

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO100/2015

[2018] SCSC 197

THE REPUBLIC

versus

RICHO RICHARD CHETTY

Accused

Heard: 1-07-16, 5-7-16, 26-7-16, 4-4-17, 12 -5-17, 6-6-17, 24-10-17 and 17-11 17
Counsel: Mr. Vipin Benjamin, Assistant Principal State Counsel for the Republic
Mr. Nichol Gabriel Attorney at Law for the accused
Delivered: 28 February 2018

JUDGMENT

Burhan J

[1] The accused Rico Chetty has been charged as follows:

Count 1

Manslaughter contrary to Section 192 of the Penal Code and punishable under Section 195 of the same code.

Particulars of offence are that, Rico Richard Chetty of Anse Aux Pins, on the 7th December 2015 near Mona Thevers Shop at Anse Aux Pins, Mahe unlawfully causes the

death of Mr. Jerris Asba of Perseverance, Mahe who was crossing the road, by driving motor vehicle Nissan Sunny S22911 with all 4 tyres worn out, without third party insurance, under the influence of heroin, on the road crossing over the white continuous line to the opposite lane by overtaking a parked vehicle in front of the said shop, at a speed in a manner which is dangerous to the public in the said vehicle S22911, while going towards South of Mahe, and the said vehicle S22911 failed the brake test as per the Road Transport Act.

Count 2

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

Rico Richard Chetty of Anse Aux Pins, on the 7th December 2015 near Mona Thevers Shop at Anse Aux Pins Mahe caused death of Mr. Jerris Asba of Perseverance, Mahe, who was crossing the road, by driving recklessly, under the influence of heroin and at a speed in a manner which is dangerous to the public in a motor vehicle S22911 with all 4 tyres worn out, without third party insurance, on the road crossing over the white continuous line to the opposite lane by overtaking a parked vehicle in front of the said shop, while going towards South of Mahe and the said vehicle S22911 failed the brake test as per the Road Transport Act.

Evidence of the Prosecution

- [2] Dr. Carlos Carera stated that on the date of the accident, 7th of December 2015, she was working at the Anse Aux Pins Clinic when she had to go to the scene of the traffic accident and found the victim of the accident, Jerry Asba, fallen on the side of the road, in bad condition having injuries to the head, right side of chest, right arm, fracture to the left leg and trauma to the head. She produced her report as P1. The victim had been immediately taken to the Casualty at Victoria hospital but he had passed away 3 hours later. Witness Angelique Agathe working with the SCCRB (Scientific Support and Crime Record Bureau) stated that she had photographed the scene of the accident on the 7th of December 2015. The photographs were produced as P2 (1 to 29). She further stated

there was a white continuous line in the middle and on the left hand side, there were two yellow lines along the side of the road. She stated that the label 1 was placed on the lane on which traffic from Anse Royale to Victoria were proceeding. She stated that label No 2 indicated where the victim had fallen. This was on the side of the road on the lane leading towards Anse Royale and there was blood at this point. The vehicle involved in the accident was in photograph No 22, a Nissan bearing registration number S22911. The damage to the vehicle was seen on photographs 23, 24 and 25. Photograph 33, showed a close up of the face of the deceased and the other photographs showed the injuries sustained by him.

- [3] Under cross-examination witness confirmed that she was accompanied by Sergeant Volcy at the time she was taking the photographs and the two yellow lines near the shop (referred to as Mona's shop), indicated a no parking area. At the time she went to the scene there was no vehicle parked near the shop of Mona but the vehicle of the accused was a bit further away. She stated she was told by Sergeant Volcy that the point of impact was at Label 1. The car was parked about 28 metres from the point of impact. She stated the damage on the car was only in the front. She had not noticed any brake marks.
- [4] The next witness Darren Romain, stated that he was a firefighter and on the 7th of December 2015, he was driving a fire truck on a road trial and his instructor Mr. Vidot was next to him. On nearing a restaurant in the area called Carefree, he noticed there was a traffic block. Arriving near the area near Mona's shop, he noticed there were many people, some were talking loud, others screaming and shouting and saying there was an accident and somebody had been hit by a car. He could see a man on the ground in a blue jean and wearing a blue T shirt. He stated the continuous white line in the middle of the road indicated no overtaking. He stated label 2 was where the body was. The vehicle was parked a bit further away. He had continued driving as he had to make room for the ambulance to come as his fire truck was big and would block the road. He too stated the double lines in front of Mona's shop, indicate a no parking in the area.
- [5] The next witness called by the prosecution Sergeant Sylvianne Volcy stated that she had been a police officer for 14 years and was attached to the Anse Royale police station. On

