

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 72/2014

[2016] SCSC 654

THE REPUBLIC

versus

ANDY MOREL

Accused

Heard: 19th October 2015, 23rd October 2015 and 10th March 2016 and 9th May 2016

Counsel: Mr. Ananth Subramanian, Assistant Principal State Counsel for the Republic
Mr. Nichol Gabriel Attorney at Law for the accused

Delivered: 14 September 2016

JUDGMENT

Burhan J

[1] The accused in this case has been charged with the following offences:

Count 1

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

The particulars of offence are that Andy Morel of Baie Lazare, Mahe, on the 18th May 2014 at near Quatre Borne, Mahe unlawfully killed another person namely Daniella Balette.

Count 2

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

- [2] *The particulars of offence are that Andy Morel of Baie Lazare, Mahe, on the 18th May 2014 at near Quatre Borne, Mahe caused the death of another person namely Daniella Balette by driving a motor vehicle having registration number S 6901 on the road at a speed or in a manner dangerous to the public.*

Count 3

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

The particulars of offence are that Andy Morel of Baie Lazare, Mahe, on the 18th May 2014 at near Quatre Borne, Mahe drove a motor vehicle bearing registration number S 6901 while his breath contained a proportion of alcohol which exceeded the prescribed limit of 35 micrograms in 100 millilitres of breath test set out in the schedule to S.I 109 of 1995 was found to be 98.1 and 100 micrograms of alcohol per 100 millilitres.

- [3] The accused denied the charges against him and the trial against the accused commenced on the 19th of October 2015.
- [4] The prosecution called Sergeant Agathine an officer attached to the Scientific Support and Crime Record Bureau who had photographed the scene of the accident. On the 18th of May 2014, he had been instructed by SI Quarte to go to the scene of the accident at Takamaka and he had proceeded to Quarte Bonne police station where he had met with one officer Roseline who had taken him to the scene of the accident. When he arrived at the scene,

there was no vehicle but he had observed a mark on a tree on the land side of the road where a vehicle had hit. He had taken photographs of the tree from different angles. Thereafter, he had proceeded to Bai Lazare where he had photographed the vehicle involved in the collision which was parked at the house of the accused. He described the vehicle as being black in colour and bearing registration number S6901. He produced the photographs taken as exhibits P1 (1 to 9) and identified and explained each photograph in open court. He stated the driver of the vehicle was the accused Mr. Andy Morel.

[5] Corporal Fadette Roseline stated she was a police officer and at the time of the accident in 2014 was attached to the Quarte Bonne police. She had received a call on the 18th of May 2014 around 4.27 a. m. about the accident and she had called Anse Royale police for assistance. They had sent a vehicle for her and she had gone to the scene at 4.40 a.m. She had observed that a car bearing registration number S6901 had left the road and hit the tree on the side of the road. The driver had been at the scene and she had identified him and stated further he was the accused in the dock. The driver had told her he was driving and one Daniel Balette was seated behind him. The accused had also told her that another vehicle had been coming towards him and due to the light of the vehicle on his eyes, he had lost control of his own vehicle and it had crashed onto the tree. Witness stated Danielle Balette was not at the scene. The front driver's side of the vehicle was completely damaged. The accused was in shock. The accused had an injury on his right hand. The break down truck had arrived and she had taken the accused to the station.

[6] Thereafter, two breathalyser tests were done on the accused and the results were 100 and 98 micrograms of alcohol per 100 milli litres of breath. The accused had been arrested by PC Benoit and she had given him a Notice of Intended Prosecution (NIP). She identified the document as P2. Witness identified her signature on the breathalyser test documents, produced as P3 and P4 and the signatures of the accused and PC Benoit. Under cross examination she stated the breathalyser machine had last been checked and calibrated on the 11 of April 2014 and was working properly at the time of the tests being carried out. She had only assisted PC Benoit and it was he who had done the breathalyser test on the accused. She stated she had drawn a sketch but it was not in the file.

