IN THE SUPREME COURT OF SEYCHELLES

Reportable

CR108 /2021

In the matter between

THE REPUBLIC **Prosecution**
(rep. by Rongmei Langsinglu)

and

JIMMY MARIE **Accused**
(rep. by s. Rajasundaram)

Neutral Citation	*The Republic v Jimmy Marie* (CR32/2019) delivered on 27 November 2023
Before:	Vidot J
Summary	Submission of No Case to Answer
Heard:	parties filed submissions
Delivered:	27 November 2023

RULING

VIDOT J

[1] The Accused stands charged with two counts of causing death by dangerous driving contrary to and punishable under section 25 of the Road Transport Act (Cap 206). It is alleged that on 25th October 2020 the Accused was driving his vehicle in such a dangerous way that the vehicle was involved in an accident that occasioned the deaths of Michael Andrew Auguste and Noamie Joseph. The former died at the scene whilst the latter succumbed to her injuries and died on 14th February 2021.

[2] At the close of the prosecution's case, Counsel for the Accused raised a submission of no case to answer. Basically, the defence is arguing that the Prosecution has not discharged

the burden of proof to the required standard of beyond reasonable doubt as they have failed to establish all the elements of the offence. It was stated that in the circumstances a conviction will be untenable. Counsel for the defence drew attention to section 183 of the Criminal Procedure Code which states thus;

"If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him."

[3] A submission of no case to answer may be made out either if no case has been established in law or the evidence led is so unsatisfactory or so unreliable that the court should hold that the burden of proof has not been discharged. The principles to be adopted in deciding a submission of no case to answer was established in the case of **R v Stiven [1971] SLR 37**. These principles were adopted in many other cases such as **R v Olsen [1973] SLR 188, R v Marengo [2004] SLR 116** and **R v Matombe (No1) [2006] SLR 32.** These principles are;

1. There is no evidence to prove an essential element of the alleged offence; and

2. The evidence adduced by the prosecution has been so discredited as a result of cross-examination, or is so manifestly unreliable, that no reasonable tribunal could safely convict on it.

[4] Similar test was set out in **R v Galbraith 77 Cr. App. R 124 CA** as follows;

i. If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty - the judge will stop the case.

ii. The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.

iii. Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

iv. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.

[5] In **R v Galbraith** (supra), Lord Lane CJ had the following to say;

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

[6] Therefore at the stage of a submission of no case to answer, if the court was to rule that as a matter of law there is no evidence on which the accused could be convicted, the judge shall direct the jury to enter a verdict of not guilty or the Court sitting without a jury will

make the declaration. In the case of **R v Hoareau (supra),** Chief Justice Twomey makes reference to **Green v R (1972) SLR 55** in which Sauzier J had the following to say in respect of what constitutes " *no evidence*" as provided for under section 294(1) of the Criminal Procedure Code;

"The considerations which apply at that stage are purely objective and the trial court is not asked to weigh the evidence. At that stage it is only necessary for it to find that a reasonable tribunal might convict."

[7] It is non-contentious that on the fateful day the Accused was driving pickup registration number S28239 on the highway at Providence going in the direction of Victoria, coming from the international airport. In his company was the two deceased persons and another young gentleman. That pickup truck was in involved what can only be described as a terrible accident. In fact, the pathologist's report described the cause of death as violent. The pickup itself was a total wreck. There was only one eye witness to the accident who was Mike Benoit. The other witnesses were police officers who attended the scene or visited the Victoria Hospital in relation to the deceased and other official witnesses such as medical and forensic experts.