the 7th of December 2015, she had received a call from the Command Centre saying a male person had been hit by a vehicle opposite the shop of Mona and police assistance was required. She had proceeded to the scene and found a man lying on the right side of the road, the sea side. When she arrived, Dr. Carlos was present and part of the man's body was on the pavement. The victim was thereafter transported in an ambulance. She further stated WPC Agathe had come to photograph the scene. The driver had approached her at the scene and stated he was the driver and identified himself as Rico Chetty. The car he was driving was S22911 was also at the scene. PC Laramé had drawn a rough sketch plan at the scene. The demeanour of the driver was not normal, so she had informed him they were going to do a breathalyser test on him. The breathalyser was done by another officer. The driver, the accused was cautioned and arrested and taken to the Central police station. She stated that in item 1 a and b, subsequently identified as P 3 a and b, A was the place where the point of impact occurred, while B was the place where the body of the victim was lying after the accident. At the time she was on the scene she did not see the vehicle parked near Mona's shop. She had ordered that a further urine test be conducted on the driver as his alcohol test was zero but his demeanour was that of a sleepy person.

- [6] PC Mario Laramé stated on arriving at the scene, he had gone to the victim and noted he was not responding and contacted the Anse Aux Pins Clinic. He had marked the position of where the victim was after he had been taken away by the ambulance. He identified the driver as Rico Chetty and stated he had marked the position where the car involved in the accident had stopped. He had proceeded to take the necessary measurements at the scene. He stated in the point A marked on the sketch plan, showed where the victim was lying after the accident, the point of impact was B and the debris marked as C, E he stated was a blood stain. He stated the shop was Mona Theve's shop. The distance from the point of impact to where the body was lying was 28 metres. From the point of impact to where the car was parked was 79 metres and 8 centimetres. Witness further stated that the left hand side of the windscreen of the vehicle involved in the accident S22911 was smashed, the front of the vehicle was damaged as seen in the photographs. He stated the plan was signed by the accused Rico Chetty. He denied that he had signed in the place of

Rico Chetty. He stated the area outside Mona's shop was a no parking area and admitted he had drawn his clear plan at the station.

- [7] Witness Raymond Marie stated on the said day, he was standing on the stairs of the shop of Mona when a Ministry of Health vehicle, a jeep, came and stopped in front of the shop. He had seen the victim get down from a vehicle going in the direction of Victoria. The victim had crossed the road from the land side and gone into the shop of Mona and bought some Samosa and come out. The victim had then crossed the road in front of the parked Ministry of Health vehicle, to the other side. At the time he was crossing witness had seen the vehicle driven by the accused overtake the parked Ministry of Health vehicle and he was about to shout "atansyon" when the vehicle hit the victim who was now on the lane for vehicles going towards Victoria. He stated the vehicle that hit the victim was travelling at quite a speed. He stated as the victim was crossing the road even if he looked, he would have not seen the oncoming vehicle as it was being obstructed by the jeep. He had seen the victim being hit and falling but he had not looked that way thereafter, as he could not see blood.
- [8] Mr. Eric Alcindor stated on the said day the victim Jerry Asba, together with one Roger and him had been going towards Anse Aux Pins and parked their vehicle at the Chalam complex and gone to buy lemonade, while Jerry had crossed the road to go to Mona's shop to buy Samosa. As they were going towards their vehicle to get in, he heard a noise like something being hit and on looking, he saw that Jerry had been hit by a vehicle. He had seen Jerry flipping in the air and landing on the car and then get thrown onto a wall and fall. The car had stopped a bit further. He only heard the hit and had not heard a sound of ^{brakes} ~~breaks~~ being applied. He had run up to Jerry and seen him on the ground not responding. He stated Jerry had severe injuries and blood was coming out of his mouth and there were injuries on his head. He had immediately called an ambulance and ambulance had come and taken him away.
- [9] The next witness, Dr. Rose Mari Fonseka stated it was Dr. Ahimara who had done the post-mortem on the victim but had now left the jurisdiction for good. She produced the post mortem report as P4. It is apparent that the cause of death indicated on document P4

