GANGAIYA

v.

REGINAM

[SUPREME COURT, 1964 (Hammett P.J.), 21st August, 11th September]

Appellate Jurisdiction

Criminal law—traffic offences—disqualification—no power to impose for offence of failing to report an accident—Traffic Ordinance (Cap. 235) ss.26(1)(a), 37 (1) (2) (3) (5)—Traffic (Amendment) (No. 2) Ordinance 1957, s.5.

Criminal law—sentence—need for reasonable degree of consistency in penalties—Traffic Ordinance (Cap. 235) s.33(1).

Interpretation—headings and marginal notes form no part of Ordinance—meaning of "offence in connexion with the driving of a motor vehicle"—Traffic Ordinance (Cap. 235) s.26(1)(a)—Motor Car Act 1903 (3 Edw.7, c.36) (Imperial) s.4.

The appellant pleaded guilty in the Magistrate's Court *(inter alia)* to a charge of failing to report an accident contrary to sections 37 (2) and (5)(a) of the Traffic Ordinance. The motor car which he was driving was damaged when it went out of control and travelled for some twenty yards before it came to a stop on a heap of gravel. The appellant left the scene and made no report. The magistrate imposed a fine of £50 and ordered that the appellant be disqualified from holding or obtaining a driving licence for twelve months. On appeal against sentence and disqualification—

Held: 1. That the power to disqualify which is contained in section 26(1) of the Traffic Ordinance, is confined to offences "in connexion with the driving of a motor vehicle".

2. Headings of sections and marginal notes form no part of a statute and therefore, in deciding whether the offence under consideration was one to which the power to disqualify applied, the court could not base its decision on the heading, "Provisions as to Driving and Offences in connexion therewith", in Part II of the Ordinance, preceding sections of which section 37 was one.

3. It would extend too far the meaning of "an offence in connection with the driving of a motor car" to regard it as including the offence of failing to report an accident as soon as possible, and the court had therefore no power to order disqualification.

4. In view of the need for some reasonable degree of consistency in penalties a fine of £20 was appropriate.

Cases referred to: *R. v. Hare* [1934] 1 K.B. 354; 24 Cr. App.R. 108: *R. v. Yorkshire* (West Riding) Justices, ex parte Shackleton [1910] 1 K.B. 439: *R. v. Lyndon,* ex parte Moffat (1908) 72 J.P. 227.

Appeal against sentence by a Magistrate's Court.

M. J. C. Saunders for the appellant.

A *G. N. Mishra* for the Crown.

HAMMETT P.J.: [11th September, 1964]—

The appellant was charged before the Magistrate's Court of the B First Class sitting at Lautoka with the following offences :

FIRST COUNT

Statement of Offence

CARELESS DRIVING: Contrary to sections 31 and 65 of the Traffic Ordinance, Cap. 235.

C

SECOND COUNT

Statement of Offence

FAILING TO REPORT AN ACCIDENT: Contrary to sections 37(2) and 5(a) of the Traffic Ordinance, Cap. 235.

D

Particulars of Offence

GANGAIYA s/o Appal Samy on the 17th day of May, 1964, being the driver of the motor vehicle No. D740 at Tavewa Avenue, Lautoka in the Western Division, when owing to the presence of the said vehicle on the road an accident occurred causing damage to the car No. D740, did fail to report the accident to E the nearest Police Station or to a police officer as soon as possible.

THIRD COUNT

Statement of Offence

DRIVING MOTOR VEHICLE WITH DEFECTIVE FOOT BRAKE: Contrary to Regulations 34 and 57 of the Traffic (Const. & Use) F Regulations 1955.

To each of these charges he pleaded guilty.

On the second count he was sentenced to a fine of £50 and in default of payment 3 months' imprisonment and ordered to pay 10/- costs and in addition it was ordered that he be disqualified from G holding or obtaining a driving licence for 12 months. It is against the sentence on this second count that the appellant has appealed on the following grounds :

1. That the Court had no power to order disqualification upon conviction for the offence charged,

and 2. That the sentence was manifestly excessive in view of the H circumstances of the case.

