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VIJAY PARMANANDAM

v.

REGINAM

B [COURT OF APPEAL* 1968 (Gould V.P., Trainor J.A., Knox-Mawer J.A.),
13th, 29th May]

Criminal Jurisdiction

C Criminal law—traffic offences—dangerous driving—driving onto pedestrian crossing through red light—conviction and disqualification in Supreme Court on appeal from Magistrate's Court—Traffic Ordinance 1965, ss.29(2), 38(1)—Criminal Procedure Code (Cap. 9—1955) s.325(1).

Appeal—criminal appeal—powers of Supreme Court in appellate jurisdiction—appeal from Magistrate's Court—conviction of dangerous driving and order for disqualification in Supreme Court—Criminal Procedure Code (Cap. 9—1955) s.325(1).

Appeal—driving licence—disqualification order—variation in right of appeal according to whether order made in Supreme Court or Magistrate's Court—Traffic Ordinance 1965, ss.29(2), 38(1)—Court of Appeal Ordinance (Cap. 3—1955) s.17A.

D Evidence and proof—mode of proof of Ordinances and subsidiary legislation—separate mandatory requirements of sections 4 and 21 of Interpretation Ordinance 1967, ss.2 (1), 4, 21—Revised Edition of the Laws Ordinance 1955.

Interpretation—Interpretation Ordinance 1967—construction of sections 4 and 21—requirement that judicial notice of legislation be taken separate and unconditional.

E The appellant was convicted of dangerous driving by the Supreme Court sitting in appellate jurisdiction on an appeal by the Attorney-General from the appellant's acquittal on that charge in the Magistrate's Court: the Supreme Court did not remit the matter to the Magistrate's Court, but itself imposed a fine and ordered that the appellant be disqualified from holding or obtaining a driving licence for a period of twelve months. The primary facts found in the Magistrate's Court were that the appellant ignored or failed to see a red light, and drove at a speed of ten to fifteen miles per hour on to the portion of the road used as a pedestrian crossing and which pedestrians were actually crossing at the time.

F The Supreme Court rejected an argument that proof of publication of Ordinances and subsidiary legislation must be given before judicial notice can be taken of them.

G *Held*: 1. On a proper evaluation of the primary facts the only correct verdict was that of dangerous driving.

2. The Supreme Court was clearly empowered by section 325(1) of the Criminal Procedure Code (Cap. 9) to make the orders it did.

H 3. The fact that there was some variation of the appellant's right of appeal against the order for disqualification by reason of the fact that the order was made in the Supreme Court and not the Magistrate's Court was no ground for holding that the order was bad in law.

* An application for special leave to appeal from this judgment was dismissed by the Privy Council.

4. Section 4 of the Interpretation Act, 1967, contains three provisions regarding Ordinances and section 21 two provisions regarding subsidiary legislation, including in each case the requirement that Ordinances and subsidiary legislation respectively shall be judicially noticed. All these provisions are mandatory and separate and therefore the Supreme Court did not err in law in holding that judicial notice of Ordinances and subsidiary legislation must be taken unconditionally.

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Appeal from a conviction and order made in the Supreme Court sitting in appellate jurisdiction. The Supreme Court judgment appealed from is reported at p.6 of this volume.

B

S. M. Koya for the appellant.

G. Mishra for the respondent.

The facts sufficiently appear from the judgment of the court.

C

Judgment of the Court (read by KNOX-MAWER J.A.) : [29th May, 1968]

The appellant was charged before the Magistrate's Court of the First Class, Suva, inter alia, with the following offence :-

SECOND COUNT

D

Statement of Offence

DANGEROUS DRIVING : Contrary to Section 38(1) of the Traffic Ordinance, No. 11 of 1965.

Particulars of Offence

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VIJAY PARMANANDAM s/o Kuppsami, on the 25th day November, 1967 at Suva, in the Central Division, drove a private motor vehicle on Rodwell Road, in a manner which was dangerous to the public having regard to all the circumstances of the case.

The appellant was acquitted thereof, whereupon the Crown appealed to the Supreme Court against the order of acquittal. The Supreme Court reversed the decision of the Magistrate's Court in this respect, convicted the appellant of dangerous driving, fined him £10 and disqualified him from holding or obtaining a driving licence for a period of 12 months. We are now asked to reverse this decision of the Supreme Court on a number of grounds.