is displaced fracture of the skull with severe brain damage, 'politraumatism' from road traffic accident. She described the injuries as depicted in the report and the photographs taken at the post-mortem. She stated the primary cause of death in the report was fracture of the skull and severe brain damage which was a result of the motor traffic accident. Mr. Yanick Radegonde stated he was a surveyor by profession and had done a survey of the whole area from the market to the bus stop. He produced his site layout as P5. He explained the details and the markings in the said plan drawn out by him in relation to the scene of the accident. He admitted there was a 5 minute difference in respect of the time the accident occurred between the request letter of Mr. Cadeau and that given in his survey plan.

[10] Mr. Jason Rusteau stated he was the Manager at the Vehicle Testing Station and admitted he had prepared a report in respect of vehicle S22911. He had made two reports one in respect of the state of the vehicle and the other in respect of the brake test conducted by them on the said vehicle. This report was produced as P7. He stated according to his report P7, the roof and windscreen of the vehicle were damaged, the bonnet was smashed and the front grill damaged, both headlamps and front indicators were damaged, the radiator and air conditioner condenser were bent in and the front bumper bent inwards in the direction of the engine. Further all four tyres were worn out and the vehicle had badly failed the brake test as it had failed three components out of four. Witness categorically stated that the failure of the brake test was not ^{as} a result of the accident. He further explained the disparity in the date of his report. A
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[11] Witness Mr. Vidot affirmed the evidence of witness Romain in that he was in the fire truck with him and he was training Mr. Romain a fireman for defensive driving, when they had passed the scene of the accident immediately after it had happened. He stated that a person who overtook a stationery or parked vehicle when there was a solid white line, had to give the appropriate signal, change gear and if it is clear, overtake, keeping a distance of 1.5 metres from the side of the parked vehicle. He further stated that the fact that the vehicle had stopped a distance from where the point of collision was, indicates high speed and high gear. Mr Farid Sabury stated, prior to joining the NDEA, he was working for the traffic police and in this instant case, he was the investigating officer and

had issued a notice of intended prosecution against the accused. He produced it as P8. He had made a request for the post-mortem of the deceased which was marked as P9. He proceeded to mark the road fund licence of vehicle S22911 as P10 and insurance certificate as P11. The statement under caution of the accused was marked as P15 and P16.

[12] Thereafter, the evidence of Yhannish Jaggeshar and Mahmoud Kamel was recorded by way of video link at the RAPPIC centre. Mr. Jaggeshar stated he was the Technician and Sales Executive at Quantilab Ltd which was situated in Mauritius. He gave evidence of his expertise and stated that the laboratory analysed forensic samples like blood, urine, food and water. He stated Mr. Malvina from the Seychelles had handed over a sample on the 14th of September 2016 and the sample at the time of handing over had its seals intact and there was no sign of tampering. The sample was registered and sent for analysis to Mr. Mahmoud Kamel. The reference given was JB 1. The sample had been kept in the fridge and handed over in the sealed state the same day to Mr. Kamel for analysis. Mr. Mahmoud Kamel stated his qualifications and experience and that he was a Pharmacist by profession. He referred to the sample received from the Seychelles from Mr. Malvina and corroborated the fact that it was not tampered. He had analysed same and produced his report as P17. He stated the sample was a urine sample and it was tested for controlled drugs. On analysis it revealed the sample contained 6 mono acetylmorphine, morphine and codein. He described the analysis done by him. He stated the sample he had analysed was in good condition and not tampered with. The test was not done to analyse the quantity but to analyse the type of drug present in the urine. He further stated that 6 mono acetylmorphine comes only from heroin.

