IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Labasa Criminal Appeal No. 9 of 1977

Between:

SURNASH CHAND s/o JAG PRASAD

and

REGINAM

JUDGMENT

On the 12th September 1977 at Labasa Magistrates Court the appellant was convicted after trial of driving a motor vehicle whilst under the influence of drink contrary to section 39(1) of the Traffic Ordinance.

He has appealed against conviction on the grounds that the trial Magistrate erred in law and in fact in holding that the evidence of drunkenness and incapability had been substantiated by the medical evidence beyond reasonable doubt, and that the verdict is unreasonable and cannot be supported having regard to the evidence adduced.

The evidence upon which the trial Magistrate relied established that on the afternoon in question, after drinking liquor from about 3.30 p.m. until about 5 p.m., the appellant drove his brother's van and crashed into the rear offside of a car which was travelling ahead of him, apparently in an attempt to overtake it. The rear offside of the car was damaged as a result, and paint from it was found on the nearside of the front bumper of the van which the appellant was driving.

About one hour later the appellant was interviewed by the police and smelled heavily of liquor. He denied that the van which he was driving struck the rear of the car ahead, and claimed that the van was in front of the car and that the car hit the van from the rear, a patently absurd version of what had occurred.

At 6.20 p.m. the same night the appellant was examined by a properly qualified medical practitioner, at which time the appellant still smelled of liquor and an examination of his eyes revealed that the pupils were dilated and nystagmus was present. There were no other clinical indications adverse to the appellant so the doctor reserved his opinion as to whether or not the appellant was capable of controlling a motor vehicle until he had seen the laboratory report on the blood-alcohol level of the appellant. The laboratory report revealed that the appellant's blood contained 345 mg./100 ml.; and on taking this into account together with the clinical symptoms previously observed the doctor came to the firm opinion that the appellant was under the influence of alcohol to such an extent as to be incapable of having proper control. In his evidence the doctor explained his reasons for coming to that conclusion, quoting from and adopting in his evidence passages from an authoritative medical textbook on the subject.

At his trial the appellant elected to say nothing; and on the prosecution evidence the trial Magistrate found the appellant guilty as charged. In his judgment the trial Magistrate properly evaluated the doctor's testimony in

accordance with the principles laid down in R. v. Langford (Cr.App.142/73).

There is nothing objectionable in a doctor reserving his medical opinion as to fitness to drive until he knows the blood-alcohol level of the driver (R. v. Arun Narayan Ltka Cr.App.76/77) and the prosecution evidence which I have outlined was ample to sustain the conviction.

The appeal is accordingly dismissed.

(Sgd.) Clifford M. Grant
Chief Justice

Suva,
31st March, 1978.