A

RAJ BALI

v.

B **REGINAM**

[SUPREME COURT, 1969 (Thompson Ag. P.J.), 22nd August]

Appellate Jurisdiction

Criminal law—sentence—failing to stop after accident—failing to report to police
C *—purpose of legislation—not to ensure that assistance rendered—callous conduct by driver—relevance—Traffic Ordinance (Cap. 152) ss.43(1) (a), 43(2), 43(4).*

Criminal law—traffic offences—sentence—failure to stop after accident—failure to report to police—purpose of legislation—relevance of callous conduct of driver—Traffic Ordinance (Cap. 152) ss.43(1) (a), 43(2), 43(4).

The purpose of section 43(1) (a) and (4) of the Traffic Ordinance, whereby a driver is required to stop after an accident in which personal
D injury or damage is caused to another person or his vehicle or to an animal is not to ensure that assistance is rendered to the person injured, but to enable the driver and the owner of the vehicle to be identified. The requirement of stopping at the scene and (section 43(2)) reporting to the police as soon as possible, has the further purpose, should the driver be incapable of driving by reason of drink or drugs, of making
E that fact apparent to the police and persons at the scene.

Held: 1. A sentence of twelve months' imprisonment for failing to stop after an accident, based upon the callous conduct of the driver in leaving an injured man unattended, was wrong in principle.

2. Such conduct, however, was a factor which the court, in consider-
F ing the question of disqualification, was entitled to take into account in deciding whether the accused was a man from whom other road users needed to be protected; a period of fifteen years' disqualification was nevertheless too long.

Appeal against sentences imposed in the Magistrate's Court.

G *D. S. Sharma* for the appellant.

J. R. Reddy for the respondent.

The facts sufficiently appear from the judgment.

THOMPSON J.: [22nd August 1969]—

H The appellant was convicted in the magistrate's court of the first class at Nadi, on his own plea of guilty, of failing to stop after an accident contrary to section 43(1) (a) and (4) of the Traffic Ordinance, Cap. 152, and of failing to report an accident contrary to section 43(1) (a), (2) and (4) of that Ordinance.

The facts admitted by the appellant, a taxidriver, were that in the early hours of 1st March, 1969, he was driving from Sigatoka to Namaka when he ran over something lying in the road near Namaka, which at first he thought to be a dried coconut trunk but immediately after running over it he realised was a man; that he did not stop at the scene but drove on to the airport terminal building; that he then drove back to Sigatoka where he told his employer what had happened and then went and reported the matter to the police at 6.30 a.m. It was not disputed that there were police stations at Nadi and Namaka where he could have reported the accident within a short time of it occurring.

He was sentenced to serve 12 months' imprisonment in respect of the offence of failing to stop after the accident and was disqualified for 15 years for holding or obtaining a driving licence. On the second count he was sentenced to pay a fine of $20 or to serve 6 weeks' imprisonment in default of paying the fine.

This appeal is against the sentence of imprisonment and the order of disqualification imposed on the first count. The first ground of appeal was described by the learned defence counsel as compassionate and related to the appellant's physical condition. He is a T.B. patient, although details of his present condition were not stated in the lower court or given in the course of the appeal. In addition he is temporarily partially incapacitated as the result of a broken leg. In my view, this ground is without merit. There was no medical evidence before the lower court — and there is none before this court — that his physical condition will deteriorate as a result of his serving the sentence of imprisonment; nor is there evidence that he is so infectious that he is a risk to the health of other prisoners. As far as this ground is concerned the appeal must fail.

