

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No.65 of 1984

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Between:

SATISH CHANDRA MAHARAJ  
s/o Beni Madho

Appellant

and

REGINAM

Respondent

Mr. S.M. Koya for the Appellant  
Mr. T. Gates for the Respondent

J U D G M E N T

On the 28th August the appellant appeared before the Chief Magistrate charged with the offence of driving while being disqualified from holding a driving licence contrary to section 30(4) of the Traffic Act. On conviction he was sentenced to 3 months' imprisonment and disqualified from driving for a further period of 2 years. A second charge of driving a motor vehicle without Third Party Insurance contrary to section 4 of the Motor Vehicle (Insurance) Act, Cap. 153, led to a fine of \$50, the endorsement of the appellant's licence and a period of disqualification for 12 months. However, the learned Chief Magistrate made it clear that he intended to disqualify the appellant for 2 years in all.

This is an appeal against the sentences imposed in the court below. As appeals against sentences from the Magistrates' Courts appear to be on the increase, it is

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perhaps timely to refer to what is the proper approach of an appellate court to an appeal against sentence. This can best be done by quoting the judgment of Hyne, C.J. in Kamchan Singh v. The Police 4 F.L.R. 69 at 70 :

" The Appellate Court does not alter a sentence merely because that Court might pass a different sentence. It is only when a sentence appears to err in principle that the Appellate Court will alter it. If a sentence is so excessive or inadequate as to satisfy the Appellate Court that when it was passed there was a failure to apply the right principles, then the Appellate Court will intervene. I do not think that there has been any failure to apply the principles laid down in Rex v. Ball 35 Cr. App. R. 164, and although this Court might have inflicted a lesser fine, the fine imposed by the Magistrate, who was fully conversant with the circumstances and who doubtless was, and quite rightly, considering the public interest, was what he considered to be a reasonable fine in the circumstances. No adequate grounds have been urged for interfering with the sentence. "

It is the appellant's case that on the first count there existed "special circumstances of the case", which, if considered by the Chief Magistrate, would have justified his imposing either a fine or a suspended sentence upon him. The wording of section 30(4) of the Traffic Act is such that it can leave no doubt that it was the intention of the legislature to provide that a person who drives while being disqualified, should ordinarily be sentenced to imprisonment unless there exists such special circumstances as would enable the Court to impose a fine. (D.P.P. v. Bissun Prasad 20 F.L.R. 23). It was argued in this Court, not only that special circumstances existed, but, that the Chief Magistrate was under a duty to hear evidence from the unrepresented appellant in support of his claim that these circumstances existed. (Jones v. English (1951) 2 All E.R. 853).

According to the record the appellant was asked to make a statement in mitigation which was recorded as follows:

"The circumstances that made me drive are that I stay in Wailoku.

I have no telephone contact.

My wife was sick and had stomach aches.

My nearest neighbour with a phone was not in.

I had taken my wife to the doctors and then her parents and was going back.

Married no children.

Works as accountant at Air Pacific.

If I go to prison, my employment would go.

I ask leniency.

I was only 2 weeks away from the disqualification being lifted.

COURT: 4 weeks.

ACCUSED: Yes.

If it had not been for my wife being sick, I would not have done it. "

In approaching this plea the Chief Magistrate was (without hearing evidence) prepared to accept that the appellant's wife was ill and that he drove his car on that account. However, he took the view that the emergency ended as soon as the appellant had delivered his wife to her parents' house, and, that there was no excuse for his decision to drive home alone. It was during the course of this journey that he was apprehended.

As the plea in mitigation did not disclose to the Chief Magistrate the existence of special circumstances, it would have been a pointless exercise for him to call upon the appellant to produce witnesses to give evidence about his wife's illness, her visit to the doctor and her journey to her parents' house. The Chief Magistrate said that he could see no mitigation in the facts advanced by the appellant and with this conclusion I agree.

All magistrates must be deemed to be aware of the options open to them on a consideration of the proper sentence to pass on an offender, including the power to suspend a

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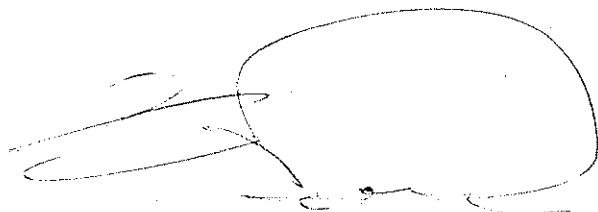
sentence. They are not required to record their consideration of all or any of these options. I must assume that the learned Chief Magistrate did not regard suspension as appropriate to the circumstances and I cannot interfere with his discretion in this respect.

In regard to the further suspension of the licence, Mr. Koya for the appellant made the point that subsection (1)A of section 29 of the Traffic Act provides as follows :

"29(1)A - Where a person is convicted of driving a vehicle when disqualified from holding or obtaining a driving licence the Court by which he is convicted may, in addition to any other penalty, order that the period of such disqualification be extended for such further period as it deems appropriate. "

Mr. Koya argued that by the time the case was heard in the Magistrate's Court the original suspension had lapsed and the Chief Magistrate had no power to extend that which no longer existed. While I agree that the use by the draftsman of the word "extended" in the subsection was unfortunate, I read it in the broad sense that the disqualification can be continued or prolonged. The power to do this cannot, in my view, be defeated by the accident that the date of conviction or sentence may occur after the period of disqualification has elapsed. In imposing an additional 2 years' disqualification, the Chief Magistrate acted within his powers.

For the above reasons this appeal is dismissed.



( F.X. Rooney )  
JUDGE

Suva,

15th October, 1984