IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
A T L A U T O K A
Appellate Jurisdiction
Criminal Appeal No. 4 of 1984

BETWEEN : SHIU NATH s/o Ram Lal — Appellant

A N D : R E G I N A M — Respondent

Mr. Iqbal Khan — Counsel for the Appellant
Mr. M. Raza — Counsel for the Respondent

J U D G M E N T

Cases Referred to:

(1) Chandra Prakash Singh v R 16 FLR 188
(2) DPP v Mohammed Shameen FCA 33 of 1978
(3) R v Dangerfield (1959) 3 All E.R. 88
(4) R v Meese (1973) 2 All E.R. 1103
(5) R v Davies (1962) 3 All E.R. 97
(6) Sohan Ram v R Cr. App. 138 of 1977
(7) R v Spurge (1961) 2 All E.R. 688
(8) R v McBride (1961) 3 All E.R. 6
(9) R V Gosney (1971) All E.R. 220

This is an appeal from the Magistrate's Court at Lautoka.

The appellant was convicted on a count of driving a motor vehicle whilst under the influence of drink and also on a count of dangerous driving contrary to section 39 and 38 respectively of the Traffic Act Cap. 152 (1967) Edition. The learned trial magistrate imposed a fine of $200 and ordered that the appellant be disqualified from holding a driving licence for two years in respect of the first count: he imposed a fine of $50 in respect of the second count. He also ordered endorsement of the driving licence held by the appellant.

The only direct evidence in the court below of the accident in which the appellant's vehicle was involved was that of the appellant. It was his evidence that he had worked long and late on the day in question. He commenced work at 6 a.m. He ate lunch at 1 p.m. and some tea and biscuits at 3 p.m. He had been busy the whole day and was consequently tired. He finished work at 8 p.m., read his mail and thereafter commenced drinking at a club premises in Lautoka at 9 p.m. He drank until 10 p.m. during which time he consumed "3 nips of gin and 8/9 glasses if draught beer". Thereafter he purchased some bread nearby and drove home. En route at Vomo Street, Lautoka, his vehicle went out of control at a roundabout. A prosecution witness testified that, alerted

by three loud bangs, the first two within a fraction of a second of each other, he found the appellant's vehicle nearby with one front wheel on the kerb, the other touching the kerb: both front tyres and rear right tyre were punctured, with wheel rims damaged. The concrete island on the side of roundabout approached by the appellant was damaged at the edge and in the middle thereof. There was no skid mark from the direction of approach of the appellant's vehicle up to the damaged section of the traffic island: there was, however, a tyre mark from such point for some 25 metres to where appellant's vehicle was stationary up on the kerb. The appellant was arrested. When brought to the police station he declined medical examination by a private or Government doctor.

The learned counsel for the appellant Mr. Khan has submitted a number of grounds of appeal. The first of those is that the learned trial Magistrate in view of the limitation of his powers under section 8 of the Criminal Procedure Code did not have jurisdiction to try the appellant. Section 8 reads as follows:

> "8.- A second class magistrate may, in the cases in which such sentences are authorised by law, pass the following sentences, namely:-
>
> (a) imprisonment for a term not exceeding one year;
> (b) fine not exceeding two hundred dollars;
> (c) corporal punishment not exceeding twelve strokes."

The relevant parts of sections 38 and 39 of the Traffic Act, Cap. 152 (1967 Edition) read as follows:

> "38.(1) If any person drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public having regard to all the circumstances of the case including the nature, condition and use of the road and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road, he shall be guilty of an offence and shall be liable upon conviction to imprisonment for two years or to a fine or to both such imprisonment and fine.
>
> (2) The court shall order particulars of any such conviction to be endorsed on any driving licence held by the person convicted.
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> (3) On a second or subsequent conviction under the provisions of this section the convicting court shall exercise the power conferred by this Part of this Ordinance of ordering that the offender shall be disqualified from holding or obtaining a driving licence unless the court, having regard to the lapse of time since the date of the previous or last previous conviction or for any other special

reason thinks fit to order otherwise, but this provision shall not be construed as affecting the right of the court to exercise the power aforesaid on a first conviction."

"39.(1) Any person who when driving or attempting to drive or when in charge of a motor vehicle on a road or other public place is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle shall be guilty of an offence and shall be liable upon conviction to imprisonment for two years or to a fine or to both such imprisonment and fine.