[13] Mr. Jemmy Bouzin giving evidence on behalf of the prosecution stated that on the 7th of December 2015, he received a urine sample obtained from one Rico Chetty, brought by PC Stephen Onezime to be tested for controlled drugs. He had done a preliminary test and it tested positive for heroin. He submitted his report as P18. He stated thereafter the sample was sealed and handed over to WPC Maureen Young to be sent for a confirmatory test to Mauritius Quantilab. He too described how the preliminary test was done to identify heroin in the urine. Ms Maureen Young stated she received the said

sample from Mr. Bouzin and handed it over to Mr. Malvina for analysis to be done in Mauritius. Mr. Johnny Malvinna stated he had received the sealed sample from WPC Maureen Young and taken it for analysis to Mauritius and handed it over in a sealed state to Mr. Jagershar at Quantilab Ltd Mauritius who had in turn handed it over to Mr. Mahmoud Kamel for analysis. He stated he had not brought any exhibit back. It is apparent it was used up for the analysis. Mr. Stephen Onezime testified that on the 7th of December 2015, he was working at Anse Aux Pins police station and he had conducted a breathalyzer test on the accused Rico Chetty. He was cautioned and he had agreed to be tested. The result was zero. Then witness had taken a swab test from the accused and a urine sample. He had consented for both. Witness had taken the sample and handed it over to Mr. Bouzin for testing. He admitted he had not got the consent in writing but orally from the swab. The accused had signed a form for the urine sample which he had given Mr. Bouzin.

- [14] The prosecution next called Murline Lebon, the Manager attached to H. Savy Insurance who stated that the third party insurance in respect of vehicle S22911 had expired on the 8th of November 2015. Her e-mail dated 11 December 2015 sent in respect of Inspector Sabury's request was produced as P19 stating the insurance of the said vehicle was in the name of one Mr. Raymond Marcel. The Insurance certificate was produced as P20. She stated there was no valid insurance certificate in respect of the said vehicle S22911 or in the name of Rico Chetty on the 7th of December 2015. She stated usually the insurance was in the name of the owner of the vehicle. She produced a document P21, indicating the transfer of the vehicle to Rico Chetty on the 26th of October 2015 which indicated the vehicle had been transferred by Raymond Marcel to Rico Chetty prior to the expiry of the insurance on the 8th of November 2015. She stated that Mr. Rico Chetty had to do his own insurance on purchasing the said vehicle. Learned counsel for the accused produced another insurance certificate in the name of the accused Mr. Michel Rico Chetty but it appears that was in respect of another vehicle S11273 and the said insurance commenced on the 14th of October 2015 and expired on the 25th of December 2015. However this insurance had nothing to do with the vehicle he was driving on the 7th of December 2015 and which was involved in the accident which was S 22911. Thereafter the prosecution closed its case.

Evidence of the Defence

- [15] The accused Rico Chetty made an unsworn statement from the dock. He admitted he was driving the vehicle at the time of the accident. He stated that his son was in the car with him and he was going home to Anse Aux Pins from town to his place, to take his daughter to hospital. He stated near Chalam Building, a bus was parked and as he was overtaking the bus, when suddenly he had seen someone crossing the road. He had hit him but he had not done this on purpose and he stated he was not driving fast. It was an accident. He stated when he saw the victim crossing the victim had almost finished crossing the road but came back in the same direction, it was then he had hit him. He stated he was not even drunk when the accident happened.
- [16] Thereafter the defence closed and both parties made submissions in writing.

Analysis of the Evidence and Findings

- [17] The accused admits he was driving the vehicle at the time of the accident. According to his unsworn statement from the dock, the accused states that he was overtaking a bus when he had suddenly seen someone crossing the road. According to the accused, the victim had almost finished crossing the road but had come back in the same direction and it was then that he hit him. When one considers the evidence of eye witness Raymond Marie, he states that on the said day, the victim after buying Samosa from Mona Theve's shop which was on the seaside, had crossed in front of the parked Ministry of Health vehicle which was a jeep, to the other side which would be the mountain side. At the time he was crossing, witness had seen the vehicle driven by the accused overtake the parked Ministry of Health vehicle and hit the victim who was still crossing the road and on the lane on which vehicles were travelling to Victoria. Witness does not mention that the victim turned and came back in the same direction and then he was hit. Be that as it may, it is clear from the evidence of witness Raymond Marie and it is admitted by the accused

that the accident occurred on the opposite lane and not on the lane the accused should have been travelling on.

