

IN THE SUPREME COURT OF FIJI  
(WESTERN DIVISION) AT LAUTOKA

Appellate Jurisdiction

Criminal Appeal No. 13 of 1978

BETWEEN:

ASHOK KUMAR s/o Surya Bali

Appellant

- and -

REGINAM

Respondent

Mr. G.P. Shankar, Counsel for the Appellant  
Mr. D. Williams, Counsel for the Respondent

JUDGMENT

The appellant appeals against a conviction for careless driving.

The evidence shows that as he was driving from Ba to Tavua about 12 midnight on 29.1.77 he was involved in an accident with a pedestrian who was walking along the road in the same direction as the appellant.

It was a dark night.

The only material witnesses are the complainant (P.W.1) and the appellant.

It is not disputed that the appellant's car hit the complainant (P.W.1) from behind knocking him into the ditch on the left hand side of the road and breaking his left leg. The complainant was with his brother and sons but they were walking on the opposite side of the road.

In his evidence the appellant a physio-therapist said that his speed was 35 to 40 m.p.h., his headlights were good and he saw a bunch of people about 5 chains ahead of him.

He stated that the people scattered and then his car hit something; although he did not stop he continued to the police station where he reported the incident.

It was argued by Mr. G.P. Shankar that the mere fact that an accident occurs is not proof of careless driving and that the magistrate did not pay sufficient heed to the appellant's evidence that he slowed down prior to the accident.

There is support for P.W.1's claim to have been on the left hand side of the road when he was struck because he was knocked into the ditch on the left hand side.

The learned magistrate directed his attention towards the appellant's evidence that he saw a bunch of people in the road 5 chains ahead. The magistrate held that the appellant on seeing that danger should have been on his guard and have taken steps to avoid colliding with the pedestrians. He took the view that the appellant had not taken the precaution of slowing down sufficiently to avoid hitting any of the pedestrians.

One might argue that this is a counsel of perfection but it is based on the accused's own admission that he saw, 5 chains ahead of him, something which should have at once alerted him. The appellant did say that he slowed down, nevertheless he struck one of the pedestrians.

There is no suggestion that the complainant suddenly dashed in front of the appellant's car. The appellant simply says he did not see the person whom he struck. The magistrate says that had the appellant slowed down sufficiently he would have seen the complainant. I cannot say that the magistrate's approach was speculative or erroneous, because on his own evidence the appellant had the opportunity of slowing down considerably and even stopping.

Of course the appellant said in evidence that he slowed down. The magistrate did not ignore that evidence because he did say that the appellant had not slowed down sufficiently.

3.

If the appellant had slowed down, and if he had his headlights on full beam (which he should have had) what reason could there be for his not seeing the complainant. If it was because he could not keep track of each one of the scattering pedestrians then he should not have continued into the area of danger but should have stopped.

The blow was not, on the evidence, of a glancing nature, such as would occur if the complainant had been grazed by the side of the car. The complainant's leg was broken suggesting a direct impact with the front of the car; he was thrown on to the bonnet which again indicates that he was struck by the front of the car.

One would expect the appellant to see a pedestrian in front of his car because the latter would be in the beam of the headlights. The fact that the appellant did not see the complainant although the appellant had slowed down indicates that he was not keeping a proper lookout.

The appeal is dismissed.

The conviction and sentence are upheld.

(Sgd.) J.T. Williams  
JUDGE

LAUTOKA,  
14th April, 1978.

Messrs. G.P. Shankar & Co., for the Appellant  
Director of Public Prosecutions for the  
Respondent.

Date of Hearing: 30th March, 1978.