(2) A person convicted of an offence under this section shall, unless the court for special reasons thinks fit to order otherwise, and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of conviction from holding or obtaining a driving licence."

Mr. Khan points to the fact that the maximum sentence of imprisonment under sections 38 and 39 of the Traffic Act is that of two years' imprisonment: as the learned trial magistrate could not impose a term of imprisonment exceeding one year he had no jurisdiction to try the present case. This is a startling proposition. It means in effect that a magistrate has no power to try an offence unless he has power to impose the maximum punishment in respect thereof. I am quite satisfied that if a magistrate has no power to impose any minimum sentence which might be prescribed for an offence, he thus has no power to punish and therefore has no power to try. It is altogether a different proposition to base a magistrate's jurisdiction on the maximum punishment prescribed for a particular offence. To do so would in my view make nonsense of the provisions of sections 4 and 5 of the Criminal Procedure Code and the First Schedule thereto. It will be seen therefrom that there are many offences under the Penal Code triable by a resident magistrate or second class magistrate, sometimes without the consent of the accused, where the maximum punishment in respect thereof well exceeds the respective powers of those magistrates. To be more specific, the learned counsel for the respondent, Mr. Raza points to the latter part of the First Schedule (at page 130 Cap. 21) which refers to "Offences Under Other Laws Where No Specific Provisions Is Made To the Contrary In Those Laws." I am satisfied that the legislature there intended reference inter alia to offences under the Traffic Act. It will be seen that such offences "if punishable with imprisonment for one year or upwards, but less than three" are triable by a resident magistrate or second class magistrate.

Again, section 222 of the Criminal Procedure Code makes specific provision for a resident magistrate to commit an accused to the Supreme Court for sentence where the magistrate is of opinion that "greater punishment should be inflicted in respect of the offence than the magistrate has power to inflict." Although the power to commit has been limited by the legislature to resident magistrates only, a limitation which I find difficult to appreciate in view of the enabling provisions of the First Schedule in respect of second class and to a lesser extent third class magistrates, nonetheless the provisions of section 222 serve but to emphasise such enabling powers: a magistrate's jurisdiction to try offences is not related to the maximum punishment which may be imposed in respect of such offence.

Mr. Khan, however, has referred me to the following dictum contained in the judgment of the Court of Appeal delivered by Gould V.P. in the case of Chandra Prakash Singh v R (1) at p.190 at E: 6 FLR 188

> "In the Supreme Court the learned Judge held that the criterion for jurisdiction is clearly the maximum punishment to which the accused is liable in law for the offence with which he is charged. With that we are in entire agreement."

The Court of Appeal were there considering the provisions of section 211 (now 221) of the Criminal Procedure Code, the provisions of which section authorise a shortening of the normal procedure in trials by resident magistrates of minor cases. The particular provisions empowered such procedure, upon request by the public prosecutor, in respect of -

> "Any offence of which the maximum penalty does not exceed a fine of one hundred dollars, or imprisonment for six months or both such fine and imprisonment."

It will be seen that those provisions specifically confer upon a resident magistrate a jurisdiction to adopt the shortened procedure, in relation to the maximum punishment fixed by law in respect of the particular offence charged. The appellant in the case before the Court of Appeal had been convicted, under the procedure outlined in section 211 of being drunk and disorderly contrary to section 200(d) of the Penal Code (now section 4 of Cap. 18). Any person convicted under that section was liable to imprisonment for the maximum term of one month, three months and one year in respect of a first offence, second offence and third or subsequent offence respectively. In its judgment in Chandra Prakash Singh v R(1) the Court of Appeal went on to say (at p.190 at F).

> "The learned Judge said also that the accused, being a first offender was properly tried under the provisions of section 211 of the Criminal Procedure Code as in law his liability to punishment under section 200(d) of the Penal Code was limited to a maximum of one month's imprisonment. On the basis upon which the argument was presented to the Judge this was a justifiable conclusion and if that were all, this appeal would have to be dismissed."

The Court of Appeal in fact observed that as the provisions of section 200(d) of the Penal Code provided for imprisonment only, under section 28(3) of the Penal Code the magistrate (who had in fact imposed a fine of $8) had the power to impose a fine, and under section 30(1)(a) (now 35(1)(a))of the Penal Code that fine could be unlimited but not excessive. The Court of Appeal were unable to hold as a matter of law that a magistrate could not impose a fine exceeding $100 on a first offender under section 200(d). As the maximum fine which might thus be imposed under section 200(d) exceeded the maximum of $100 specified in the provisions of section 211 of the Criminal Procedure Code, there was no power to try the appellant under those provisions and such trial was a nullity (see now section 221(1)(e) of the Criminal Procedure Code).