- [18] At this stage it would be pertinent to refer to the case of in the case of *Regina v Adomako* [1994] 3 WLR 288 where it was held by the House of Lords, following the case of *R v Bateman (1925) 19 Cr App R 8*, in order to establish culpable, gross or criminal negligence or whatever epithet that may be used, the prosecution should establish that the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment.
- [19] In the Seychelles, 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, 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 to establish a charge of manslaughter.
- [20] On considering the evidence of Raymond Marie, one fact is obvious which is that the victim had crossed the road from sea side to land side in front of a parked Ministry of Health vehicle, a jeep. Witness Raymond himself states that in crossing in front of the parked vehicle, the victim would have not been able to see the oncoming car being driven by the accused and it is the view of this court that the jeep would have obstructed the vision of the accused as well. Having considered these material facts peculiar to this case, I am inclined to believe that gross negligence required to establish a charge of manslaughter has not been established by the prosecution.
- [21] However, the following factors as borne out by the evidence have also to be considered. The accident occurred while the accused was overtaking a vehicle. This means, the burden was on the accused to ensure that there were no persons crossing the road or obstructions or oncoming vehicles in front of him at the time he was overtaking, as he was crossing onto the lane on which vehicles were travelling in the opposite direction. Further, the evidence indicates that there was a solid white line at this spot. According to

Mr. Roch Vidot an instructor in defensive driving, the vehicle should have slowed down, changed gear and having ensured it was safe overtaken the stationary vehicle on a lower gear. However it is apparent from the evidence that none of this was done. The accused himself does not state in his unsworn statement, he slowed his vehicle at the time of overtaking. The evidence of witness Raymond is that the vehicle came at quiet a speed. There was no attempt at applying brakes and there were no brake marks at the scene and the witnesses' state there was no sound of brakes being applied. Even the evidence of Jason Rusteau was that the brakes were faulty and three of the four components failed the tests. The accused admits in his statement under caution that his brakes failed. Further the evidence clearly indicates that the victim on impact was thrown up, fell on the car and ended up a distance of 28 metres from the point of impact. In fact no attempt was made by the accused to stop the car either before or immediately after the accident as it eventually had stopped 79 metres from the point of impact.

- [22] The evidence of Mr. Jemmy Bouzin is that he had analysed a urine sample of the accused given to him by officer Stephen Onezime and the preliminary test done by him indicated it tested positive for Heroin. He had sent the sample for a confirmatory test to Mauritius Quantilab Ltd. The evidence of witness Mahmoud Kamel an expert witness who tested the sample of urine of the accused in Quantilab Ltd Mauritius for controlled drugs stated on analysis it revealed the sample of urine contained 6 Mono Acetyly Morphine, Morphine and Codein. He further stated that 6 Mono Acetyly Morphine comes only from heroin.
- [23] The evidence of Yhannish Jaggeshar and Mahmoud Kamel, Mr. Jemmy Bouzin, WPC Maureen Young, Mr. Johnny Malvina and officer Stephen Onezime clearly indicate the chain of custody of the sample of urine taken from the accused Rico Chetty until it was tested in Mauritius in Quantilab Ltd and the evidence of these witnesses affirms the fact that the sample was given voluntarily by the accused and was not tampered and it was the same sample that tested positive for Heroin. Further evidence was led that the accused had driven the vehicle S22911 with an expired road fund licence and an expired insurance and worn out tyres. The evidence of all the prosecution witnesses were

corroborative and not contradictory in nature and supported by documentary evidence. I therefore have no hesitation in accepting the evidence of the prosecution.

[24] It is in evidence that the urine sample taken from the accused tested positive for heroin. Therefore, the accused knowing the risk involved in taking controlled drugs and driving had decided to do so which indicates recklessness on his part. Further the accused knowing the dangers of driving a vehicle with highly defaulty brakes had decided to drive the vehicle and that too at a speed and in a reckless manner. Recklessness involves indifference to an obvious risk and appreciation of such risk with a determination nevertheless to run it *R v Stone and Dobinson [1977] QB. 354*.

[25] 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”.

[26] In the case of *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.

[27] 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. When considering paragraphs 17, 21 22 and 23 herein, the facts set out in this case clearly indicate beyond reasonable doubt that the standard of driving was

“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 reckless and dangerous.

[28] For all the aforementioned reasons, I am satisfied beyond reasonable doubt that all the elements of the offence as set out in Count 2, have been proved by the prosecution beyond reasonable doubt. I therefore proceed to find the accused guilty on Count 2 and convict him of same.

Signed, dated and delivered at Ile du Port on 28 February 2018


M Burhan
Judge of the Supreme Court