

VICTOR WILSON s/o CHARLES WILSON

and

REGINAM

Mr. K. Chauhan for the Appellant  
Mr. R. Lindsay for the Respondent

JUDGMENT

On 26th August 1980 the appellant was convicted after trial by the Suva Magistrate's Court on three counts namely, careless driving for which he was fined \$35, failing to stop after an accident and fined \$50 and failing to report an accident and fined \$25.

In the grounds in his petition of appeal the appellant avers:

- (i). that the learned magistrate erred in law in holding that there was a case for the appellant to answer at conclusion of the prosecution case;
- (ii) that the learned magistrate misdirected himself on the standard and onus of proof;
- (iii) that the verdict was against the weight of evidence having regard to all the circumstances.

The facts which the learned Magistrate accepted show that in the evening of 22nd April last PW.1's taxi a blue Toyota Corona was parked on its correct side in Lakeba Street outside his house. That at about 7.20 p.m. PW.1 heard a loud banging noise from the road and rushed from his house. On the road about a chain away from his car he saw a white Holden taxi which appeared to have stopped for a

moment before moving off. When PW.1 checked his car he found a big dent on the right rear mudguard. PW.2 who lived nearby on the same street also heard a loud noise from the road and when he came out he saw a white Holden taxi driving away but had time to note its number which was Y431. Later the same evening PW.3, a police constable attended a report on this accident. His investigation took him to Tubou Street where he found a white Holden taxi Y431 about a quarter to half a mile from the scene of the accident. The Holden taxi had a damage on its rear side. PW.3 saw some blue paint stuck on the damaged part. He also found that the white paint flakes he had collected from the scene were very similar in colour and finish to the paint on the white Holden. PW.3 later interviewed appellant who told him he owned the Holden taxi and that he was driving it on that day. When asked about the damage on his car appellant said he received it when he bumped a post at Nadi. In a further interview appellant said that he received the damage on his way back to Suva when his car was hit in Tailevu by a blue van which did not stop.

With regard to ground (i) of the appeal there was in my opinion a case for appellant to answer at the end of the prosecution case. At the trial it was established by the prosecution that appellant was driving his white Holden taxi Y431 on the day in question and that his taxi was seen by PW.2 at the scene of the accident soon after a loud noise was heard in Lakeba Street where PW.1's blue Toyota taxi was parking. In my view such evidence was more than enough to raise a prima facie case against appellant. Accordingly I can find no substance in this ground of appeal.

With regard to ground (ii) as far as I can see, there is nothing in what the learned magistrate said in his judgment suggesting that he had drawn an inference adverse to the appellant from the fact that appellant had chosen to remain mute and offer no evidence. The case of R. v. Josefa Nasora 9 F.L.R. 97 upon which counsel for appellant was relying for his submission on this ground is clearly distinguishable. In that appeal which was allowed it was beyond question

that learned magistrate drew an adverse inference from appellant's silence. There is also no merit in this ground of appeal.

With regard to ground (iii) which is a general ground I have already pointed out certain important material facts when dealing with ground (i). To them one must add the rather weak explanation given by appellant when he was interviewed by PW.3 as to how his car received the damage to its rear side. On the whole of the evidence adduced at the trial I am satisfied the learned magistrate was entitled to infer as he did infer that not only was appellant driving the white Holden taxi at the material time but did so carelessly causing the accident in question. In my view the conviction in this case was clearly justifiable on the evidence before the Court.

For the reasons given this appeal is dismissed.

(T.U. Tuivaga)  
Chief Justice

Suva,  
23rd January, 1981.