It will be seen, however, (at p.191) that the Court of Appeal were not considering the magistrate's jurisdiction to try the appellant under the general provisions of the Codes: he clearly had jurisdiction to do so. Instead the Court were considering provision which prescribed a mode of trial in respect of certain offences: those offences were categorised according to the maximum punishments which they attracted and thus a magistrate's jurisdiction, not, I stress, to try such offences, but rather to try such offences by the prescribed mode of trial, was governed by such maximum punishments. Under such circumstances, the criterion for such jurisdiction is clearly the maximum punishment to which the accused is liable in law for the offence with which he is charged. Nowhere did the Court of Appeal say however that the criterion for a magistrate's jurisdiction to generally try an offence is the maximum punishment which may be imposed in respect of that offence and to urge the relevant dictum of the Court of Appeal in support of the proposition before me is simply to overlook the context of such dictum.

Mr. Khan has also placed the authority of DPP v Mohammed Shameen (2) before me in support of his proposition. I can find no such support therein. It is significant that the Court of Appeal were there again dealing with the jurisdiction to try, by the particular procedure under section 89 (now 88) as read with section 81 (now 80) of the Criminal Procedure Code, offences categorised by the maximum punishment applicable thereto.

Mr. Khan also submits that the learned trial magistrate did not have any jurisdiction to disqualify the appellant from holding a driving licence for two years, as under section 8 of the Criminal Procedure Code he had power only to "impose a sentence of up to 12 months". Mr. Khan has referred to the cases of R v Dangerfield (3) and R v Meese (4) as authority for the proposition that a disqualification is a sentence. Both cases do in fact refer to disqualification as a 'sentence'. The provisions of the Penal Code and Criminal Procedure Code indicate that the various punishments imposed, or orders made by a court, upon conviction, all add up to the court's 'sentence'. It seems to me more appropriate (no more than that) to speak of disqualification as a 'punishment', as did the Court of Appeal in Mohammed Shameen (2), or as an 'order', rather than a 'sentence'. Whatever word is used it is quite clear that a sentence of imprisonment is quite distinct from a sentence of disqualification and it is to the former only that the legislature made reference under section 8(a) of the Criminal Procedure Code. To my mind, it is stretching the plain meaning of the words used, namely,

"(a) imprisonment for a term not exceeding one year,"

to seek to relate them to a sentence, or punishment, or order of disqualification from holding or obtaining a driving licence. As indicated by the latter part of the First-Schedule to the Criminal Procedure Code (at p.130), a magistrate's powers of sentencing are not limited to the provisions of sections 7, 8 and 9 of that Code. As to an order of disqualification, the power to impose same is generally contained in section 29(1) of the Traffic Act Cap. 152 (1967 Edition), as qualified in the present case by section 39 of the Act.

Mr. Khan's submission, however, is directed not simply to the order of disqualification imposed by the learned trial magistrate but to jurisdiction: the magistrate had no power to make such order, therefore he had no power to try the appellant. The submission can only go to jursidction if it was obligatory upon the magistrate to order disqualification. It will be seen from section 39(2) that an order of disqualification is not mandatory and that a court may decline to order disqualification "for special reasons" which no doubt it should record. In any event, the learned trial magistrate quite clearly had jurisdiction under section 29 and 39 of the Act to order disqualification.

Mr. Khan submits that -

> "the learned trial Magistrate was persuaded by the P.W.1 whose evidence (he) relied on because he was an ex Police Officer and who was of the opinion that the Appellant was drunk. Consequently there has been a substantial miscarriage of justice."

