

Between:

DOR SAMI s/o NARAYAN

and

REGINAM

Mr. V. Parmanandam for the Appellant

Mr. V. Maharaj for the Respondent

JUDGMENT

On the 6th August 1979 the appellant was convicted after trial in the Labasa Magistrate's Court of the following offence:

" STATEMENT OF OFFENCE

Dangerous Driving: Contrary to Section 38(1) of the Traffic Ordinance.

PARTICULARS OF OFFENCE

DOR SAMI (son of Narayan) on the 13th day of March, 1979 at Tabia, Labasa, in the Northern Division, drove a motor vehicle on Labasa/Nabouwalu Road in a manner which was so dangerous to the public having regard to all the circumstances of the case."

Upon his conviction as aforesaid the appellant was sentenced to a fine of \$75 or in default three months' imprisonment.

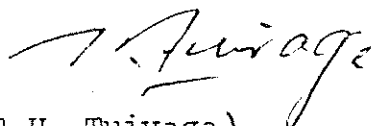
He now appeals against his conviction on the only ground relied upon namely that the learned Magistrate erred in law in failing to consider the evidence of the defence witness.

The issue in this case is essentially one of credibility as to which side to believe in regard to the two conflicting versions of how the accident occurred. The learned Magistrate carefully evaluated the evidence before him and

found himself satisfied beyond reasonable doubt that the prosecution version as deposed to by Mohammed Sakur s/o Mohammed Kasim (P.W.1) was true. He was fully satisfied that the appellant was at fault and that his fault was the substantial cause of the accident. This was a finding of fact and as is well established an appellate court would be very slow to alter such finding.

Sitting as it does in its appellate jurisdiction in this case this Court is unable to say that the learned Magistrate was wrong in his assessment of the evidence. Further, there is nothing in my view in the charge that the learned Magistrate did not give proper attention to the defence case. It is quite clear from the record of proceedings that he did so and despite that he preferred the account given by the prosecution side.

I find this appeal to be wholly without merit and must be dismissed.


(T.U. Tuivaga)
Chief Justice

Suva,
31st October 1980.