GAURI SHANKAR

v.

REGINAM

[SUPREME COURT, 1963 (Hammett P.J.), 18th, 22nd January]
Appellate Jurisdiction

Criminal law—careless driving—identification of driver—no change of onus on proof of ownership—inference from false evidence of owner—Traffic Ordinance (Cap. 235) ss. 31, 37 (1), 37 (2), 37 (5), 65.

Criminal law—practice—ruling of case to answer—position of court of appeal.

The appellant was convicted of offences under the Traffic Ordinance. There was ample evidence that it was his car which, while being driven, was involved in a collision, but the appellant was not identified as the driver. His defence was that his car was in his garage and up on blocks at the relevant time.

Held.—(1) There is no rule of law that once ownership is established the onus falls on the owner of the car to show that he was not driving at the relevant time.

(2) When a submission of " no case " has been overruled and the accused elects to give evidence the court of appeal must look at the evidence as a whole at the close of the case for the defence.

(3) The only logical inference from the false testimony that the vehicle could not have been involved in the accident was that it was the appellant and no one else who drove the car at the relevant time.

Appeal against conviction.

Ramrakha for the appellant.

Gajadhar for the Crown.

HAMMETT P.J. [22nd January, 1963]—

The appellant was convicted by the Magistrate's Court sitting at Suva on each of the following three counts:—

" *First Count*—

Careless Driving: Contrary to sections 31 and 65 of the Traffic Ordinance, Cap. 235.

Gauri Shankar son of Shiu Rattan on the 1st day of September, 1962, at Suva in the Central Division drove motor vehicle No. 9179 on Stewart Street without due care and attention.

Second Count—

Failing to stop after an accident: Contrary to sections 37 (1) and 65 of the Traffic Ordinance, Cap. 235.

Gauri Shankar son of Shiu Rattan on the 1st day of September, 1962, at Suva in the Central Division being the driver of motor vehicle No. 9179 on Stewart Street, failed to stop after an accident occurred causing damage to vehicle No. E728.

Third Count—

Fail to report an accident: Contrary to sections 37 (2), (5) and 65 of the Traffic Ordinance, Cap. 235.

Gauri Shankar son of Shiu Rattan, on the 1st day of September, 1962, at Suva in the Central Division being the driver of motor vehicle No. 9179 on Stewart Street, failed to report as soon as possible to the nearest police station or to a police officer an accident involving the said motor vehicle and caused damages to motor vehicle No. E728."

He appeals against these convictions on the following grounds:—

" (*a*) That the verdict is unreasonable and cannot be supported having regard to the evidence;

(*b*) That there was no proof that your petitioner drove vehicle number 9179 at the time of the accident;

(*c*) The learned trial Magistrate erred in law in ruling at the close of the prosecution case that there was an onus on the appellant to show that he was not driving the car;

(*d*) The learned trial Magistrate erred in ruling there was a case to answer at the close of the prosecution case."

At the close of the case for the prosecution evidence had been given to the following effect.

On the 1st September, 1962, motor vehicle No. E728 was parked on the left hand side of Stewart Street, Suva, at about 6.50 p.m. Behind it was parked vehicle No. 9179. The registered owner of this vehicle at the time was the appellant.

This vehicle, No. 9179, was driven by some person, who was not identified, into the back of vehicle No. E728 to which it caused damage. The driver did not stop and the accident was not reported to the police.

On 5th September, 1962, Miss Fon Moa, who had seen vehicle No. 9179 at the time it collided with and damaged vehicle No. E728, identified at the appellant's residence, the appellant's vehicle No. 9179, as the same car that she had seen damage vehicle No. E728 in Stewart Street on the 1st September. Substantial damage was found on the appellant's vehicle which was consistent with that which could have been caused by its collision with car No. E728.

The appellant was present on 5th September, 1962, when Miss Fon Moa, in the presence of the police, identified his car and he was told of the incident on the night of 1st September in which his car had been involved and that proceedings would be taken against him.