(1959) 3 E.R.88

(1973) 2 E.R.1103

The first prosecution witness, had been a police officer for six years and in his own evidence had been accustomed to dealing with drunk persons. I do not, however, see that that aspect affects the situation: the magistrate was quite entitled to, on the authority of R v Davies (5), to receive the general opinion of a non-expert witness (police officer or otherwise), as to whether the accused had taken drink, provided the witness described the facts on which he founded that opinion. R v Davies (5) was relied upon in the case of Sohan Ram v R (6). In that case Grant C.J. quoted the following dicta in the judgment of the Courts - Martial Appeal Court delivered by Lord Parker C.J.:

> "The very first prosecution witness, the bombardier, found these vehicles in collision, and he gave evidence about a conversation which he had had with the appellant and how the appellant appeared to be behaving. He then said: 'I formed the impression that the accused was under the influence of drink and at that time he was in no condition to handle a motor vehicle.' .....
>
> It is to be observed that the witness was allowed to speak about two matters which are quite distinct; one is what his impression was as to whether drink had been taken by the appellant, and the second was his opinion as to whether as the result of that drink he was fit or unfit to drive a car.
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> The court has come clearly to the conclusion that a witness can quite properly give his general impression as to whether a driver had taken drink. He must describe of course the facts upon which he relies, but it seems to this court that he is perfectly entitled to give his impression as to whether drink had been taken or not. On the other hand, as regards the second matter, it cannot be said, as it seems to this court, that a witness, merely because he is a driver himself, is in the expert witness category so that it is proper to ask him his opinion as to fitness or unfitness to drive. That is the matter which the court itself has to determine."

There were in fact four prosecution witnesses who gave extremely detailed evidence of the appellant's condition. Two of them, police officers, opined that he was drunk: one of those, the third prosecution witness, did not in fact base his opinion on any observations other than the fact that appellant's handwriting at the time was not very legible. The learned trial magistrate did not, however, apparently in his judgment rely on such opinion. Two other witnesses, a police officer and the first prosecution witness, testified as to their observations which were to the effect that the appellant was drunk. The learned trial magistrate in his judgment observed that the

first prosecution witness had opined that the appellant was drunk: this was not the case and the magistrate's observation amounts to a misdirection on the point.

The evidence indicated that the appellant after colliding with the kerb, sat motionless, with head lights on, in his vehicle and took some time to emerge from the vehicle when the door was opened; he found it difficult to stand and was unsteady on his feet if not staggering; he found difficulty in answering repeated questions and was apparently unable to speak properly; he smelt heavily of alcohol; he later became very talkative; his eyes were bloodshot with pupils dilated, his speech was 'thick'; when subjected to routine police tests he either performed them poorly or could not perform them at all.

The learned trial magistrate considered the authority of Sohan Ram v R (6) and observed,

> "However, the Court should, in my view, before convicting a person, satisfy itself that the evidence of observations carried out by lay witnesses is so ample and of such a compelling quality that it must inevitably point to guilt."

I do not see that that direction can be faulted. The learned trial magistrate went on to say,

> I have considered carefully all the Prosecution and Defence evidence in this regard and find it ample to conclude that the Defendant was under the influence of drink."

Mr. Khan submits that, at that stage, the learned trial magistrate had not detailed the defence evidence, so he could not have considered it carefully. As I see it, the defence evidence merely went to corroborate the prosecution evidence: the appellant had testified that he had at the end of a hard and long day's work, before partaking of his evening meal, consumed 3 'nips' of gin and 8|9 glasses of beer: he had testified that he had been "drinking for about 20 years" and that "liquor on an empty stomach does not affect me", but the latter aspect was surely a matter for independent testimony. The appellant also testified that he performed the tests in the police station satisfactorily. As will be seen the learned trial magistrate rejected the appellant's defence of sudden mechanical defect as being untrue. On the record the prosecution witnesses were not shaken in cross-examination, whereas the appellant's evidence was contradictory in itself. On the issue of intoxication, the learned trial magistrate obviously preferred the evidence of the prosecution witnesses: the accused's evidence amounted to an admission of what must be regarded as heavy drinking. Under the circumstances, I am quite satisfied that, if it is the case that the learned trial magistrate

had not fully considered the defence evidence on the point, he would inevitably have made the same finding as he did had he done so.

The learned trial magistrate rejected, as I have said, the appellant's evidence of a sudden mechanical defect, a burst tyre. Mr. Khan submits that the learned trial magistrate failed to consider the evidence of a motor mechanic employed by the appellant, who gave evidence for the defence, and also the fact that the onus lay upon the prosecution to disprove the appellant's defence. The learned trial magistrate did not refer to such evidence in his judgment and that must amount to a misdirection by way of omission. The witness' evidence, however, was contradictory in itself. He testified:

> "Car brought to garage next morning. No damage to car. Two (wheel) rims were damaged and a tyre had blown. Three tyres were damaged.....Two tyres with the damaged rims must have hit something. One was blown. Tube blown inside."
>
> "Three rims were replaced. They were chrome rims. 2 rims were damaged so we replaced them with new rims. Extensively damaged.
>
> The kind of rim damage this car had could be caused by blown tyres. If tyre leaves rim - rim can be damaged."

