DONALD IAN LANE

v.

REGINAM

[SUPREME COURT, 1970, (Moti Tikaram P.J.), 19th November, 16th December]

A

Appellate Jurisdiction

Criminal law—giving false information to a public servant—ingredients of offence—to " do or omit anything "—wording of Particulars of Offence—Penal Code (Cap. 11) ss. 135(a), 200.

B In a prosecution for giving false information to a public servant contrary to section 135(*a*) of the Penal Code, once the prosecution has established that the information given was false, that it was given to a public servant and that the person giving it knew or believed it to be false, the only other ingredient to be established is that that person intended or knew that he was likely to cause the public servant to do or omit to do something which he would not do or omit to do had he known the true state of facts.

C Particulars of a charge laid under the section in the Magistrate's Court included the words, " and knowing it to be likely that he will thereby cause (the public servant) to take action which he ought not to do if the true state of facts respecting which such information is given were known to him. "

Held: The essence of the last ingredient of the offence is the intention to mislead or knowledge that the false statement was likely to mislead the public D servant into doing or omitting to do something, and the Particulars of Offence were in terms sufficiently wide to include both acts and omissions.

Case referred to:

Josefa Nasora v. Reginam (1963) 9 F.L.R. 97.

Appeal against a conviction in the Magistrate's Court.

S. Prasad for the appellant.

E *J. R. Reddy* for the respondent.

The facts sufficiently appear from the judgment.

MOTI TIKARAM P.J.: [16th December, 1970]—

This is an appeal against conviction only.

On 23rd September, 1970 the appellant was convicted by the Magistrate's F Court, Nadi of the offence of giving false information to a public servant, contrary to section 135(*a*) of the Penal Code, Cap. 11.

The particulars of offence were as follows:—

" *DONALD IAN LANE*, on the 5th day of December, 1969 at Lautoka in the Western Division gave to Police Constable No. 477 Suliasi Matavesi a person employed in Public Service, namely the Fiji Police Force, information

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which he believed to be false in that he told the said Constable that, ' I still remember on 3rd day of December, 1969 I was driving my private car No. T349 from Lautoka towards Nadi, on coming Lomolomo flat I was travelling at about 45 miles per hour. On coming along to the rail crossing about ½ a mile away I saw two bullocks and the caretaker came out from the cane field and they gone across to the other side of the road. At this stage I reduced my speed to 35 miles per hour as I came closer to them all of a sudden a calf suddenly came from the cane field on my left and I then applied my brake and the calf bumped the left portion of my car. The calf ran out from the cane field suddenly when the caretaker and the two other bullocks were on the other side of the road. After the accident the caretaker came up to me and said that he was very sorry for that as he should bring the calf with him ', knowing such information to be false and knowing it to be likely that he will thereby cause the said Police Constable No. 477 Suliasi Matavesi to take action which he ought not to do if the true state of facts respecting which such information is given were known to him. "

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The appellant had pleaded not guilty.

At the end of the prosecution's case the learned Counsel for the appellant submitted that there was no case to answer. The court ruled there was a case to answer. Section 201 of the Criminal Procedure Code was complied with. The defence elected to call no evidence whatsoever and the learned Counsel for the appellant repeated his earlier submissions to the effect that every ingredient which is required to constitute the offence must be proved beyond any reasonable doubt. He also emphasised the fact that no one was charged with careless driving.

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The learned Magistrate in a reserved judgment found the accused guilty, convicted him and fined him $150.00. In the course of his judgment he stated " the accused did not give or call any evidence and relies on four legal submissions on the prosecution evidence. " He then went on to cite the submissions, which were as follows:—

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" 1. The information given must be false.

2. The accused must have known or believed the information to be false.

3. The information must have resulted in P.C. 477 taking action which he ought not to do if the true facts were known to him.

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4. The accused must have known that P.C. 477 would have taken such action. "

After analysing the evidence the learned trial Magistrate found that the accused gave a false statement and concluded that accused believed it would be accepted as the truth and acted upon by P.C. 477 accordingly; in other words knowing it to be likely that P.C. 477 would do something he would not do if the true information was known to him.

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The learned Magistrate observed that whether in fact the intended course of action was taken is irrelevant, the emphasis is on " to be likely ". He also stated—

" the accused is not charged with causing P.C. 477 to do or omit to do, he is charged with ' knowing it to be likely ' that P.C. 477 will omit to do. "

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The appellant has appealed against the decision of the learned trial Magistrate upon the following grounds:—

A " (*a*) *THAT* the learned trial Magistrate erred in law in ruling that there was a case to answer at the end of the Prosecution's case. Your Petitioner submits that the learned Magistrate ought to have acquitted your Petitioner in accordance with Section 200 of the Penal Code (Cap. 14).

B (*b*) *THAT* the learned trial Magistrate erred in law by taking into consideration the accused's silence at the trial and consequently misdirected himself on the onus of proof and as a result there has been a miscarriage of justice.

(*c*) *THAT* the learned trial Magistrate erred in law and in fact in holding that the information given by the accused to P.C. 477 Suliasi Matavesi was false and consequently there has been a serious miscarriage of justice.

C (*d*) *THAT* the learned trial Magistrate misdirected himself when he said that ' he (the accused) is charged with knowing it to be likely that P.C. 477 will omit to do ' and consequently there has been a miscarriage of justice.