The material parts of the provisions of section 37 of the Traffic Ordinance, as originally enacted, are as follows :

"37 (1) If in any case owing to the presence of a motor vehicle on a road an accident occurs whereby damage or injury is caused to any person, vehicle, property or animal, the driver of the vehicle shall stop and if required so to do by any person having reasonable grounds for so requiring shall give his name and address and also the name and address of the owner.

(2) The driver shall as soon as possible report the accident at the nearest Police Station or to a police officer but before doing so he shall render all necessary assistance in the way of transporting any injured person to hospital.

(3) Any person who fails to comply with the provisions of this section or upon being required so to do refuses to give his name and address in accordance with the provisions of this section shall be guilty of an offence."

The general penalty section, namely section 65, reads as follows :

"65. Any person convicted of an offence under this Ordinance for which no special penalty is provided shall be liable in the case of the first offence to a fine not exceeding twenty pounds and in the case of a second or subsequent conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months."

In 1957, by Ordinance No. 37 of 1957, section 37 (5) was repealed and replaced by the following new subsection :

"37 (5) (a) Any driver who fails to comply with any of the provisions of this section shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one hundred pounds or to both such imprisonment and fine;

(b) Any other person who fails to comply with any of the provisions of this section shall be guilty of an offence."

It will be seen, therefore, that in 1957 the Legislature provided substantially enhanced penalties in respect of offences committed by drivers under the provisions of section 37.

Section 37 does not contain any specific powers whereby a driver may, on conviction, be disqualified from holding a driving licence and recourse was therefore made, by the Court below, to the provisions of section 26, of which the material parts read :

"26 (1) Any court before which a person is convicted of any criminal offence in connexion with the driving of a motor vehicle —

(a) may in any case, and shall when so required by this Part of this Ordinance, order him to be disqualified for holding or obtaining a driving licence for such period as the court thinks fit."

It is the case for the appellant that the offence of failing to report an accident to the police is not an offence "in connexion with the driving of a motor vehicle" within the meaning of that expression in section 26 (1).

For the respondent it is pointed out that section 37 which creates the offence is one of the sections in the Traffic Ordinance between section 29 and section 39 which comes under the subheading in Part II of the Ordinance which reads :

A

"Provisions as to Driving and Offences in connexion therewith."

It is submitted, therefore, that the Legislature has specifically designated the offences created by section 37 as offences "in connexion with the driving of a motor vehicle". On the basis that the B offence of failing to report an accident is not a "provision as to driving", it is contended that it must be an offence "in connexion" with the driving of a motor vehicle.

It appears to me that the words of Avory J. in *Rex v. Hare* [1934] 1 K.B. 354 are very much in point when he said : "Headings of sections and marginal notes form no part of a statute. They are not C voted on or passed by Parliament . . .". I do not feel able to base my decision in this appeal on this submission by the Crown concerning the heading which appears above section 29 of the Ordinance.

The expression "an offence in connexion with the driving of a motor car" has been used in the early English Acts of Parliament dealing with the subject of motor cars from the Motor Car Act 1903 D section 4 onwards, until comparatively recently.

In the case of *Rex v. Yorkshire (West Riding) Justices;* ex parte Shackleton [1910] 1 K.B. 439 the driver of a motor van allowed it to remain standing on the highway so as to cause an unnecessary obstruction thereof. He was convicted and he was ordered to produce his licence for the purposes of indorsement of this con- E viction on the ground that it was an offence "in connexion with the driving of a motor car".

