A

CHANDAR PAL

v.

REGINAM

B

[SUPREME COURT, 1974 (Grant Ag. C.J.), 17th January]

Appellate Jurisdiction

Criminal law—traffic offences—causing death by dangerous driving—Penal Code (Cap 11) s. 269 (1)—driving must be shown to be the real cause of accident—prosecution must show fault on part of driver causing a situation which, viewed objectively, was dangerous.

C

Criminal law—evidence and proof—duty of magistrate to analyse the evidence—recommended form of judgment—Criminal Procedure Code (Cap 14) s. 154 (1).

Judgment—recommended form and pattern—Criminal Procedure Code (Cap. 14) s. 154 (1).

D

The appellant had been convicted of causing death by dangerous driving. He had collided with a taxi which had turned across his path, and the taxi driver had been killed.

The prosecution alleged that the appellant had been travelling too fast and that this was a contributory cause of the accident relying on *R. v. Hennigan* [1971] 3 All. E.R. 134; 55 Cr. App. R. 262.

E

Allowing the appeal the Court held: 1. Where the death resulted from a traffic accident it was necessary for the prosecution, on a charge of causing death by dangerous driving, to show that the accused's dangerous driving was the real cause of the accident and something more than de minimis.

2. The speed of the appellant's vehicle might well have been the cause of the dangerous situation, but it was necessary for this to be established beyond a reasonable doubt.

F

3. The case of *R. v. Hennigan* (supra) was clearly distinguishable on its facts as the driver in that case had been engaged in overtaking prior to the collision.

4. Insufficient evidence had been adduced to show the distance between the appellant's vehicle and the taxi when the taxi made its turn.

5. The magistrate had failed to analyse the evidence and did not give his reasons nor explain in what manner the appellant's driving was dangerous.

G

Per curiam: The judgment should follow a recommended pattern.

Cases referred to:

R. v. Gosney [1971] 3 All. E.R. 220; [1971] 2 Q.B. 674.

Pratt v. Bloom [1958] The Times October 21; [1958] Crim L.R. 817

H

Dalip Kumar v. R. Fiji Cr. App. No. 102 of 1973 (unreported).

Appeal against conviction and sentence in the Magistrate's Court for causing death by dangerous driving.

GRANT Ag. C.J.: [17th January 1974]

On the 24th September, 1973 at Suva Magistrate's Court the appellant was convicted after trial of Causing Death By Dangerous Driving contrary to Section 269 (1) of the Penal Code and sentenced to a fine of $100 and disqualified from holding a driving licence for two years.

The appellant has appealed against conviction on the grounds that:

(*a*) The learned trial Magistrate erred in fact and in law in holding that the dangerous driving was a substantial cause of the death of the deceased;

(*b*) the learned trial Magistrate erred in fact and in law in holding that it was clear to the Court beyond reasonable doubt the the accused did drive in a manner which was dangerous to the public having regard to all the circumstances of the case;

(*c*) the verdict is unreasonable and cannot be supported having regard to the whole of the circumstances of the case.

The facts found by the trial Magistrate were that on the 21st April, 1973 a motor car driven by the appellant was proceeding along Queens Road in the direction of Navua at a high speed, well in excess of the speed limit of 40 miles per hour in force on that stretch of road, when the driver of a taxi approaching from the opposite direction cut across his path to turn into one of the entrances of the Tradewinds Hotel. The appellant's car hit the taxi broadside on, killing the driver.

Where death has resulted from a traffic accident it is necessary for the prosecution, on a charge of causing death by dangerous driving, to show that the accused's dangerous driving was a real cause of the accident and something more than de minimis (*R. v. Hennigan* [1971] 3 All E.R. 134) and to establish the accused's dangerous driving it is necessary for the prosecution to show that there was some fault on his part causing a situation which viewed objectively, was dangerous (*R. v. Gosney* [1971] 3 All E.R. 220).

The driver of the taxi, in turning across the road to enter one of the entrances of the Tradewinds Hotel, was doing something unusual, that is to say, instead of proceeding on his correct side of the road he was changing direction and crossing that side of the road on which vehicles approaching from the opposite direction had the right of way and it was his duty, first, to signal and, secondly, to see that no one was incommoded by his change of direction (per Streatfield J. in *Pratt v. Bloom* [1958] The Times, October 21). He owed a very high duty of care to other road-users, particularly those entitled to use that portion of the road on which he was encroaching and there can be little doubt that by turning into the path of the appellant's car he was driving in a negligent manner.

However, this in itself does not relieve the appellant of liability if there was also some fault on his part which was a cause, in the sense of being more than de minimis, of the dangerous situation arising; and it is the submission of the Crown that the excessive speed of the appellant's car was a contributory cause.

The Crown relies heavily on the judgement in *R. v. Hennigan* (supra) in which a driver was convicted of causing death by dangerous driving as a result of his colliding with a car which had emerged from a side road and was astraddle the main road on which he was travelling when he crashed into it broadside, there being a considerable body of evidence that he was travelling at a fast speed. However, in my view, that case is clearly distinguishable on its facts, as the driver who was convicted had been engaged in overtaking immediately prior to the collision. As was stated in *Dalip Kumar v. Reg.* (Fiji Crim. Appeal No. 102 of 1973) a driver who is overtaking is executing a hazardous manoeuvre which

imposes upon him the highest duty of care. He is, almost invariably, encroaching on his incorrect side of the road and accelerating while not having a wholly unobstructed view of the road ahead; and it is his responsibility to ensure that he is in a position to properly control his vehicle and to cope with any contingency that might arise without endangering other road-users.