D (*e*) *THAT* the quantum and quality of evidence adduced by the Prosecution against your Petitioner on a proper evaluation fell short of the proof requisite to warrant conviction in a Criminal Case and your Petitioner further complains that the decision is unreasonable and cannot be supported having regard to the evidence as a whole. "

The whole of section 135 of the Penal Code reads as follows:—

E " Whoever gives to any person employed in the public service any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such person employed in the public service—

(*a*) to do or omit anything which such person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or

F (*b*) to use the lawful power of such person employed in the public service to the injury or annoyance of any person,

is guilty of a misdemeanour, and is liable to imprisonment for twelve months. "

At the hearing of this appeal ground (*a*) was abandoned and grounds (*c*) and (*e*) were argued together.

G In support of his contention contained in ground (*b*) of the appeal the learned Counsel for the appellant has cited the case of *Josefa Nasora v. Reginam* 9 F. L. R. 97. In my view this case is distinguishable from the appeal case before me. In Josefa Nasora's case the first paragraph of the Learned Trial Magistrate's Judgment reads as follows:—

H " Accused has had the opportunity to deny or explain what has been said by the prosecution witnesses. Since he has not taken the opportunity the Court is left only with the evidence of the prosecution witnesses and therefore accepts that evidence as the truth. "

On appeal the Crown did not seek to support the conviction because from the wording of this first paragraph, viz, " since " the accused has elected to remain silent "therefore" the Court accepts the evidence of the prosecution witnesses as the truth, the lower Court had apparently misdirected itself upon the onus of proof. Consequently the Supreme Court allowed the appeal and quashed the conviction and sentence.

In the instant case there can be no suggestion that the learned trial Magistrate had misdirected himself on the question of onus of proof. Furthermore nor did he, even by implication, make any adverse comment on the accused's silence. He made no more than a statement of fact. Consequently I find no basis whatsoever for the complaint contained in ground (*b*) of the Petition and this ground must, therefore, fail.

With regard to grounds (*c*) and (*e*) it is essential to remember the following facts:—

(*a*) that the prosecution evidence stood uncontradicted;

(*b*) that the inference which the learned trial Magistrate drew was based on his findings of fact made on evidence accepted by him;

(*c*) that it was never the defence case that the statement (Ex. "A") on which the charge was based was not made by the accused.

In my view when one contrasts the whole of the verbal testimony against the written statement of the accused the falsity of the written statement emerges quite distinctly, because it is quite apparent that they related to the one and the same incident and are irreconcilable insofar as the identity of the driver of the car at the time of the accident is concerned. In his statement the accused claimed that he was driving the car No. T349 on 5th day of December, 1969 at Lomolomo flat when it came into collision with the calf. The prosecution evidence is that the same car was being driven by the accused's wife and that she was the only person in that car. To suggest the possibility that the prosecution evidence might refer to an incident different from that described by the accused is to stretch the imagination too far. The learned Magistrate's finding that the statement was false and that the accused knew it to be false was in my view soundly based and his inference that the accused knew that P.C. 477 was likely thereby to be misled into taking or omitting to take a certain line of action is inescapable. I agree with the learned trial Magistrate that the fact that P.C. 477 did not in fact take a particular course of action which the accused knew to be likely, is irrelevant.

The fact that the accused's wife was prosecuted for driving the vehicle in question without a valid driving licence, such prosecution arising from driving car No. T349 at the time of the incident in question, throws some light on the reason why the accused would want to falsely mislead the police by assuming responsibility for the driving. In my view on the evidence as a whole the trial court was amply justified in finding proved beyond reasonable doubt that the accused's statement was false. His decision cannot be characterised as unreasonable and insupportable having regard to the evidence. Grounds (*c*) and (*e*) can, therefore, be of no avail to the appellant.

I now turn to ground (*d*) of the appeal, which ground was argued last. It is true that the particulars of offence do not allege that the accused knew " that P.C. 477 was likely to omit to do " a certain thing. Although the learned trial Magistrate's construction of the charge in one particular part of his judgment appear on the face of it to be inconsistent with the particulars alleged, no miscarriage of justice has, in fact, occurred.

In my view, on a charge under section 135(a) once the prosecution has established the following matters:—

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(*a*) that the information given (i.e. the statement made in this case) was false;

(*b*) that the information (or statement) was made to a public servant;

(*c*) that the maker knew that the information (or statement) was false or believed it to be false,

B then the only other ingredient that the prosecution has to establish is that the maker thereby intended to cause or knew that he was thereby likely to cause the public servant to do or omit to do something which he would not do or omit to do had he known the true state of facts.

In this particular case it can be argued that the particulars of the offence are couched in sufficiently wide terms to include doing or omitting to do something. The essence of the last ingredient is an intention on the part of the maker to C mislead or knowledge on his part that his false statement was likely to mislead the public servant into doing or omitting to do something. Insofar as the present charge is concerned the prosecution had by inference satisfied the court that the accused knew the likely misleading consequences of his act. Whether the public servant was in fact misled or not is immaterial. I, therefore, find no substance in this last ground of appeal which must also fail.

D In the outcome, therefore, this appeal must be dismissed and it is ordered accordingly.

Appeal dismissed.