The second ground of appeal is that the sentence has been imposed on the basis that the appellant had a legal duty to stop and render assistance to the injured man. As learned defence counsel pointed out, such a legal duty is imposed in some countries, for instance in New South Wales. He conceded also that there is a moral duty to render assistance but pointed out that, if the appellant had stopped, given the information required by the Ordinance and then driven off without rendering any assistance whatsoever, no offence would have been committed, notwithstanding that such conduct would have been completely callous and morally indefensible. He drew attention to the fact that the appellant did report the matter within 3 hours, that there was no suggestion that he had driven dangerously and that consequently this was not a case in which a guilty driver had sought to avoid being traced. He suggested that the sentence of imprisonment for which the legislature has provided was intended for a case of that nature and was inappropriate to the circumstances of this case.

Learned Crown Counsel supported the sentence of 12 months' imprisonment and argued that the magistrate was entitled to take into account the whole of the appellant's conduct, and in particular his callous disregard for human life, in determining the sentence.

The learned magistrate stated his reasons for the sentence as follows :—

A

" But even if the accused did feel that he was in danger of being assaulted if he stopped the fact remains that a fellow human being was callously left injured on the road by the accused and from all the accused cared the victim will be maimed or dead. It did not concern him. He had opportunity if he did have such a fear to stop some hundreds of yards along the road and obtain the assis-

B

tance of the officer on duty at Namaka Police Post. He didn't do this. He did not report it to any police officer who may have been on duty at the terminal. He did not report it at Namaka Police Post — or at Nadi Police Station, or at Sigatoka Police Station until after he had conferred with his employer. There was no fear of personal injury once he had passed the scene of accident and his actions only show a callous disregard for a human life. This is

C

not the worst case of "hit and run" driving for, to his credit, he did ultimately report to the police but it is impossible for this court to say, although it is open to conjecture, that if he had stopped and conveyed the injured person to hospital, that person may, instead of dying, be alive to this day. A deterrent sentence is called for."

The learned magistrate appears to have misunderstood the statutory

D

purpose for which, in this country, a driver is required to stop after an accident in which personal injury or damage is caused to another person or his vehicle or to an animal. It is to enable him, and the owner of the vehicle, to be identified, not to ensure that assistance is rendered to any person injured. There is doubtless a further purpose both in requiring a driver to stop at the scene and in requiring him to

E

report to the police as soon as possible, namely that, if he is incapable of driving by reason or drink or drugs, the fact will become apparent to the police and to persons at the scene. It may well be worthy of consideration, when next the Traffic Ordinance is amended, whether a provision similar to that contained in New South Wales law should be introduced into it, requiring drivers to stop and render assistance after accident.

F

As the appellant not only failed to stop at the scene but also failed to report the accident to the nearest police station, it is clear that at the time his intention was to avoid disclosing his identity. For that it was appropriate that he should be punished. However, three hours after the accident he repented of his earlier decision and made the report. He no longer sought to hide his identity; nor, as it was a relatively

G

short delay, was there any suggestion that he delayed reporting because he had been drinking. He should not, in my view, be punished for having callously left the injured man unattended; if he had stopped or given the requisite particulars, he could not have been punished for that.

In my view, the sentence imposed was wrong in principle. The appel-

H

lant has already served more than five week's imprisonment. If he had not done so, I should have imposed a substantial fine; as he has done so, he has, in my view, been adequately punished. I set aside the sentence of 12 months' imprisonment and impose such sentence as will entitle him to be released forthwith.

The learned magistrate's reasons for ordering the long period of disqualification were the same as those for imposing the sentence of 12 months' imprisonment. The purpose of disqualifying drivers is primarily to protect other road-users and to bring home to the drivers concerned the need for them to mend their ways. The appellant's callous disregard of human life was a factor which the learned magistrate was entitled to take into account in deciding whether the appellant was a man from whom other road users needed to be protected and who needed to mend his ways. There was nothing wrong in principle in making an order for disqualification. Learned Crown Counsel conceded, however, that the period of 15 years was too long. In my view the appropriate period is 3 years.

Accordingly I set aside the order for disqualification for 15 years and substitute an order disqualifying the appellant for holding or obtaining a driving licence for 3 years.

Appeal allowed.