It will be seen that the witness never made specific reference to any particular tyre, that is, with reference to its position on the appellant's vehicle. Further, the witness testified to only two damaged wheels and then apparently to three. Again, while he said that two wheels "must have hit something", thereafter he opined that the wheel rims could have been damaged simply by coming in contact with the road surface after a puncture of tyre or tube. His evidence, therefore, gravitates from a situation where the appellant suddenly experienced from one to three burst tyres caused either by sudden deflation or by striking an object.

In this respect the appellant initially testified:

> "Just before the round-about my car started to pull to one side. I was doing about 40 m.p.h. This was a chain before round-about. When the car pulled I braked hard. Then I left the brake. One tyre blew. I saw a lamp post. When I knew I could not avoid it I swerved further to left. I applied my brakes slowly, I was able to control my vehicle by the time I got to the post. Car stopped about 4' from the post. Then I sat and started thinking how this happened."

It will be seen there that the appellant testified that his vehicle "started to pull to one side" before the tyre burst. Again he neglected to say whether or not he had struck the particular lamp post or indeed the

kerb on which his vehicle partly came to rest Further on in examination-in-chief he testified that "three tyres had blown and one rim had damaged." In cross-examination he testified:

> "Two rims were dented and three tyres punctured. Rims dented when tyre blew. Not true 1 rim dented because of impact on triangle. Rim did not hit cement. When I tried to avoid accident it hit something but not triangle. One right rim was also dented. It did not hit kerb. While going up hill my car started pulling to left. I could not apply brakes as the car would have tumbled. Then another tyre blew. Left and right sides rims dented. I am not sure how rims dented."

The appellant's evidence was obviously contradictory. Further, he repeated the evidence that his car pulled to his left without volunteering what caused or might have caused such occurrence: "then another tyre blew," he said, suggesting but without saying that he had experienced a tyre - burst before his vehicle became difficult to control. Again, he testified that,

> "when I tried to avoid (an) accident it hit something but not triangle ..... It did not hit kerb."

The appellant could not say what his vehicle had hit. All of this evidence, of course, was contradictory and confused and, as the learned trial magistrate observed, was contrary to the evidence of the prosecution witnesses who testified in turn that the appellant had stated at the scene of the accident simply that he had "lost control", and at the police station, "Someone hit my car. Badly smashed ..... Someone did a bad thing. Damaged my tyre." At that stage the appellant's vehicle had three damaged tyres. Nowhere did he testify that he said to the police that he had experienced a sudden tyre burst before he lost control of his vehicle.

The learned trial magistrate considered the authority of R v Spurge (7). While the onus of disproving the defence of sudden mechanical defect lies upon the prosecution, such defence, or any defence for that matter, can only be raised by credible evidence. As Salmon J. said in delivering the judgment of the Court of Criminal Appeal in R v Spurge (7) at p.691 at H,

> "The court will consider no such special defence unless and until it is put forward by the accused. Once, however, it has been put forward it must be considered with the rest of the evidence in the case. If the accused's explanation leaves a real doubt in the mind of jury, then the accused is entitled to be acquitted. If the jury rejects the accused's explanation, the jury should convict."

In the present case the learned trial magistrate observed,

> "I have considered all the evidence. I do not believe the Defendant that the loss of control was due to the burst tyre. I reject his evidence as untrue."

Although the learned trial magistrate there made no specific reference to the evidence of the appellant's defence witness I consider that on the evidence the learned trial magistrate was fully justified in rejecting the special defence raised by the appellant.

The appellant was also convicted of the offence of dangerous driving. In the case of R v McBride (8) Ashworth J. in delivering the judgment of the Court of Criminal Appeal held (at p.9 at H) that a charge of driving under the influence of drink might be tried with a charge of dangerous or careless driving. In the present case where no medical evidence was adduced of the appellant's incapacity of having proper control of his vehicle, and where the prosecution relied on the evidence of the appellant's driving of the vehicle to establish such incapacity, it seems that in the least such considerations must affect sentence. Nonetheless, as the learned Counsel for the respondent, Mr. Raza submits, the offences are properly joined.

