A

GANESH PRASAD

v.

REGINAM

[SUPREME COURT, 1965 (Hammett P.J.), 26th March, 2nd April]

B

Appellate Jurisdiction

Criminal law—practice—visit to locus in quo in absence of parties or their representatives—Traffic Ordinance (Cap. 235) s.31—Penal Code (Cap. 8) s.132(a).

A visit to the *locus in quo* should not be made by a judicial officer, C in connection with a case he is hearing, without the defence and the prosecution being given the opportunity of being present, or represented, at the view.

Appeal against conviction by a Magistrate's Court.

R. I. Kapadia for the appellant.

D

K. C. Gajadhar for the Crown.

HAMMETT P.J.: [2nd April, 1965]—

The appellant was convicted by the Court below on a charge containing two counts. He was charged on the first count of Careless Driving contrary to section 31 of the Traffic Ordinance and on the E second count of Giving False Information to a Public Servant contrary to section 132 (a) of the Penal Code.

He appeals against each of these convictions on a number of grounds.

The appellant's mother is the registered owner of car No. H792, F which is licensed as a taxi and of which the appellant is the usual driver. On 15th June, 1964, the appellant was teaching one Pritam Singh to drive in this vehicle. Whilst Pritam Singh was driving it with the appellant beside him, the vehicle was involved in an accident by running into the bank of the side of the road. There was a passenger in the back of the car at the time.

The appellant reported this accident to the police, to the effect that G he, the appellant, had had an accident in this taxi, as a result of which no one was injured and minor damage to the extent of only £10 was done. He said that Pritam Singh was a passenger in the car at the time. In fact the damage done to the vehicle was considerable, and he later claimed £170 under the policy of insurance on the vehicle. Further, Pritam Singh was in fact the driver and a passenger in the vehicle at the time named Ram Autar was injured. The appel- H lant himself drove him to the Medical Officer for medical attention, after the accident.

Two of the grounds of appeal complain that the learned trial Magistrate erred in law :

Firstly in amending the charge before the close of the case for the prosecution; and

Secondly in calling a witness.

There is no substance in either of these grounds of appeal. The course followed by the Court below was perfectly proper and was fully authorised by sections 204 and 136 of the Criminal Procedure Code respectively.

The second ground of appeal, which concerns the conviction for Careless Driving, complains of the inspection of the alleged scene of the accident by the learned trial Magistrate in the absence of the parties and counsel after the close of the hearing. The only reference in the record to this visit to the *locus in quo* is in the judgment. It is clear that this visit was made in the absence of the accused and his counsel and presumably at some time after the hearing and before judgment was delivered.

A visit to the *locus in quo* should not be made by a judicial officer, in connection with a case he is hearing, without the defence and the prosecution being given the opportunity of being present, or represented, at the view. In this case, quite apart from the question of whether exactly the correct *locus* was seen, it was submitted that the learned trial Magistrate could not have been satisfied of the guilt of the appellant beyond reasonable doubt before he made his inspection, as he would otherwise not have considered it necessary to have a view. It is quite impossible for this Court now to say whether on the evidence on the record alone, the learned trial Magistrate must inevitably have convicted the appellant of Careless Driving.

In these circumstances the appeal against the conviction on the first count must be allowed.

With regard to the second count, there was ample evidence, if believed, and it was believed, to support the conviction. In my opinion there are no merits in the appeal against the conviction and sentence on the second count.

In the result, the conviction on the first count is set aside and the appeal against the conviction and sentence on the second count is dismissed.

Appeal on first charge allowed.

Appeal on second charge dismissed.