When this point was considered on appeal, Lord Alverstone, C.J., said :

> "The words 'any offence in connection with the driving of a F motor car' when read with their context in s.4 of the Motor Car Act, 1903, point to offences connected with the handling or manipulation of the car in the process of driving it. Inasmuch as a person wilfully obstructing the free passage of a highway may be convicted under other statutes independently of the Motor Car Acts and the regulations made under them, there is no reason for construing the words in question so as to include that offence. G It seems more reasonable to take them as applying to offences in respect of the actual locomotion of the car, and not as including the mere leaving of the car at rest in the highway, which cannot properly be said to be an offence in connection with the driving of the car."

My examination of the judgments in all the reported cases on this H matter since *Rex v. Lyndon ex parte Moffat* (1908) 72 J.P. 227 supports the statement by counsel that there are no cases in which it has ever been held that the offence of failing to report an accident is an offence "in connexion with the driving of a motor vehicle".

The Traffic Ordinance, section 37 (2), makes it an offence not to report an accident "as soon as possible". It is clear, therefore, that a period of time must elapse after an accident and before it is physically possible or necessary to report it. During this period no offence has been committed against the provisions of this section. In other words the offence of failing to report cannot arise until after the lapse of a reasonable period of time after the end of the driving of the vehicle immediately prior to the accident. Whilst the cause of the accident itself obviously may amount to "an offence in connection with the driving of a motor vehicle", the failure to report the accident is clearly not an offence connected, in the words of Lord Alverstone, C.J., "with the handling or manipulation of the car in the process of driving it". It is not, in that sense, connected with the driving of the motor vehicle concerned.

In my view it is extending too far the meaning of the term "an offence in connexion with the driving of a motor vehicle", to regard it as including the offence committed some time after the actual driving has ceased of failing to report an accident as soon as possible.

In these circumstances it is my view that in the existing state of the law, which may well require reconsideration by the Legislature, the Court has no power to order the driver of a motor vehicle who is guilty of the offence of failing to report an accident contrary to section 37 (2) of the Traffic Ordinance to be disqualified from holding a driving licence. The appeal against the order of the Court below disqualifying the appellant must, therefore, succeed and that order is set aside.

The second ground of appeal is against sentence on the ground that it is excessive.

In this case the accident occurred in Lautoka Township at night. The appellant's car was damaged when it went out of control and travelled for some 20 yards before it came to stop on a heap of gravel. The appellant, who admitted that his breath smelt of liquor at the time, left the scene and could not be found again until the next day.

The learned trial Magistrate said he regarded this as a serious case in the circumstances and imposed a penalty of similar severity to that which is not infrequently imposed on a conviction for a first offence of "Driving Whilst Drunk" under the provisions of section 33 (1) of the Traffic Ordinance. The maximum penalty for that offence is two years' imprisonment or a fine or both such imprisonment and a fine. The amount of the fine in such a case is not subject to any specific statutory limitation. Those penalties are therefore much greater than the maximum penalties provided for the offence of which the appellant was, in fact, convicted.

It was submitted by counsel for the appellant, and conceded by the Crown, that if the sentence passed was intended to be the same as would have been passed if the appellant had been convicted of "Driving Whilst Drunk", it was wrong in principle.

It was further submitted for the appellant that if the sentence passed was not so intended, then it was excessive since no damage was done to any person or to the property of any other person. With this submission the Crown did not agree.

A

I wish to record my approval of the learned trial Magistrate's obvious determination to ensure that the intention of the Legislature in this respect is carried out, and I appreciate that there were some extremely unsatisfactory features about the appellant's conduct in this case. Nevertheless, I am of the opinion that, having regard to the facts and to the penalties imposed for this offence in other cases both in the Court below and in other Courts in Fiji, and the need for there to be some reasonable degree of consistency in penalties, a fine of £20 would be appropriate in the particular circumstances of this case.

B

The sentence of a fine of £50 on the second count is therefore set aside and in lieu thereof the sentence of a fine of £20 is imposed or in default of payment 6 weeks' imprisonment. The appellant must also pay the costs awarded against him by the Court below.

C

Appeal against disqualification allowed; fine reduced.