

A

HASAN RAJA

v.

REGINAM

[SUPREME COURT, 1964 (Hammett Ag. C.J.), 13th December 1965,  
10th January 1964]

B

Appellate Jurisdiction

*Criminal law—practice and procedure—judgment—failure to comply with s.155 of Criminal Procedure Code—date omitted and section under which convicted not specified—no miscarriage of justice—Traffic Ordinance (Cap. 235) s.32(1)—Criminal Procedure Code (Cap. 9) ss.155(1) (2) (3), 325.*

C

The appellant, who was convicted of dangerous driving contrary to section 32 (1) of the Traffic Ordinance, appealed on the ground (inter alia) that his conviction was unlawful because the trial magistrate had failed to date his judgment or to specify the offence and the section of the law under which the appellant was convicted, as required by section 155 of the Criminal Procedure Code. The judgment, having set out the Magistrate's reasons for his decision, concluded with the words, "Convict Dangerous Driving as charged".

D

*Held:* That by his reference to the charge the magistrate had made plain the section under which the appellant was convicted, and the date of the judgment was ascertainable from the record of the case.

E

Failure to comply strictly with section 155 of the Criminal Procedure Code had therefore occasioned no miscarriage of justice whatever and the proviso to section 325 of the Code would be applied.

*Joseph v. The King* [1948] A.C. 215 distinguished.

F Appeal against conviction and sentence.

*R. G. Q. Kermode* for the appellant.

*B. A. Palmer* for the Crown.

G [Editorial note :— The case is reported only on the question of compliance with the requirements of section 155 of the Criminal Procedure Code.]

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H The appellant was convicted of Dangerous Driving, contrary to Section 32(1) of the Traffic Ordinance, and fined £25 and disqualified from holding a driving licence for 12 months. He appeals against both conviction and sentence on the following grounds:

Firstly: That the conviction was unlawful because the learned trial Magistrate failed to date his Judgment or to specify the offence and section of the law under which the appellant was convicted as required by Section 155 of the Criminal Procedure Code. A

Secondly: That the manner in which the appellant drove his vehicle at the material time was not dangerous having regard to all the circumstances of the case.

Thirdly: That the sentence is excessive.

The material part of Section 155 of the Criminal Procedure Code reads: B

“ 155. (1) Every such judgment shall ... .. be dated and signed by the presiding officer in open court at the time of pronouncing it.

(2) In the case of a conviction the judgement shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted, and the punishment to which he is sentenced. C

(3) In the case of an acquittal the judgment shall state the offence of which the accused person is acquitted and shall direct that he be set at liberty.”

The case was heard on the 1st November, 1963, and this date was entered at the head of the record by the learned trial Senior Magistrate. After hearing the evidence, the hearing was adjourned to 2.00 p.m. for Judgment. D

At 2.00p.m. the case was again called and the recorded Judgment was pronounced. After setting out the reasons for the decision, the Judgment ends E

“Convict Dangerous Driving as charged.”

It was signed by the learned trial Senior Magistrate who did not, however, date it when he pronounced it, although he inserted “2.00 p.m.” at the head of the record.

In support of his contention that these apparently obvious defects were fatal to the conviction, learned Counsel for the Appellant relies on the decision of the Privy Council in *Joseph v. The King* [1948] A.C. 215. F

In that case a conviction by the Supreme Court of Fiji was quashed on the ground that the trial Judge had not in fact delivered a Judgment at all. The Assessors had expressed the opinion that the appellant was guilty and the trial Judge had, without delivering any Judgment, passed sentence on him. G

As was said in the Judgment of the Privy Council,

“In the result the appellant had been convicted by Assessors who had no power to try or convict him and sentenced by a Judge who had not convicted him.” H

The reason why the conviction was quashed in that case, is stated in the concluding sentence of the Report of the Privy Council.

"The appellant was entitled to be tried by the Judge and he has not been so tried and in the circumstances the only course open to the Board was to advise His Majesty to allow the appeal and quash the conviction and sentence."

A Those considerations do not apply to this case.

B When the learned trial Senior Magistrate recorded "Convict Dangerous Driving as charged", he failed to comply strictly with the provisions of Section 155 of the Criminal Procedure Code, but he made it perfectly plain that the section of the law under which the appellant was convicted was Section 32(1) of the Traffic Ordinance, Cap. 235, as was in fact stated in the charge. His failure to comply in this respect with the section was not therefore a fatal defect.

C Similarly the learned trial Senior Magistrate's failure to date the Judgment, whilst it is another indication that the record was perhaps made with somewhat greater despatch than desirable, was a formal defect in the Judgment, but not in my view a fatal defect. It can be clearly seen from a perusal of the record that the Judgment was in fact delivered at 2.00p.m. on the day the case was heard, namely 1st November, 1963.

D To hold otherwise would lead to the absurd conclusion that the failure of a trial Magistrate to state the offence of which a person is acquitted (See Section 155 (3)) or to enter the date on the Judgment acquitting him were fatal defects vitiating the acquittal.

E I am abundantly satisfied that notwithstanding these indications of undue expedition in making the record in this case no miscarriage of justice whatever has occurred, and I would therefore, apply the proviso to Section 325 of the Criminal Procedure Code to this aspect of the appeal.

F The second ground of appeal is on the merits. It is not disputed that the appellant drove his car towards the blind crest of a hill in the road, completely on the wrong side of the road. This resulted in a head on collision between his vehicle and an oncoming unseen vehicle, which approached from the other side of the blind crest on its correct side of the road.

G The learned trial Senior Magistrate heard and fully considered the reasons given by the appellant for the manner in which he drove his car and its position on the road. He held that he swerved to the wrong side of the road just below this blind crest quite unnecessarily and that to do so constituted dangerous driving.

As a result of the appellant's action, a serious head on collision occurred and a great deal of damage was done to both cars and at least two persons were taken to hospital for treatment.

H In my opinion the Court below was perfectly correct in convicting the appellant of dangerous driving.

The third ground of appeal concerns the sentence and a fine of £25 and an order disqualifying the appellant from holding a driving licence for 12 months on the ground that it is excessive.

The Appellant has one previous conviction for exceeding the speed limit and another for a comparatively minor traffic offence.

It was pointed out by the learned late Chief Justice at the hearing of an appeal in the case of Hayat Mohammed earlier this year (Criminal Appeal No. 10 of 1963), who was fined £30 and £4 costs and disqualified from holding a driving licence for two years on his conviction for dangerous driving—he having no previous convictions at all—in circumstances certainly no worse than in this case, that the sentence was a severe one, but the offence carries a maximum penalty of two years' imprisonment and I would add disqualification for any period within the discretion of the trial Court. On those facts he felt unable to say that either the fine or the term of disqualification imposed in that case was manifestly excessive. This Court is in precisely the same position. It appears to be quite fortuitous that the injuries received by the passengers and drivers in the cars involved in this collision were not more severe. It is the duty of Magistrates to impose adequate penalties upon persons convicted of dangerous driving, the incidents of which within their own districts they are well aware. This Court will not interfere with the sentences they impose in such cases unless they are shown clearly to be wrong in principle or manifestly excessive or inadequate.

The appeal against conviction and sentence is dismissed.

*Appeal Dismissed.*