He told the police he knew nothing about the accident and that he was not driving his car on the evening of 1st September.

At the close of the case for the prosecution, counsel for the defence submitted the appellant had no case to answer.

This submission was overruled by the learned trial Magistrate who ruled—

" Well established that once ownership established onus on owner to show that he was not driving the car."

In my opinion this ruling was incorrect. The onus of proof remained on the prosecution throughout to prove beyond reasonable doubt that it was the appellant who drove his vehicle at the material time. That onus never shifted to the defence.

The appellant could have declined to give evidence but he chose to do so. This Court as a Court of Appeal must now look at the evidence as a whole at the close of the case for the defence before it can decide whether at that stage there was sufficient evidence, which on a proper direction must inevitably have led to one conclusion and one conclusion only, namely the conviction of the appellant as the driver of the car at the material time, before the conviction can be upheld.

The appellant gave evidence as follows:—

> " I did not drive motor vehicle 9179 in Stewart street on 1st September, 1962. My vehicle not involved in any accident in Stewart Street on 1st September, 1962."

He went on to say that the damage seen on his vehicle on 5th September had been caused some time before 1st September. He said he had put his car up on blocks with its wheels removed before 1st September and that on that date it was standing in his compound covered with sacking in the same damaged condition as it was found by the police on 5th September, 1962.

The appellant's evidence, which was not corroborated, was not believed by the learned trial Magistrate who held as fact that it was the appellant's vehicle No. 9179 that did in fact collide with and damage car No. E728 on 1st September, 1962.

On this appeal those findings of fact are not challenged. What is complained of is the learned Magistrate's findings that he was satisfied that there was evidence that the appellant was the driver of the car he owned in the absence of any explanation as to who else was driving his vehicle at the time.

It is submitted by counsel for the appellant that the only logical, possible and proper inference which could have been drawn from the trial Court's findings of fact was an equivocal one, namely that the driver of the appellant's car at the time it was involved in this accident was either (*a*) the appellant or else (*b*) some person whom the appellant wished to shield.

It is submitted that such an inference falls short of what was required, i.e. an unequivocal and single inference that it was the appellant and no one else who must have been driving the vehicle at the material time.

In my opinion if the appellant had merely denied he had driven the car at the time and asserted that he did not know who had driven it at the time, there would have been insufficient evidence to support this conviction. The appellant, however, did not merely deny that he drove the car but positively asserted that, to his own knowledge, the car was at the time in his compound and not merely was not used by him but was in a state or condition in which it could not have been used by anyone, i.e. it was jacked up on blocks and with its wheels removed. Although his evidence was not believed it appears that by implication the appellant was in fact asserting—

(1) That he admits that he knew where his car was at the material time.

(2) That he admits that it was not being driven by someone known to him at the material time; and

(3) That it could not have been driven by someone else without his knowledge at the material time.

Where a trial Court positively holds as fact that in these circumstances the appellant has deliberately given false evidence that his vehicle could not have been involved in this accident I consider there is one and only one inference that can properly and logically be drawn from the established facts in the case. Namely that it was the appellant and no one else who drove the appellant's car at the material time when it was involved in this accident.

I do not think the Court should infer fanciful defences such as that the car might have been driven by someone the appellant wished to shield, when the appellant himself never suggested any such thing at the time he gave evidence.

I am of the opinion that the verdict of the Court below was correct although for somewhat different reasons than those given by the learned trial Magistrate.

For these reasons the appeal is dismissed.

I would add that in my view the sentences imposed in this case were extremely light. I was also a little surprised to see that no order was made disqualifying the appellant from holding a driving licence, as would be appropriate in a case in which an owner-driver of a motor vehicle has displayed such a callous sense of irresponsibility. This is a matter which is not before me however and can only be considered in due course on revision after due notice has been given, in order that any factors in mitigation which do not appear on the record can also be considered.

Appeal dismissed.

Solicitor for the appellant: *K. C. Ramrakha.*

Solicitor-General for the Crown.