

RAM PRAKASH

v.

REGINAM

[SUPREME COURT, 1963 (Hammett Ag. C.J.),

15th November, 20th December]

Appellate Jurisdiction

Criminal law—evidence—witness declared instead of being sworn—evidence ignored—Criminal Procedure Code (Cap. 9) s. 137—Oaths Ordinance (Cap. 13) s. 2.

A witness for the prosecution was a Catholic and objected to being sworn on the "Protestant" bible, the only one available in court; he was affirmed instead of being sworn.

*Held.*—(1) The combined effect of s. 137 of the Criminal Procedure Code and s. 2 of the Oaths Ordinance is that the only witnesses who may be affirmed instead of taking the oath are those who (a) have no religious belief (b) declare that the taking of the oath is contrary to their religious belief, or (c) are incapable of comprehending the nature of an oath by reason of defect of religious knowledge or belief.

(2) The witness did not fall within any of these categories and his testimony had therefore to be ignored completely. There was ample other evidence to sustain the conviction.

*Appeal against Conviction.*

*Sahu Khan* for the appellant.

*Palmer* for the Crown.

HAMMETT Ag. C.J. [20th December, 1963]—

The appellant was convicted of careless driving contrary to section 31 of the Traffic Ordinance (Cap. 235) and fined £12 and disqualified from holding a driving licence for 3 months.

There are four grounds of appeal against the conviction of which the fourth was abandoned at the hearing. The remaining grounds are particulars of the general ground that the verdict is unreasonable and cannot be supported having regard to the evidence.

One point of interest arose in the course of the trial which was not specifically referred to in the grounds of appeal.

The first witness for the prosecution was Alexander Smith who said he was a Catholic and could not be sworn on the "Protestant" bible, the only bible in Court. Since no "Catholic" bible was readily available at the time, he was affirmed instead of being sworn before he gave his testimony.

Section 137 of the Criminal Procedure Code reads as follows:—

" 137. Every witness in any criminal cause or matter shall be examined upon oath or affirmation, and the court before which any witness shall appear shall have full power and authority to administer the usual oath or affirmation:

Provided that the court may at any time, if it thinks it just and expedient (for reasons to be recorded in the proceedings), take without oath the evidence of any person declaring that the taking of any oath whatever is according to his religious belief unlawful, or who by reason

of immature age or want of religious belief ought not, in the opinion of the court, to be admitted to give evidence on oath; the fact of the evidence having been so taken being also recorded in the proceedings."

Section 2 of the Oaths Ordinance (Cap. 13) reads—

"2. Every person upon objecting to being sworn and stating as the ground of such objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief, and every person who, by reason of any defect of religious knowledge or belief, is incapable of comprehending the nature of an oath, shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or shall be required by law, which affirmation shall be of the same force and effect as if he had taken the oath, and if any person making such affirmation shall wilfully, falsely and corruptly affirm any matter or thing which, if deposed on oath, would have amounted to wilful and corrupt perjury, he shall be liable to prosecution, indictment, sentence and punishment in all respects as if he had committed wilful and corrupt perjury:

Provided that nothing in this Ordinance shall prevent any person from being sworn according to the ceremonies of his own religion or in such manner as such person may deem binding on his conscience."

The only witnesses therefore who may be affirmed instead of being sworn when giving evidence are those who—

- (a) Have no religious belief.
- (b) Declare that the taking of the oath is contrary to their religious belief; or
- (c) Are incapable of comprehending the nature of an oath by reason of defect of religious knowledge or belief.

The first witness did not fall within any of these categories.

It is clear that in these circumstances the Court below had no authority to take the evidence of the first witness on affirmation instead of on oath. The testimony of the witness must therefore be ignored completely. Unless there was ample other evidence which was accepted by the trial Court, and which alone would have inevitably led to the conviction of the appellant, the conviction cannot be upheld.

In his judgment the learned trial Magistrate accepted in its entirety the evidence of one P. A. McFarlane whom he described as a completely independent witness. This witness gave evidence that the appellant whilst driving the motor vehicle in question, turned from the direction in which he was travelling, to the right into the path of an overtaking vehicle without giving any hand signal of his intentions. At the time, the appellant himself admitted he knew there was a vehicle travelling behind him. As a result of the appellant's actions a collision occurred between the appellant's vehicle and the vehicle which was about to overtake him.

In my opinion there was ample independent evidence, quite apart from that of the witness Alexander Smith, which was believed and which supported the conviction of careless driving. In view of the express finding of the learned trial Magistrate that he accepted completely the evidence of P. A. McFarlane, it is clear that he would in any event have convicted the appellant, quite apart from the evidence of Alexander Smith.

The appeal is therefore dismissed.

*Appeal dismissed.*

Solicitor for the appellant: *A. H. Sahu Khan.*

*Solicitor-General* for the Crown.