However he testified that the accused said “sa boug in koup par deryer en transpor, monn ornen, in ale in trounen monn tap li, monn panic e monn akselere” (that guy had crossed from behind a vehicle, I had tooted, he had gone and come back and I had hit him and I panicked and accelerated).
- [10]** Dr Paresch Bharia, a pathologist, testified that Dr Maria Zlatkovich conducted the post mortem examination and after reviewing the external and internal injuries concluded that the cause of death was fracture of the base of the skull and internal haematoma, (collection of blood on the right side of the brain).
- [11]** Dr B B Aurora, a forensic expert, testified that he studied the details of the case after having been briefed by SI Maxime Payet as to how the accident happened. He also went to the scene some days later. He concluded that from his analysis, there was not excess of speed but there was a bit of speed and he estimated the speed to be not less than 40kph.

He estimated the speed to be closer to 50kph due to the crack of the windscreen which would not have happened if the speed was 30kph or less.

[12] There statements of Josetta Moustache, the partner of the deceased and Donatien Dogley who was close to the scene and observed the immediate aftermath of the accident were admitted on agreement of the parties as being non-contentious. The notice of intended prosecution was also admitted on agreement.

[13] The accused chose to make the following dock statement.

“My name is Terrence Stravens. I live at Foret Noire and on the 03rd of April 2013 I was driving the car registration number S8095 and the make of the car was a Renault. And I proceed from Foret Noire road to Mont Fleuri and I proceed towards town. On both sides of the road the both lanes there was traffic going up and down and I was driving at a speed below 30 kilometres. And when I reached at Sun Rise Guest House the car the engine stopped and I applied the brakes and the brakes were so hard. And this kind of car which uses servo brakes when the car the engine is off and the brakes is hard and the car continues to move. And I was about to hit a car and I swerved on the left and in order not have an accident because on the pavement there was a pick-up which was unloaded the goods and it was parked half on the main road and half on the pavement. And whilst swerving it again swerving past the pick-up I was going to hit the wall of the premises of a shop and at that time the pavement was clear. And I drove on the pavement and when I reached at the shop suddenly the victim just came out of the shop and I couldn’t do anything for me to avoid the accident. It was so quick that he stepped out of the shop and the car continues to move and then I hit another car and car went opposite again on the pavement nearby and the car stopped”.

[14] In his final submission learned counsel for the Prosecution submitted that there is enough evidence against the accused to prove the guilt of the accused beyond reasonable doubt. Learned counsel submitted that the test as to whether the driving of the accused was dangerous is not whether the accused himself recognize as dangerous but whether sober and reasonable people would recognize the danger. Learned counsel submitted that the test is an objective standard of driving and the standard of driving must fall far below that expected of an ordinary competent and careful driver.

[15] Learned counsel submitted further that driving carelessly, however slight, even momentary inattention, amount to dangerous driving. Learned counsel submitted that the

evidence showed that the accused in this case drove the vehicle far below the standard that was expected of an ordinary competent and careful driver. If he had focused on the road ahead of him, he could have avoided the possibility of hitting the pick-up truck and there would have been no need for him to swerve to his left. Learned counsel submitted that the speed must have been high as the vehicle climbed onto the pavement and only stopped after it hit another car.

- [16] Learned counsel submitted that the evidence of Dr Aurora stated that the accused drove at a speed and the evidence also showed that the car climbed onto the pavement and continued on two levels of pavements off the road before hitting another car and climbing a wall and stopped. The fact that the accused drove the car onto the pavement and hit the deceased on the pavement, showed that he was not applying the minimum standard of a reasonable driver. There was disregard and lack of due care to other road users. Learned counsel submitted that driving on the road is a lawful act but driving on the pavement is totally gross negligence as there was no necessity to do so.
- [17] Learned counsel submitted that pavements are meant for use by pedestrians and that any reasonable driver who drives on the pavement must be deemed to have reasonably foreseen that such manner of driving would do. In this case it shows nothing less than total disregard to the life of others and therefore so serious that it amounts to culpable negligence. Learned counsel referred the Court to several cases in support of his submission some of note are: *Miller v Minister of Pensions [1947] 2 All E R 372*; *Ukut v The State [1995] 9 NWLR 392*, *Nasiru v The State [1999] NWLR 87*; *R v Robert Michel Oreddy (no reference)*; *Mervin Sedgwick v Republic CR App 22/2014*; *Woon Poon Kong v R [1974] SLR 23*, *DPP v Newburry and DPP v Jones [1976] 2 All E R 365*.
- [18] Learned counsel for the accused submitted that he would rely on the submission made at the stage of no case to answer with the necessary adjustments to the issue of proof which is now beyond reasonable doubt. Learned counsel submitted that no witness testified that the accused was driving recklessly or in a manner dangerous to the public. Learned counsel submitted that one prosecution witness, Francis Labiche, testified that the accused did his best to avoid hitting the shop but that the deceased who was not on the pavement at the time the car got onto the pavement came out of the shop at the same time

the accused was avoiding hitting the shop. Learned counsel submitted that from the evidence it cannot be concluded that the accused drove in a reckless or dangerous manner.

