

## IN THE SUPREME COURT OF FIJI

## Appellate Jurisdiction

Criminal Appeal No. 40 of 1961

Between:

SHAYAM BARAN, s/o RAJMAN Appellant

v.

REGINAM Respondent

Traffic Ordinance, Cap. 235—presumption of law regarding compliance with section 35.

The appellant was convicted of dangerous driving before the Magistrate's Court, Nadi. The trial magistrate made no specific finding of fact as to whether s. 35 of the Traffic Ordinance (Cap. 235) had been complied with. The appellant contended that his conviction could not be sustained since the trial magistrate had failed to direct his mind to the defence that no warning was given under s. 35.

*Held.*—The appellant had failed to call the necessary evidence that none of the requirements of s. 35 of the Traffic Ordinance had been complied with. In these circumstances there was a presumption in law that the requirements of this section had been complied with, and it was not necessary for the trial court to record any findings of fact on the matter.

Appeal dismissed.

Case referred to:

*Sanders v. Scott* (1961) 2 All E.R. p. 403.

*K. C. Ramrakha* for the Appellant.

*K. C. Gajadhar* for the Respondent.

HAMMETT, Ag. C.J. (29th September, 1961).

This is an appeal from the decision of the Magistrate's Court sitting at Nadi dated 2nd August, 1961, whereby the appellant was convicted of the offence of dangerous driving contrary to section 32 (1) of the Traffic Ordinance, Cap. 235, and fined £40 and disqualified from holding a driving licence for 12 months. The facts relied upon by the prosecution and accepted by the learned trial Senior Magistrate were that on the 14th June at 8 p.m. the appellant, who was driving a heavy goods vehicle, was signalled to stop by a policeman who stood in the middle of the road in uniform flashing a torch. The appellant was driving his truck at about 30 miles per hour at the time but when a police constable gave the signal, the truck increased speed and the constable had to jump out of the road to avoid being run over. The police immediately chased the appellant's lorry in a landrover. The appellant drove his vehicle at a speed of 50 to 55 miles per hour on a narrow road taking corners on the wrong side at a time when the road was more busy than usual due to the cane cutting season before he stopped and was interviewed by the police.

A number of the grounds of appeal were based on fact and in these there was no merit. At the hearing of the appeal all the grounds of appeal were abandoned save ground three which reads as follows:—

“That the learned Senior Magistrate failed to direct his mind to the defence that no warning was given under section 35 of the Traffic Ordinance and made no finding on this aspect of the defence.”

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The material part of section 35 of the Traffic Ordinance, Cap. 235, reads as follows:—

“ Where a person is prosecuted for an offence under . . . this Ordinance relating . . . to . . . dangerous driving . . . he shall not be convicted unless either—

- (a) he was warned at the time the offence was committed that the question of prosecuting him for an offence under some one or other of the provisions aforesaid would be taken into consideration; or
- (b) within fourteen days of the commission of the offence a summons for the offence was served on him; or
- (c) within the said fourteen days a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence:

Provided that—

- (b) the requirement of this section shall in every case be deemed to have been complied with unless and until the contrary is proved.”

In this case Police Constable 408 R. D. Mishra gave evidence that he warned the appellant when he eventually caught up with him that he would be summoned for dangerous driving. The appellant in his evidence denied this. He did, however, say that he asked the police if he would be charged with an offence and “ they said they would think about it and then left ”.

The learned trial Senior Magistrate made no specific finding of fact on the issue of whether or not the appellant was warned, at the time the offence was committed, in the terms of section 35 (a) of the Traffic Ordinance, Cap. 235. In his judgment, however, the learned trial Senior Magistrate said “ I believe witness for the prosecution ”. He further held to be false the appellant’s denial that at the material time he was driving the vehicle.

The appellant contended that until the trial court had determined the issue of whether or not section 35 had been complied with, he had no jurisdiction and the conviction must, therefore, be quashed.

Section 35 of the Traffic Ordinance is in similar terms to section 241 (2), para. (c) (i) of the English Road Traffic Act of 1960. In the case of *Sanders v. Scott* (1961) 2 All E.R. p. 403 it was held that the proper way of establishing non-compliance with the provisions of this section is for the driver to give evidence that no warning was given to him and no notice of intended prosecution or summons was served upon him within the time limit and also to call the registered owner of the vehicle to prove that no notice had been served on him either. Unless and until all this evidence has been called by the defence, the defence has not proved non-compliance with all the alternatives required by the section.

It is clear in this case that the appellant failed to call the necessary evidence that none of the requirements of section 35 of the Traffic Ordinance had been complied with. In these circumstances there was a presumption in law that the requirements of this section had been complied with and it was not necessary for the learned trial court to record any findings of fact on the matter. For these reasons the appeal must be dismissed.