

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Appellate Jurisdiction

Criminal Appeal No. 73 of 1983

BETWEEN : HASSAN ALI f/n Ismail Appellant
 A N D : R E G I N A M Respondent

Mr. Iqbal Khan Counsel for the Appellant
 Mr. H. Raза Counsel for the respondent

J U D G M E N TCase referred to:Chandar Pal v. Peginam 20 F.L.R. 1

This is an appeal from the Magistrate's Court at Lautoka. The appellant was convicted of dangerous driving.

The learned counsel for the appellant, Mr. I. Khan submits that the issue was one of credibility. In brief, the complainant testified that the appellant's vehicle swerved across the road on to the side on which he was driving. On the other hand, the appellant testified that it was the complainant who swerved on to his side. The learned trial Magistrate dealt with the issue of credibility as follows:-

"I accept the evidence of PW1 that accused overtook a bus in front and went on incorrect side and collided with his car. Accused's story could not be true. If there was a white car as said by accused then that white car too would have been involved in the accident and got the impact.

I find as fact the accident took place because accused went on the incorrect side and hit PW1's car. PW1 was not overtaking any white car."

The complainant (PW1) himself had testified as to the presence of a white car in front of him, but denied that that vehicle, as alleged by the appellant, had suddenly slowed and that he, the complainant had swerved out past the white vehicle onto

53

000053

(2)

The appeal is allowed. The sentence is set aside and in all the circumstances I substitute therefor a sentence of one year and six months' imprisonment with effect from 13th September, 1983.

Delivered In Open Court At Lautoka This 6th Day of April, 1984



(B. P. Cullinan)

Judge