- [7] Witness Amedee Benoit stated he had conducted a breathalyser test on the accused and identified the reports P3 and P4. He stated that prior to conducting the test on the accused, he had observed that the machine was working properly and was in good condition. The test conducted at 6.15 am gave a reading of 100 micrograms while the 2nd test conducted at 6.20 am gave a reading of 98 micrograms. He stated the accused too had signed on both receipts. Under cross examination he stated he had not undergone any specialized training but had witnessed other officers conducting the test. He also explained the procedure in open court.
- [8] Witness Wilbert Serge Elizabeth stated that at the time of the accident he was working as an ambulance driver and upon receiving a call of an accident at Takamaka had immediately set off to Takamaka with the porter and paramedic. On arrival at the scene, they observed that a car had collided with a Mango tree. They had observed a lady who was injured lying near the car. Tony Volcy the paramedic had attended to her and then they had put her in the ambulance and taken her to the Anse Royale hospital. He stated he had seen the driver, the accused at the scene of the accident and asked him if he was okay. The accused had replied he was. Witness identified the accused and photographs of the vehicle involved in the accident in open court.
- [9] Witness Elizabeth further stated his team had asked the accused if he was the driver of the vehicle involved in the accident and whether he needed their assistance. He had said he was okay and thereafter they had concentrated on the patient. His evidence was corroborated by the evidence of witness Andy Coralie who accompanied him in the ambulance and was one of the porters at the scene. Witness Coralie too stated that he had asked the accused whether he was the driver as they were going to give first aid to the person who was in the car and he had admitted he was the person driving the vehicle and said he was okay.
- [10] Witness Tony Volcy, the paramedic, corroborated the evidence of these two witnesses. He stated there was a lady on the road side near the scene of the accident. He had observed blood was coming from her head and her arm was deformed indicating a fracture. He also observed blood on her back. The driver had admitted to witness he had removed the lady

from the vehicle after the accident. He stated the driver had complained of a pain in the shoulder but had not wanted to accompany them to the hospital. This witness too stated he had asked the accused whether he was the driver and the accused had admitted same. He identified the accused in open court as the same person.

- [11] The prosecution next led the evidence of Dr. Sanjeev Kumar Pagazhendhi, a doctor who was attached to the Intensive Care Unit at Victoria hospital and who had treated the deceased Daniella Balette when she was admitted to hospital after the accident. He tendered his report in respect of same as P5. He described the injuries in detail which included a left basal ganglia brain haemorrhage, fractures of the vertebrae, fractures of the right ribs with adjacent pulmonary contusions and liver and renal lacerations that were bleeding. He further stated the injuries were consistent with a road traffic accident.
- [12] Witness further stated the numerous injuries led to infections, pneumonia, organ failure and death. Witness described in detail the treatment procedures undergone by the victim prior to her death. The other doctor called by the prosecution, Dr. Parish Bharria pathologist, produced the report of Dr. Marija Zlatkovic as P6 which gave the cause of death as due to basal ganglia haemorrhage and bilateral broncho pneumonia, surgical right kidney removal and liver lacerations which the doctor explained were from injuries sustained from a road traffic accident.
- [13] Having obtained an order from court, the prosecution produced the statement under caution of the accused as P8 after a *voire dire* was held in respect of its admissibility.
- [14] The prosecution thereafter closed its case. The accused chose his right to remain silent. It should be borne in mind that in terms of article 19 (2) (h) of the Constitution of the Republic of Seychelles, no adverse inference should be drawn by Court from the fact that the accused chose his right to remain silent.
- [15] Having considered the evidence of the prosecution in this case, I note that in his retracted statement, the accused admits he was driving towards Anse Forbans in a vehicle bearing registration number S6901 on the said date and time. He admits that the deceased was seated in the back of the vehicle. While he was driving the vehicle towards Quarte Bonne

near the residence of one Maxim Tirant, due to the lights of another vehicle coming in the opposite direction, his vision had been “blocked”. As a result, after the vehicle had passed him, he had driven to the right side of the road, and gone off it, and hit a tree on the right side of the road. He further admitted that at the time of the accident Daniella Balette had been occupying the back seat.

- [16] It is trite law that as the accused had retracted his statement under caution all admissions made by him that implicate him must be corroborated by independence evidence as held in the case of *Rachelle v The Republic [1984] SLR 42*. The admission by the accused that he drove the vehicle is corroborated by the evidence of the 1st responders to the scene namely the driver of the ambulance Serge Elizabeth, porter Andy Coralie and paramedic Tony Volcy who stated that the accused on being questioned had admitted he was the driver of the vehicle. Several other witnesses also stated that the accused had admitted at the scene he was the driver of the vehicle. In regard to admissions of an accused refer *Cross on Evidence 4th Edition D.L. Mathieson para 18.12 and 18.13*. I therefore hold that as sufficient independent evidence exists to corroborate the admissions of the accused that he was the driver of the vehicle at the time of the accident, the prosecution has proved this fact beyond reasonable doubt.
- [17] It is apparent from the admission of the accused in his statement under caution that his vehicle that was going in the direction of Quarte Bonne had gone across the lane of oncoming vehicles to the other side of the road and gone off the road and hit a tree on right side of the road (mountain side). This admission is corroborated by the evidence of Sergeant Agathine and Corporal Fadette Roseline. The marks on the tree and the damage to the tree and serious damage to the right driving side of the vehicle as shown in photographs P1 (5) to (8) and P 1 (9 to 14) clearly corroborate the admissions of the accused in his statement under caution. I therefore proceed to accept these admissions made by the accused in his statement under caution as the admissions stand corroborated by the independent evidence set out above.
- [18] The fact that the victim Daniella Balette was in the rear seat of the car at the time of the accident is also admitted by the accused. This fact is corroborated by the evidence of the

1st responders to the scene Serge Elizabeth, Andy Coralie and Tony Volcy who state in their evidence that when they arrived on the scene Daniella Balette had been on the ground next to the car and the accused had admitted to them that she had been in the back seat of the vehicle involved in the accident and he had taken her out and put her on the ground.

