

ROBERT VICTOR PHILLIPS

v.

REGINAM

[SUPREME COURT, 1966 (Hammett P.J.) 26th August, 23rd September]

Appellate Jurisdiction

Criminal law—traffic offences—dangerous driving—sentence—Traffic Ordinance 1965, s.38(1) (2).

Criminal law—sentence—dangerous driving—disqualification—previous conviction for speeding—first conviction for dangerous driving—endorsement of driving licence obligatory—Traffic Ordinance s.38(1) (2).

The appellant was driving his private car around a bend in the road at from forty-two to forty-five miles per hour at night and in rain when he swerved and lost control of the vehicle, which went over a bank at the side of the road after striking a pedestrian. The car overturned and the pedestrian, the appellant and a passenger in the car were injured. The appellant's defence was that he was temporarily blinded by the approaching lights of a car, saw people on the road ahead, and in swerving to avoid them, skidded and lost control of his vehicle. In the Magistrate's Court he was convicted of dangerous driving contrary to section 38(1) of the Traffic Ordinance 1965, fined £50 and disqualified from holding a driving licence for twelve months. On appeal against conviction and sentence—

Held: 1. That there was no ground for disagreement, even viewing the case on the basis of the facts admitted by the appellant, with the finding of the trial magistrate that the appellant was driving in a manner which was dangerous to the public in all the circumstances of the case.

2. The appellant had been convicted of speeding some six months earlier and it was not wrong in principle to order disqualification on a first conviction of dangerous driving. It was also mandatory under section 38(2) of the Traffic Ordinance for the court to order particulars of the conviction to be endorsed on the driving licence of the person convicted.

3. Though the penalty was severe it could not be regarded as excessive.

Appeal against conviction and sentence in the Magistrate's Court.

K. C. Ramrakha for the appellant.

T. U. Tuivaga for the respondent.

HAMMETT P.J. : [23rd September, 1966]—

This is an appeal against the decision of the Magistrate's Court sitting at Suva whereby upon conviction of the offence of Dangerous Driving contrary to Section 38(1) of the Traffic Ordinance 1965 the appellant was fined £50 and ordered to pay £3 costs and disqualified from holding a driving licence for twelve months.

He appeals against both conviction and sentence on the following grounds:—

- “1. The learned trial Magistrate erred in stating that it was the prosecution case that the accused travelled around the bend at 42 miles per hour when in fact this was the defence case.
2. The learned trial Magistrate erred in not adequately weighing and assessing the defence case generally as the defence gave a perfectly logical explanation of the accident.
3. The sentence is harsh and excessive and the circumstances did not warrant a disqualification.”

A further ground of appeal was abandoned at the hearing of the appeal.

The facts were that on 9th March, 1966, at about 10.00 p.m. the appellant was driving his private car from Suva towards Nausori when at a bend in the road he lost control of the vehicle which ran off the road and fell down the bank at the side.

The case for the prosecution was that as the appellant negotiated this bend the rear part of his car swerved sideways and the car after striking a pedestrian on the side of the road, went over the bank at the side of the road, overturned and was extensively damaged. The appellant and his passenger and the pedestrian were all injured.

It was the case for the appellant that as he reached this blind bend in the road he was driving at a speed which in his statement to the Police he said was 42 m.p.h. but which in his evidence he said was 45 m.p.h. The road was wet and it was raining. He asserts that just before the bend he was temporarily blinded by the lights of a car approaching him from the opposite direction. As he rounded the bend he saw about six people on the road ahead of him and he swerved to avoid colliding with them. In so doing his car skidded and he lost control. His car ran off the road and fell about 177 feet down the bank. In his defence it was submitted that the cause of the accident was the fact that the pedestrians were walking on the road and not at the side of the road. It is contended that this was negligence on the part of the pedestrians which could not have been anticipated and that they, rather than the appellant were to blame for the accident.

The learned trial Magistrate did not unfortunately record any findings of fact on the conflicts of evidence on this and other matters in the case. I am in no position to assess the credibility of the witnesses for the prosecution and the defence, in the Court below, and in these circumstances I must view the case on the basis of the facts admitted by the appellant. It is not, however, a good defence to a charge of dangerous driving to plead or prove contributory negligence on the part of pedestrians.

A The first ground of appeal complains that the learned trial Magistrate erred in stating that it was the prosecution case that the accused was travelling at 42 m.p.h. when in fact that was the defence case. The prosecution relied on the statement of the appellant to the Police that he was travelling at 42 m.p.h. To this extent that was therefore part of the prosecution case. Since in his evidence the appellant said he was in fact travelling at 45 m.p.h. when he rounded the bend the first ground of appeal even if conceded, does not appear to me to be very material.

B In considering the second ground of appeal I think it must be conceded that the appellant gave a perfectly logical explanation of the accident. Nevertheless I do not feel able to disagree with the finding of the learned trial Magistrate that the appellant was in fact driving in a manner which was dangerous to the public having regard to all the circumstances of the case.

C On the question of sentence I agree that the penalty imposed was a severe one. Nevertheless the appellant had been previously convicted for speeding only some 6 months before this accident. It is the duty of the Court to impose such sentences on the drivers of motor vehicles who infringe the provisions of the Traffic Ordinance as to keep the roads as safe as possible in the interest of all road users. The Legislature has given them a wide discretion in this respect. It is certainly not wrong in principle to order disqualification for a period of 12 months on a first conviction of dangerous driving. D In fact it is mandatory under the provisions of Section 38(2) for the Court to order that the particulars of any such conviction shall be endorsed on the driving licence of the person convicted. The maximum fine provided by the Legislature upon conviction for this offence by a Magistrate's Court of the First Class is £300. E In these circumstances whilst the fine of £50 was certainly a severe penalty it cannot be regarded as excessive when the seriousness of this case is considered. Two persons besides the appellant himself were injured as a result of this accident. Whilst I cannot avoid a feeling of some sympathy for this appellant who indeed suffered severely from this accident, there are no grounds for interfering with the decision of the learned trial Magistrate.

F The appeal is therefore dismissed. In compliance with the provisions of Section 38(2) of the Traffic Ordinance; it is ordered that the appellant's licence be endorsed and that the Court below do take the necessary steps to have this done.

Appeal against conviction and sentence dismissed and order made for endorsement of licence.