

A

ARUN KUMAR

v.

B

REGINAM

[SUPREME COURT, 1973 (Mishra J.), 13th June]

Appellate Jurisdiction

C

*Road Traffic—notice of intended prosecution—careless driving—whether place of accident specified with sufficient particularity—Traffic Ordinance (Cap. 152) s. 41.*

D

Having been involved in an accident, the appellant was served with a notice of intended prosecution in which the offence of careless driving was alleged to have been committed "on Vatulaulau, Moto Road". The appellant contended that the notice was invalid as it did not specify with sufficient particularity the place where the offence was alleged to have been committed.

Held. 1. There had been a serious accident and there could be no doubt as to where the accident occurred and the appellant had not been misled.

2. Each case depended on its own facts and there might be circumstances when the notice was insufficient to direct the driver's mind to the incident but this was not the case here.

E

(*Young v. Day* 123 J.P. 317 distinguished).

Cases referred to:

*Pope v. Clarke* [1953] 2 All E.R. 704; [1953] 1 W.L.R. 1060.

F

Appeal against the decision of the Magistrate's Court convicting the appellant of careless driving.

*M. S. Sahu Khan* for the appellant.

*D. S. Sharma* for the respondent.

MISHRA J. [13th June 1973]—

G

On 10th August 1972 the appellant was convicted by the Magistrate's Court, Ba of Careless Driving contrary to section 37 of the Traffic Ordinance and was fined \$20 in default 1 month's imprisonment. He was also ordered to pay \$10 costs.

The appellant appeals against his conviction.

H

The only ground urged in support of this appeal was that the notice of intended prosecution was invalid in that it did not specify with sufficient particularity the place where the offence was alleged to have been committed. There was no complaint about the other particulars contained in the notice. The notice served on the appellant advised him that the offence alleged to have been committed by him occurred "on Vatulaulau, Moto road in the Western Division at approximately 5 p.m. on the 11th day of May 1972".

In support of his argument the appellant cites *Young v. Day* (123 J.P. 317). The notice of intended prosecution in that case described the place of the incident as "*Hothfield to Bethersden Road*," a minor road 4 miles in length and the justices dismissed the information on the ground that the place of the offence was not sufficiently specified in the notice. Giving the decision of the Appellate Court in that case Lord Parker C.J. said,

"It seems to me that this was a question of fact for the justices and it is impossible for this court to say that there was no evidence which would entitle them to come to the conclusion to which they did. In my judgment they came to the right conclusion, and the appeal must be dismissed."

In *Young v. Day* (supra) there had been no accident. The allegation against the driver was that he "drove in such a manner that he narrowly avoided colliding with a motor car which was stationary on the offside of the road". The justices decided that, merely naming a road 4 miles long, was insufficient, in such a case, to direct the driver's mind to the incident that the police were relying upon.

In the instant case a serious collision had occurred between the appellant's landrover and another motor vehicle on the road in question at the time and the date specified in the notice of intended prosecution. The police had been to the scene of the accident and made an investigation while the appellant was still there. The learned trial Magistrate held that on the facts of this case the appellant could not have been misled and, in my view, he was entitled to come to that conclusion.

The serving of the notice of intended prosecution specifying the nature of the alleged offence is the mandatory part of section 41(c) of the Traffic Ordinance, the furnishing of the other particulars being merely directory in nature (*Pope v. Clarke* [1953] 2 All E.R. 704). The test of whether the requirements of the section have been complied with depends upon the sufficiency or otherwise of the information contained in the notice to direct the mind of the driver to the incident in relation to which he is to be prosecuted. As Lord Goddard C.J. said in *Pope v. Clarke* (supra),

"If a person met with two accidents on the same day at or about the same place, possibly other considerations might apply, because he might then say he was misled. Here the respondent, on whom was the onus of showing he was misled, gave no evidence."

In the instant case the appellant did give evidence but his evidence quite clearly showed that he had never been in any doubt as to the incident to which the notice of intended prosecution referred.

The appeal is dismissed.

*Appeal dismissed.*