[8] Mike Benoit recollected what be observed. He was driving behind pickup S28239. I reproduce part of his testimony;

Q: *When you were going down, where were you?*

A: *I was at the roundabout airport and when I was passing by there was a pickup truck, Kia Motor, which was in front of me, in the right lane and behind me there was an Isuzu pickup, 5 tons. The Isuzu pickup overtook me, and passed in front of the Kia Motor and then when I hit the blinker for me to come out of the left lane, I saw the pick-up sort of lose control.*

Q: *Which one lose control?*

A: *Kia Motor*

Q: *And you say there was an Isuzu truck?*

A: *Yes.*

Q: *From which side of the road, which side did the Isuzu overtake?*

A: *Left side. When the pickup truck lose control, there were two people at the back of the pickup truck. On the left side there was a lady and on the right side there was a man. The lady, when the pickup tilted she slide and fell down and the man also fell down and the truck hit on the rocks and went on the other side. And when I stopped and stood and watched and I saw the lady was bleeding on the ground and the man he fell in a certain kind of way that so to speak that his upper body part was in some kind of way and then lower body part, another kind of way.*

And then I called 999, a lady spoke to me, asked where I was and wanted to know what assistance I seeking for, I tried to explain and the lady said that there were people coming. When I went to the pickup truck the driver was stuck the hood of the pickup truck was a bit downwards and there was blood on his face. I panicked and went back to the man on the ground and then I heard a horn from the pickup truck, then I went to reach out my hand for me to switch off the engine of the pickup truck because it was still in gears and the tyres were turning.

Then when I went to the front of the pickup truck, the windscreen was shattered, there was a hole and I could see through that hole that there was a small boy (a boy/man of about 16 to 17 years) and I removed him and there was blood in his face and I sat him down and stayed with him."

[9] Mike Benoit explained that the door of the pickup truck had to be cut opened to remove the driver therefrom. He also testified that he was driving at a speed of around 70 km per hour.

[10] Dr. Lander Bettencourt, pathologist, presented the post mortem reports prepared by another pathologist, Dr Raoul Ramirez. The latter is no longer in the Republic. The injuries were quite horrific. That could also be indicative of the speed at which the pickup truck was being driven by the Accused.

[11] In this case, the photographs are very revealing. They showed that the pickup truck was a complete write-off and the extent of injuries sustained by the deceased. It is my view that, it would be incorrect to suggest that the truck was not going at a high speed. I even doubt Mike Benoit's testimony that he was driving at around 70 km per hour when he was about to about to overtake the pickup truck suggesting that the truck was going at a slower speed. I believe that considering that the truck even changed lane and went to the opposite lane of the highway and could not be stopped by the big rocks in the island separating the lanes bringing traffic in opposite direction suggest a higher speed. The skid marks, damage caused to the pickup truck and the extent of injuries sustained by the deceased support the Court's position.

[12] Furthermore, one cannot ignore the evidence of Mr. Mohammed of QuantiLab of Mauritius. Analysis conducted on samples taken from the Accused, it was discovered that there was alcohol and ketamine, which is a drug in the samples. These could have contributed to the accident and are indeed pertinent.

[13] Section 25 of the Road Traffic Act provides 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 manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, conditions 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."

[14] Therefore, section 25 postulates an objective test. This is what was held in **DDP v Milton (2009) R.T.C 21 D.C.** In **Evenor v R [1972] SLR 91**, it was held that that the offence of dangerous driving is not an absolute offence and whether or not a piece of driving is dangerous is to be viewed objectively taking into account all the circumstances of the case. Fault in falling below the required standard of skill must be proved against the driver. The proof required is that the driver was responsible for causing the dangerous situation and whether such is deliberate or not is immaterial. The case went on to add that the fault of the driver need not be the sole cause of the accident.

[15] Section 206 of the Penal Code provides;

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

[16] It has been established that there was presence if drugs and alcohol in the blood sample of the Accused and this is suggestive that this could have been a cause, if not the principal cause of the accident. The skid marks on the road and the fact the truck ended up on the opposite side of the road and could not even be stopped by the rocks separating the lanes as indicative that the truck could have been driving at a great speed. I have also referred to the damage caused to the pickup truck and the injuries sustained by the deceased as other supporting evidence of speed.

[17] Therefore, having assessed the evidence above, I find that the Accused has a case to answer and therefore invite him to make his defence.

Signed, dated and delivered at Ile du Port on 27th November 2023

M Vidot J