A very different situation arises when a driver is simply proceeding, albeit at a fast speed, on his correct side of the road with a clear and unobstructed view ahead, and a vehicle approaching from the opposite direction suddenly cuts across his path.

In the present case the speed at which the appellant's car was travelling might well have been the cause of the dangerous situation, but if so it was necessary for this to be established beyond reasonable doubt. The appellant should have been travelling at no more than 40 miles per hour in view of the speed limit imposed and should also have anticipated that vehicles might emerge from or turn into the entrance ways of the hotel; and the taxi driver on his part was entitled to assume that the appellant's car was not travelling in excess of 40 miles per hour. On that basis, had the taxi turned across the road to the entrance way of the Tradewinds Hotel when the appellant's car was a reasonably safe distance away but the taxi was struck by the appellant's car because the appellant was being unobservant, or because his car was travelling well over 40 miles an hour and therefore covered the intervening distance sooner, the appellant would certainly have been at fault.

On the other hand, if the taxi turned across the road when the intervening distance was so short that even if the appellant had been paying proper attention and proceeding at 40 miles per hour a collision would inevitably have occurred, the fact that the speed of the appellant's car was greater would not have been a cause of the dangerous situation, the sole cause being the gross negligence of the taxi driver.

Thus it was of vital importance to know the distance between the two vehicles at the time the taxi cut across the path of the appellant's car, particularly as the appellant stated that he suddenly saw the taxi turn right, and that it suddenly appeared in front of him. There should have been no difficulty in obtaining evidence of this distance as an inspection of the scene by the trial Court disclosed that a pedestrian (P.W.4), on whose estimate of speed the trial Magistrate relied, had given incorrect estimates of distances in her prior testimony and that she was, apparently, two yards beyond the first entrance of the Tradewinds Hotel and proceeding in the direction of the second entrance when the appellant's car passed her, at which time the taxi turned across the path of the appellant's car to enter the second entrance. If, for example, the distance between the entrances was thirty yards it is clear that had the appellant's car had been travelling at 40 miles per hour it could not possibly have stopped in time to avoid colliding with the taxi, as it would have covered the distance in one and a half seconds, and the fact that it was travelling faster would in no way have contributed to the dangerous situation which would have been brought about solely by the reckless manoeuvre on the part of the taxi driver. However if the distance between the two entrances was very much greater, say one hundred yards, then the high speed of the appellant's car could very well have been a contributory factor.

Unfortunately no attempt was made by the prosecution to ascertain the position. Indeed, the plan that was produced only showed one of the entrances to the hotel and was of singularly little assistance, and the photographs in the absence of expert evidence were of no assistance whatever.

Further, the onus was upon the prosecution to establish that the taxi-driver gave ample warning of his intention to turn so as to put the appellant on his guard at a distance which would have enabled him to avoid a collision had his speed been 40 miles per hour. Again the prosecution made no attempt to do so. A

In his judgment the trial Magistrate made no reference to these aspects of the matter, nor did he deal with the appellant's contention that the taxi turned suddenly across his path. On the evidence the taxi could have turned across the path of the appellant's car when the vehicles were so close that even if the appellant had been travelling at a more moderate speed the collision could not have been avoided. P.W.4. stated that the time that elapsed between the appellant's car passing her, the taxi turning across its path, and the collision, was no longer than the clicking of a finger. And according to another bystander (P.W.6), the only other partial eye-witness and as the owner of the taxi a not disinterested party, who noticed the appellant's car just before the accident occurred when it was in his sight for a fraction of a minute but who nevertheless assessed its speed at between eighty or ninety miles per hour, the car was only five to six yards from the point of impact. If it was at that time that the taxi driver turned across the path of the car the appellant could not have avoided the collision even if travelling at twenty miles per hour. B C

The trial Magistrate found that the appellant drove in a dangerous manner, but did not analyse the evidence, give his reasons, nor explain in what manner the appellant's driving was dangerous; and in all the circumstances I have come to the conclusion that the evidence is too unsatisfactory to ground a conviction. D

The appeal succeeds on grounds (*b*) and (*c*), the conviction is quashed and the sentence and order of disqualification set aside.

I would take the opportunity, as the judgment of the lower court in this case is a clear example, of drawing attention to what appears to be a trend on the part of some Magistrates to set out in a judgment a summary of the evidence of the witnesses in the order in which they were called regardless of the fact that this bears no relationship to the sequence of events which is the subject matter of the trial; and a tendency to omit reasons for the decision reached. E

Witnesses very often give evidence out of order, but one does not expect a Magistrate to simply restate same seriatim in his judgment. In order to arrive at a proper conclusion the Magistrate must have considered the matter in its logical progression, and have formulated reasons for his ultimate conclusion, and the judgment should be expressed accordingly. F

As a general rule, the judgment should commence with a description of the charge, followed by the relevant events and the material evidence set out in correct sequence in narrative form, the identifying number of each pertinent witness being incorporated at the appropriate places, after which the Magistrate should state what witnesses he believes and whose evidence he accepts or rejects, and should proceed to make his findings of fact, apply the appropriate law to those facts, and give his reasoned decision; bearing in mind throughout the provisions of Section 154 (1) of the Criminal Procedure Code. G

If these considerations are kept in view, not only will it make the task of an appellate court easier, it might well lead to fewer decisions being upset.

Appeal allowed. H