[19] Further, the evidence of the 1st responders clearly indicate that Daniella Balette had been injured as a result of the accident and was seen lying on the ground close to the scene of the accident from where they had rushed her to hospital. Further the evidence of doctors Sanjay Kumar and Parish Bharria and the reports produced by them, clearly indicate that her death was due to the numerous injuries caused as a result of the injuries sustained in a road traffic accident. Therefore this court is satisfied beyond reasonable doubt that the victim Daniella Balette died as a result of the injuries sustained due to the vehicle she was travelling in crashing into a tree.

[20] Having considered the manner in which the accident occurred, the facts before court clearly indicate that the vehicle which was being driven by the accused had gone from the lane it was travelling across the oncoming lane of traffic and off the road and finally stopped after crashing into a tree on the right side (mountain side) of the road. The damage to the vehicle and the marks on the tree, indicate the vehicle was travelling at speed at the time it had gone completely off the road and collided with the tree.

[21] The implied defence of the accused, as borne out in his statement under caution P8 is that the lights of an oncoming vehicle had blocked his vision, resulting in the accident but this is not supported by the evidence of the prosecution and in my view is a self-serving part of his statement to pass on the blame to another unknown source. Had this happened the accused should have stopped his vehicle or slowed down and prevented it going out of control and off the road. I therefore proceed to reject this implied defence.

[22] The evidence of Mr. Amedee Benoit and Corporal Fadette Roseline establishes the fact that the accused was under the influence of alcohol at the time he was driving the vehicle and at the time of the accident. The readings on the reports of the breathalyser test P3 and P4 clearly confirm this fact and establish beyond reasonable doubt the facts mentioned in the particulars of offence in respect of count 3. Even though officer Benoit had no

specialised training in the field of breathalyser testing, his testimony clearly indicates that he had performed the tests properly, after checking whether the machine had been calibrated and satisfying himself it was in working order. He describes in detail how he performed the tests. I see no reason to reject his evidence as the reports taken at short intervals show no vast or stark discrepancies. Further, the accused admits in his statement under caution that he had been posted to the bar to work at a private function at the restaurant that night and had had a few beers. I am therefore satisfied that the prosecution has proved all the elements of Count 3 beyond reasonable doubt.

[23] It is pertinent at this stage in terms of section 4 of the Penal Code to recourse to English authorities to construe expressions used in section 192 as was approved in *R v Hoareau 1972 SLR 18*. *Archbold Criminal Pleading, Evidence and Practice 2008 edition* describes manslaughter by gross negligence which the prosecution has sought to prove in this case. This form of manslaughter is satisfied on proof that the conduct of the accused which caused the death of the deceased amounted to a breach of duty owed towards the deceased and was so serious as to justify the imposition of criminal liability.

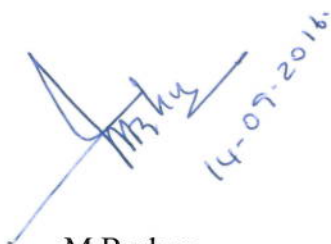
[24] In the case of *R v Marzetti 1970 SLR 20* the accused was charged with manslaughter under section 195 of the Penal Code and dangerous driving under section 18(1) (b) and (2) of the Road Transport Act. Sauzier J held that the degree of negligence required to establish manslaughter, must go beyond 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. As there are no eye witness accounts to establish these facts, I would give the benefit of the doubt to the accused and proceed to find the accused not guilty of the charge of manslaughter.

[25] Recklessness and dangerous driving on the other hand 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*. Having considered the evidence in this case especially the fact that the vehicle driven by the accused had left the roadway completely and hit a tree and the damage caused to the vehicle, I am satisfied beyond reasonable doubt based on the

aforementioned reasoning that the accused had been driving recklessly and in a manner dangerous to the public including the occupant of the car Danielle Balette.

[26] For all the aforementioned reasons stated herein, I proceed to find the accused guilty on Count 2 and 3 and proceed to convict him of same. I acquit the accused on Count 1 of the manslaughter.

Signed, dated and delivered at Ile du Port on 14 September 2016

A handwritten signature in blue ink, appearing to be 'M Burhan', with a date '14-09-2016' written below it.

M Burhan
Judge of the Supreme Court