(1961) 3 All E.R. 6

The learned trial magistrate in considering the evidence on the second count observed:

> "Here the evidence of dangerous driving is in the Defendant's own admission of driving at an excessive speed. Then there is evidence that he had hit a Traffic Island in the middle of Vomo Street, a street known for its Traffic density, and then continued for about 25.6 m before coming to a halt."

Mr. Khan submits that that passage contains two misdirections. I agree with such submissions. The defendant testified that he drove at 40 m.p.h., that is, in excess of the speed limit. The speed of 40 m.p.h., while it may be in excess of the speed limit in an urban area is not necessarily an excessive speed. In any event, driving at an excessive speed, much less in excess of the speed limit, does not necessarily constitute dangerous driving: as Megaw L.J. held in delivering the judgment of the Court of Appeal, Criminal Division, in R v Gosney (9) at p.224 at c, there must be "a situation which, viewed objectively was dangerous". Further, there was no evidence before the learned trial magistrate that Vomo Street was "a street known for its traffic density". Such aspect can hardly be said to be a notorious fact: further, if such aspect was within the learned trial magistrate's personal knowledge, that would not entitle him to take judicial notice thereof.

(1971) 3 All E.R. 220

Nevertheless, the evidence was there that the appellant drove his vehicle while under the influence of drink, to such an extent that he was incapable of having proper control of the vehicle, and as the learned trial magistrate observed on the authority of R v McBride (8) (at p.9 at C), such evidence was relevant to the issue of whether he drove dangerously.

The evidence indicates that the appellant lost control of his vehicle, to the extent that he failed to negotiate a roundabout, and mounted a kerb in an urban area at 10.30 p.m. It seems to me that to drive a vehicle under those circumstances involves danger to the public.

Finally, Mr. Khan submits that the learned trial magistrate did not properly direct himself on the onus of proof. The learned trial magistrate stated he was satisfied beyond reasonable doubt as to the guilt of the appellant on both counts. He considered the authority of Spurge (7) which clearly places the onus on the prosecution. I am satisfied that the learned trial magistrate must have considered the onus of proof. Were I not so satisfied, I would, in any event, have little hesitation in applying the proviso.

There were, as I have indicated, some misdirections in the course of the learned trial magistrate's judgment. I am satisfied, however, that had the learned trial magistrate fully considered all of the evidence and properly directed himself thereon, he would inevitably have convicted the appellant on both counts. I apply the proviso therefore and the appeals against both convictions are accordingly dismissed.

Mr. Khan submits that the sentences are harsh and excessive. He submits that the magistrate imposed the maximum fine, under section 39 of the Traffic Act. It will be seen that under the provisions of sections 38 and 39 of that Act and section 35(1)(a) of the Penal Code, the fines may be unlimited. As regards the first count, the magistrate imposed the maximum fine which he was empowered to impose under section 8 of the Criminal Procedure Code. Nonetheless, had a resident magistrate tried the case he could have imposed a fine of up to $1,000 on both counts. Thus while the first fine imposed by the learned trial magistrate was the maximum which he could impose, he was nevertheless acting within the constraints of his powers and I consider that both fines were very lenient.

The appellant was not a first offender - he had a previous conviction both under section 38 and section 39 in 1980, arising apparently out of the same transaction, when he was disqualified for one year: he also had a conviction under section 37 in the same year. He was not therefore entitled to the leniency granted to a first offender. Under the circumstances the appellant was extremely fortunate that the learned trial magistrate did not impose a sentence of imprisonment. I had given some thought to substituting such a sentence but consider that in view of the lapse of time it would not meet the ends of justice to do so.

As to the disqualification for two years, it will be seen under section 39 that in the absence of special reasons the minimum period, even for a first offence, is one year. The appellant was not, as I have said, a first offender.

In all the circumstances, the order of disqualification from holding or obtaining a driving licence for two years in no way comes to me with any sense of shock as being manifestly excessive.

It is not clear from the manuscript record as to whether the learned trial magistrate ordered endorsement only in respect of count 2. Such endorsement was, of course, obligatory under section 29(1)(b) and 38(2) of the Act. Endorsement of the conviction and disqualification under section 39 is also obligatory under section 29(1)(b), and for the avoidance of doubt, I order such endorsement.

The appeals against convictions and sentences are dismissed.

Delivered at Lautoka this sixth day of April , 1984

(B. P. Cullinan)
Judge