

SHIU CHARAN

v.

REGINAM

[SUPREME COURT, 1972 (Grant J.), 28th June, 3rd August]

Appellate Jurisdiction

Criminal Law — evidence and proof — evidence of intoxication — lay witness may give general impression as to whether an accused person has taken drink—Traffic Ordinance (Cap. 152) s.39(1).

A lay witness can properly give his general impression as to whether an accused person has taken drink and a court may attach such weight to such evidence as it considers proper in the circumstances.

Cases referred to :

R. v. Davies [1962] 3 All E.R.97; 46 Cr. App. R.292.

Hickman v. Peacey [1945] A.C.304; [1945] 2 All E.R.215.

Appeal to the Supreme Court against conviction by a magistrate of driving when under the influence of drink.

K. C. Ramrakha for the appellant.

R. Davies for the respondent.

The facts sufficiently appear from the judgment.

3rd August 1972

GRANT J.:

This is an appeal against the conviction of the appellant, on the 28th day of March 1972, of driving a motor vehicle when under the influence of drink contrary to Section 39(1) of the Traffic Ordinance Cap. 152, the appeal being argued on the grounds that the circumstances did not justify an inference that the appellant was drunk at the time of the incident and that the evidence left open the question of when he imbibed the alcohol.

The prosecution evidence was that on the 15th January 1972 around 6.45 p.m. a taxi driven by the appellant at Nasekula Road Labasa ran into the rear of and damaged a stationary car in which were sitting the complainant and his cousin, both of whom knew the appellant and positively identified him, the complainant also identifying the taxi which sustained a damaged front bumper.

The complainant testified that although he had tried to prevent the appellant from leaving the scene after the collision he had been unable

A to stop him from so doing and under cross-examination he gave as the reason that the appellant was "so drunk", defence counsel having every opportunity to enquire into the facts upon which the complainant relied. A lay witness can quite properly give his general impression as to whether an accused has taken drink (per Lord Parker in *R. v. Davies* [1962] 3 All. E.R. 97 at 98) and the trial Magistrate was entitled to attach such weight to this evidence as he considered proper in all the circumstances.

B The complainant reported the incident to the police at 7.05 p.m. and at 7.30 p.m. a police officer went to the appellant's shop where he saw the appellant on the verandah and the taxi in question parked outside with a dent in its bumper. He asked the appellant under caution if he knew anything about the accident that evening to which the appellant replied "Yes I'll fix it". The police officer formed the impression that the appellant was drunk and took him to Labasa Hospital where he was examined by a doctor at 8.30 p.m. who gave as his expert opinion that the appellant was under the influence of alcohol to such an extent as to be incapable of properly controlling a motor vehicle.

C On the following day upon the taxi in question being examined further by the police it was discovered that the dented bumper had been removed and replaced with an undamaged one.

D The appellant's defence was a complete denial that he and the taxi were in any way involved in the incident. He claimed that the taxi in question had not been driven after 5.30 p.m. on the day of the incident, that since that time he had been at his house at the back of the shop where he had been drinking rum, and that he did not leave his house after 5.30 p.m. until the police took him to hospital.

E The possibility of the appellant's intoxicated condition having occurred after the time of the collision and before being medically examined did not, in my view, arise on the evidence. To quote Viscount Simon "Far-fetched hypotheses, unsupported by any semblance of evidence . . . do not seem to me to advance the matter. . . . If nothing is to be held to be proved in a court of law when it is conceivable that another incident of which there is no evidence might reverse the conclusion, then decisions of fact based on circumstantial evidence — such as are frequently reached in criminal cases, or in the Divorce Court — would often have to be regarded as inadequately established. In my view, the right conclusion depends on the evidence, and on nothing else." (*Hickman v. Peacey* (1945) A.C. 304 at 318 et seq.).

F In his judgment the trial Magistrate, after carefully reviewing the evidence, accepted the testimony of the prosecution witnesses as true, rejected the appellant's version of events as false and convicted the appellant.

G I consider that the prosecution evidence was ample to sustain a conviction and that the trial Magistrate was fully justified in relying upon it. The appeal is accordingly dismissed.

H Driving a motor vehicle under the influence of alcohol is a most serious offence in respect of which a Magistrate's Court of the First Class may impose a sentence of up to two years imprisonment and a fine of up to \$600. The conduct of the appellant was disgraceful and he can consider himself fortunate that the trial Magistrate saw fit to impose a fine rather than imprisonment.

Appeal dismissed