[19] Learned counsel submitted that since the element of recklessness has not been established, the Court must find that the prosecution has not succeeded to establish all the elements of the offence beyond reasonable doubt. Learned counsel moved the Court to find the accused not guilty and acquit the accused accordingly.

[20] The following legal provisions are relevant to the determination of this case:

[21] 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.”

[22] Additional definition of the term causing death is elaborated in section 199 of the Penal Code whilst 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.”

[23] 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

1. 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

2. if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

[24] 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.”

[25] A person in charge of a motor vehicle by driving it owes a duty of care to other road users including pedestrians on the pavement. However this does not mean that whenever a person comes into contact with a motor vehicle and dies, the driver must automatically be criminally liable. The prosecution must establish beyond reasonable doubt that the degree of negligence or lack of care was grave enough that it amounted to criminal act.

[26] In this case, the evidence adduced show that the accused who was driving vehicle car S8095 was at the controls of the car when it went onto the pavement and hit the deceased who was the pavement having just come out of a shop. According to the accused’s own dock statement, he was unable to stop the vehicle because the engine had somehow gone off and the brakes did not engage. His options were to hit against an oncoming vehicle or a pick-up truck parked partly on the road ahead of his or move onto the pavement which at the time appeared devoid of any pedestrian. He opted to swerve onto the pavement. This raised the concept of sudden mechanical failure causing the accused to lose some control over the vehicle.

[27] When an accused raise the defence of sudden mechanical failure, although the burden remains on the prosecution to prove beyond reasonable doubt that the accused was driving in a manner dangerous to the public or in a negligent manner, the accused who raises such a defence must bring forth sufficient evidence not only to establish the mechanical failure but also to the satisfy the Court that any reasonably prudent driver in the same circumstances would have reacted in the same manner. In such cases the

defendant must establish that the accident could not have been avoided even with the greatest of care and skill. Even if the accused can show that the failure occurred without want of care on his part, this defence will fail if it was reasonably possible to avoid the accident despite the occurrence of the inevitable contributing factor.

[28] For example, in the case of *Rintoul v. X-Ray and Radium Industries Ltd., [1956] S.C.R. 674 at 678 citing McIntosh v. Bell, [1932] O.R. 179 at 187 (Ont. C.A.)*, (Civil) the defence failed because even if the service brakes in the defendant's vehicle failed without negligence by the defendant the court found that the defendant could have avoided the accident by using the hand brake if it had been in proper working order.

[29] In the case of *Director of Public Prosecutions v Markovski [2011] NSWLC 31* the accused was driving south on the Olympic Highway when he swerved onto the wrong side of the road to avoid hitting an animal running onto the road. The accused saw a car travelling towards him and turned the car further right in an attempt to get off the road and avoid the on-coming car. Unfortunately the two cars collided, seriously injuring the passenger in the accused's car and killing the driver and passenger in the other car. The accused suffered no serious injuries. There were none of the usual aggravating factors seen in fatal collisions such as speed, alcohol or drugs and there was no evidence of any sustained irregular driving behaviour leading up to the point of collision. There was, in effect, no chance for anyone to do anything to avoid the inevitable collision and any culpability was simply momentary inattention or misjudgement on the part of the accused. The court therefore concluded that in this case the negligence was at the lower end of the scale of offending. The accused was originally charged with Dangerous Driving Causing Death (x2) and Dangerous Driving Causing GBH (x1). The accused was convicted of the less serious charges of Negligent Driving Causing Death (x2) and Negligent Driving Causing GBH (x1); the negligent act being the swerving onto the wrong side of the road.

[30] The offence of negligent driving is provided for under section 161 of the Penal Code:

“161. When a person is charged with-

(a) driving a motor vehicle on a road recklessly or at a speed or in a manner which is dangerous to the public contrary to section 24(1)(b) of the Road Transport Act; or

b..

and the court is of opinion that he is not guilty of that offence, but that he is guilty of the offence of driving a motor vehicle negligently contrary to section 24(1)(b) of that Act, he may be convicted of that offence of driving negligently although he was not charged with it.”

[31] Having considered the evidence adduced by the prosecution I am satisfied that the death of Paul George Bibi was caused by the accused swerving his vehicle onto the pavement instead of using other means, such as the hand brake to stop the vehicle. The evidence adduced however has failed to establish that the accused was driving at speed or that he was driving recklessly which would amount to dangerous driving. However the evidence meets the standard of proof beyond reasonable doubt that the accused was negligent as per the case of *Tirant v. The Republic* (supra); that is non-intentional failure to conform to the conduct of a reasonable driver endowed with ordinary road sense and in full possession of his faculties.

[32] I therefore find the accused guilty of negligent driving which caused the death of Paul George Bibi and I convict the accused accordingly of the lesser offence.

Signed, dated and delivered at Ile du Port on 2 February 2018

G Dodin
Judge of the Supreme Court