

IN THE SUPREME COURT OF FIJI

212

Appellate Jurisdiction

Criminal Appeal No. 11 of 1982

000349

Between:

DESMOND WHITESIDE

and

REGINAM

Mr. T. Fong for the Appellant

Mr. S. Singh for the Respondent

JUDGMENT

This is an appeal against conviction for careless driving which was entered against appellant in the Suva Magistrate's Court on 2nd December 1981 and in respect of which he was fined \$30.

The ground of appeal states that the learned Magistrate erred in law and in fact in convicting the appellant when a proper evaluation of all the evidence did not in law and in fact support such a conviction.

The facts found and accepted by the learned Magistrate were these. At about 12.30 a.m. on 19th April 1981 a police patrol car was travelling down Edinburgh Drive towards the city. It was following a taxi. As the police car drove past Office Equipment Building, a Honda car registered No. AW358 driven by appellant overtook the police car and the taxi at a high speed. As it did so it almost collided with another car which had pulled out from Edinburgh Drive Service Station from the left-hand and crossed the road in making its way towards Samabula. Despite that near collision the appellant did not slow down. He was later located at Lucky Eddies some distance away. Appellant had been drinking during the early part of the evening and was smelling of liquor when approached by the police.

The appellant gave evidence and called one witness but their evidence was disbelieved and rejected by the learned Magistrate where it conflicted on material issues with the prosecution evidence.

The credibility of witnesses is essentially one for the trial Court which had the advantage of having seen and heard the witnesses. This Court sitting in an appellate capacity does not enjoy such advantage and for that reason will not as a general rule interfere with findings of a trial Court such as in this case where the findings were based on the learned Magistrate's assessment of credibility as between opposing witnesses (see Watt (or) Thomas v. Thomas [1947] A.C.484; Benmax v. Austin Motor Co. Ltd. [1955] A.C.370 and S.S. Hontesroom [1927] A.C.37).

Accepting as I must the facts as found by the learned Magistrate it is quite clear that appellant was not at the material time driving with due care and attention. His manner of driving clearly fell short of the standard of driving of a prudent and careful driver. Appellant had taken an unnecessary risk when he overtook two vehicles at high speed at night when it must have been impossible for him to be certain because of his restricted vision that it was safe to do so. Moreover, in view of the fact that he had been drinking there was a special obligation upon him to be much more careful in the way he drove his vehicle that night. The circumstances of the case showed that he had created a real risk of bodily injury and other damage not only to himself and his passengers but also to other road users.

I can find no merit in this appeal which must be dismissed.

(T.U. Tuivaga)  
Chief Justice

Suva;  
30th April, 1982.