

Between:

RAM AUDH s/o BALMICK

Appellant

and

REGINAM

Respondent

Mr. A. Singh with Miss Prasad for the Appellant

Mr. I. Khan

JUDGMENT

On 4th January 1980 at Suva Magistrate's Court the appellant was convicted on two counts (1) of driving a motor vehicle whilst under the influence of drink or drugs contrary to section 39(1) of the Traffic Act and was fined \$80 or one month's imprisonment in default and (ii) of dangerous driving contrary to section 38(1) of the Traffic Act and was fined \$60 or fifteen days' imprisonment.

Appellant appeals against his conviction on two grounds:

- (a) That the evidence adduced was insufficient to sustain his conviction on either count in the charge;
- (b) That the identity of the appellant as the driver of the car at the material time was not established beyond reasonable doubt.

With regard to the first count, assuming that the appellant was the driver of the Volkswagen car M137, there is ample evidence to support the finding of fact by the learned Magistrate that the appellant was under the influence of drinks to such an extent as to be incapable of having proper control of the vehicle he was allegedly driving. P.W.1 and P.W.2

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both attested in evidence that the Volkswagen was going from side to side i.e. in a zig zag manner on the King's Road from Nasinu Training College. Several times the driver almost caused an accident with oncoming cars and with persons walking on the side of the road. P.W.1 followed the Volkswagen until it turned off and stopped. He saw the driver went off to sleep over the wheel. P.W.1 went to report the matter and did so to P.W.3, a police constable who was on that day on highway patrol on the King's Road. He went to where the Volkswagen had stopped and inside he saw appellant lying across the front seat asleep. P.W.3 woke him up and noticed that he smelled strongly of liquor, his eyes were red and he could not speak coherently. Appellant had difficulty in getting out of the car and was very unsteady on his feet. When he tried to put on his flip-flops he fell to the ground.

The appellant did not give evidence electing to remain silent. So in the absence of any explanation as to the strange manner in which he drove on the road and as to his drunken demeanour when seen afterwards by P.W.3 the only proper inference appeared to be that the appellant was not in a fit state to have proper control of his vehicle because he was under the influence of drinks.

I am satisfied that the learned Magistrate was justified on the evidence before him in convicting appellant on Count 1.

With regard to the second count the evidence which I have recited in relation to the first count and which was not controverted in evidence by the appellant established beyond any reasonable doubt that the appellant was in fact the driver of the Volkswagen M137 on that afternoon. I find no merit in the second ground of appeal.

In the result this appeal is dismissed.


 (T.U. Tuivaga)
Chief Justice

Suva,
 4th July 1980.