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The first ground of appeal is to the effect that the Supreme Court erred in law in convicting the appellant of dangerous driving. We do not agree. The Magistrate found it established that on the 25th November, 1967, the appellant, driving a motor vehicle on Rodwell Road, Suva at a speed of between 10 to 15 m.p.h., ignored or failed to see the red light and drove on to the portion of the road used as a pedestrian crossing, which pedestrians were actually crossing at the time. These are the primary facts as found by the trial court. Upon a proper evaluation of those primary facts, the only correct verdict in law was the one at which the learned Chief Justice arrived — that of dangerous driving.

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The second ground of appeal before us reads as follows :-

A "Having regard to the provisions contained in Section 17 A of the Court of Appeal (Amendment) Ordinance 1965 and Section 29(2) of the Traffic Ordinance No. 11 of 1965.

B (a) *WHETHER* the Supreme Court erred in law in exercising its powers under Section 325 of the Criminal Procedure Code Cap. 9 in convicting and sentencing me for the offence of Dangerous Driving contrary to Section 38(1) of the Traffic Ordinance No. 11 of 1965.

(b) *WHETHER* the Order of disqualification to hold or apply for a driving licence to drive motor vehicles has deprived me of my right of appeal to which I was entitled by virtue of Section 29 (2) of the Traffic Ordinance No. 11 of 1965.

C (c) If my right of appeal has been destroyed by reason of the said conviction and sentence, *WHETHER* the sentence passed upon me is unlawful or whether it was passed in consequence of an error of law.

D (d) If my right of appeal has not been destroyed by reason of the said conviction and sentence, *WHETHER* the Court of Appeal can entertain my appeal against the said sentence upon the grounds that it is manifestly excessive and or was wrong in principle.

E There is no substance in this ground of appeal. Section 325(1) of the Criminal Procedure Code, Laws of Fiji 1955 Cap. 9, clearly empowered the Supreme Court to make the orders it did, so there can be no question of the Supreme Court having erred in law. The appellant can appeal to this Court from a decision of the Supreme Court in its appellate jurisdiction only upon a question of law and not upon severity of sentence. Section 29(2) of the Traffic Ordinance, No. 11 of 1965, provides that an appeal shall lie against an order of disqualification in the same manner as against conviction. If the order had been made in the Magistrate's Court the appellant would have had an unlimited appeal to the Supreme Court. As it is, he has an appeal to this Court limited to questions of law. While some variation of the appellant's rights appears to have resulted from the making of the order by the Supreme Court, we are unable to see that there is any ground in law for holding that the order for disqualification is thereby rendered bad in law.

The third ground of appeal reads :-

G "*WHETHER* the Supreme Court erred in law in holding the view :

(a) *THAT* judicial notice must be taken unconditionally both of the Interpretation Ordinance 1967 and of all other Ordinances and also of all subsidiary legislation as defined by Section 2(1) of the same Ordinance.

H (b) *THAT* judicial notice must be taken of both the Revised Edition of the Laws Ordinance 1955 and the proclamation whereby the 1955 Revised Editon of the Laws of Fiji came into effect on 1st January, 1958 as a complete Statement of the Laws of Fiji which were in effect on 16th April, 1955."

We consider that the Supreme Court has here not erred in law. Section 4 of the Interpretation Ordinance, No. 11 of 1967 provides :-

“Every Ordinance shall be published in the Gazette, shall be a public Ordinance and shall be judicially noticed.” **A**

In our view this section contains, effectively, three mandatory and separate provisions viz (a) every Ordinance shall be published in the Gazette, (b) every Ordinance shall be a public Ordinance, (c) every Ordinance shall be judicially noticed. Similarly, Section 21 of the Interpretation Ordinance, No. 11 of 1967, *inter alia*, contains, effectively, two mandatory and separate provisions viz (a) all subsidiary legislation shall be published in the Gazette, (b) all subsidiary legislation shall be judicially noticed. We think, with respect, that confusion arose in the Magistrate’s Court because the separate operation of these several provisions (in Sections 4 and 21) was not appreciated. **B**

Having regard to our conclusion in respect of the first ground of appeal it is not necessary for us to consider the points raised in an additional ground of appeal, numbered 3(c), relating to the validity of a conviction of careless driving on a charge of dangerous driving. **C**

In the outcome this appeal is dismissed.

Appeal dismissed.