

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Appellate Jurisdiction

Criminal Appeal No. 55 of 1978

BETWEEN:

KANDA SAMI s/o Armogam

Appellant

-and-

R E G I N A

Respondent

Mr. G.P. Shankar, Counsel for the Appellant

Mr. M. Jennings, Crown Counsel for the Respondent.

JUDGMENT

The appellant was driving a Government landrover on the main King's Road in the direction of Rakiraki. It had been raining, the road was earth/gravel and was being graded. One may well reasonably conclude that the conditions were poor and required constant care in driving and a moderate speed.

The Landrover which was carrying passengers ran off the road and overturned.

There were no independent witnesses and the passenger who gave evidence knew nothing more than it went off the road and overturned.

The accused informed the police that his speed was 25 m.p.h. and when he applied his brake the vehicle went off the road which was slippery.

Motor vehicles do not normally run off the road and overturn where there is no especial hazard. If the driver gives no explanation or tenders one which is not consistent with safe and proper driving or which in the circumstances is unlikely to be true that is evidence which may be presented to the Court that the driver was negligent or careless. In other words, notwithstanding the absence of eye witnesses and/or reliable circumstantial evidence the facts, speak for themselves and constitute evidence which the Court may regard as providing a case to answer.

2.

In the instant case the accused informed the learned magistrate that when he applied his brakes one of the rear wheels locked causing his landrover to pull to one side into a skid which he could not control.

The prosecution cannot be expected to anticipate a defence of mechanical failure, or blow outs, or stray animals causing the accused to swerve etc. and to meet all such contingencies by evidence to negative them beforehand. Nevertheless it is not for the accused who raises the issue to tender proof of it. Once the issue is raised it is for the prosecution to rebut it. They may do so by discrediting the accused in cross-examination, recalling, rebutting evidence, or leaving it to the court after considering submissions to find that the explanation is inconsistent with safe and proper driving.

In the instant case the prosecution sought to discredit the accused in cross-examination.

During re-examination the accused said the brake probably jammed because the lining was wet. Water is not like glue but acts like a lubricant and it would be more probable that a wet brake lining would lose adhesion rather than become jammed.

The learned magistrate did not approach the evidence in that manner. He said,

" The defendant contends that there was a sudden brake failure and wheel locking yet he has not produced a shred of evidence to substantiate this."

Undoubtedly he was putting the onus upon the accused to establish that it was not his fault that he ran off the road.

It may be that he did not believe the accused but he did not say so.

The appeal must be allowed.

The conviction is quashed and the sentence of \$20.00 fine is set aside. If paid the \$20.00 will be refunded.

LAUTOKA,
14th July, 1978.

(Sgd.) J.T. Williams

JUDGE

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

Date of Hearing: 6th day of July, 1978.