PHILIP TURA -v- REGINAM

High Court of Solomon Islands
(Muria ACJ)
Criminal Case No. 8 of 1992
Hearing: 8 May 1992
Judgment: 8 May 1992

A. Radclyffe for Appellant
R. B. Talasasa for the Respondent

MURIA ACJ: On 8 May 1992 I allowed the appellant's appeal and said that I would give my reasons later. That I now do.

The appellant appeared before the Magistrates Court Central charged with two counts, one of careless driving and the other of failing to report an accident. The appellant pleaded Guilty to both counts and was sentenced to a total fine of $150.00 and in addition the appellant was ordered to be disqualified from driving for 4 months. The appeal is against his conviction on count 2 for failing to report an accident and also against his disqualification from driving.

In his submission, Mr Radclyffe for the appellant argued that he facts before the Court did not show that an offence had been committed under section 62 of the Traffic Act (Cap. 19) and the Magistrate ought not record a conviction against the appellant.

The legal position under section 283 of the Criminal Procedure Code is that:

> *"283(1) No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted of such a plea by a Magistrate's Court, except as to the extent or legality of the sentence."*

That provision clearly limits the right of appeal by a person who had been convicted of an offence by a court upon a plea of Guilty. The section does not apply to cases where an accused person pleads guilty to a charge which in law does not amount to an offence. It is for that reason that the provision permits an accused person to challenge the "legality" of the sentence. For a sentence passed on an accused person to be legal, the offence charged must be one that is in law amount to an offence.

Was an offence committed under section 62(2) of the Traffic Act in this case? The facts which are not in dispute are that the appellant drove a heavy goods vehicle

on the day in question. He was driving along CDC road and finding the road was full of potholes, the defendant tried to avoid those potholes. In so doing the truck went off the road and ditched into a drain. He went out of the truck. He suffered no injuries nor was the vehicle damaged in anyway at all. But moreso, no other person suffered any injuries as no one was with the appellant nor was any other vehicle, property or animal injured. For section 62(2) to apply, there must be an accident and, that as a result of such accident injury or damage was caused to a person, animal or other vehicle. Nothing of the sort had happened in this case. As such no offence had been committed under section 62(2) of the Act and the plea of Guilty to the charge under section 62(2) should not have been recorded and accepted by the Magistrate.

The procedure to be followed by the court when calling upon the accused to plead to a charge is specified in section 194 of the Criminal Procedure Code. Subsections (1) and (2) of that section provide:

> *"194(1) The substance of the charge or complaint shall be stated to the accused person by the Court and he shall be asked whether he admits or denies the truth of the charge.*
>
> *(2) If the accused person admits the truth of the charge his admission shall be recorded .....unless there shall appear to it sufficient cause to the contrary."*

The section requires the court to explain to the accused person the substance of the charge or the complaint in order to enable the accused to understand what the nature of the charge or the complaint brought against him. This is more particularly so where the accused person is not legally represented in court. It is only by explaining the nature or the substance of the charge or complaint to the accused that he would be in a position to properly say whether he admits or denies the charge. This is what is envisaged under subsection (1) of section 194.

But where the accused has pleaded guilty to a charge after having explained the nature of the charge to him, the court is under a duty to convict and sentence the accused ***"unless there shall appear to it sufficient cause to the contrary"***. Thus if the facts as read out by the prosecution do not reveal that an offence has been committed, then indeed there is sufficient cause for the court not to convict and sentence the accused. The words:

> *".....unless there shall appear to it sufficient cause to the contrary",*

in subsection (2) demand that the court, not only considers the nature of the charge and the plea of the accused but also takes into account the facts as revealed by the prosecution in support of the charge. For it is only in doing so that ***"there shall appear***

to it sufficient cause to the contrary".

In the present case, had the Magistrate followed the procedure I have just outlined, he would no doubt have come to the obvious conclusion that no offence under section 62(2) of the Traffic Act had been committed. As no offence had been committed the sentence passed is one which is not authorised by law and it is therefore null and void.

On the question of disqualification in respect of the careless driving charge, the court must exercise its discretion judiciously. The offence of careless driving carries with it a discretionary power of disqualification. That discretion must also be exercised responsibly by the court taking into account all the circumstances of the case.

The circumstances in this case show that the appellant was and still is in employment as a driver with Hyundai company. He has not committed any traffic offence in the past. He has a valid driving licence. The vehicle was licensed. He pleaded guilty to careless driving. The condition of the road was in a bad state. There was no injuries or damage caused to anybody or property or vehicle. Those facts show that the circumstances of this case do not warrant the exercise of the discretionary power of the court under section 28(2) of the Act to disqualify the appellant from driving. A case of bad driving may in certain cases justify an immediate disqualification. This is not one of such case and so the order of disqualification from driving for 4 months is quashed.

Having decided that the disqualification order should not have been made, it is unnecessary for me to consider whether it is excessive or not.

Thus the appeal is allowed.

The conviction on count 2 in respect of the offence under section 62(2) of the Traffic Act is set aside and the fine of $50.00 in respect thereof must be refunded to the appellant (if he has already paid it). I order that the indorsement on the appellant's driving licence in respect of the offence under section 62(2) of the Act be expunged. The order disqualifying the appellant from driving for 4 months is quashed.

(G.J.B. Muria)
ACTING CHIEF JUSTICE