

A

GEORGE WONG

v.

REGINAM

B [SUPREME COURT, 1968 (Moti Tikaram Ag. P.J.), 26th March, 30th April]

Appellate Jurisdiction

Criminal law—traffic offences—careless driving—failure by prosecution to call evidence to prove the vehicle number alleged in the particulars of the charge—no presumption as to number in favour of prosecution—absence of proof of number not a fatal defect—Traffic Ordinance 1965, ss.37, 85, (Cap. 152—1967) ss.37, 2.

Criminal law—traffic offences—road—failure to prove accident occurred on specific road named in charge—proclamation of public road—judicial notice of road and location thereof—Roads Ordinance (Cap. 151—1967)—Roads and Rail Traffic Regulations (Cap. 151—1967).

The appellant was convicted of careless driving; the particulars of the charge alleged that the motor vehicle he was driving at the time of the offence was No. N.166 and that he was driving it on the King's Road. The prosecution did not lead any evidence, either of the number of the motor vehicle or that the road where the offence took place was named the King's Road, though it was proved that it took place on Natawa Bridge and that Natawa Bridge is part of the road leading from Tavua towards Ba. As to the number, the magistrate held that, in the absence of evidence, there was a presumption that it was as charged.

Held: 1. The magistrate erred in law in finding that there was a presumption as to the number of the vehicle.

2. In a prosecution for careless driving it is not essential that the registration number of the vehicle concerned be stated in the particulars; if it is so stated the mere failure to prove the number is not fatal.

Jones v. Metcalfe [1967] 1 W.L.R. 1286; [1967] 3 All E.R. 205, distinguished.

3. There was ample evidence that the appellant had been driving a motor vehicle within the meaning of section 2 of the Traffic Ordinance, without due care and attention.

4. In view of the proclamation of King's Road as a public road with its description (Proclamation No. 14 of 1966) it is open to courts to take judicial notice of the fact that it is a public road and of its location. There was therefore sufficient evidence to hold that the accident took place on King's Road.

5. In any event, it had been proved that the careless driving took place on a road within the meaning of the law and there was no uncertainty as to the place of the accident.

Appeal from a conviction in the Magistrate's Court.

M. S. Sahu Khan for the appellant.

K. A. Stuart for the respondent.

A

MOTI TIKARAM J.: [30th April, 1968]—

The Appellant was convicted by a First Class Magistrate sitting at Tavua Court on the 21st November, 1967 of the offence of careless driving contrary to Sections 37 and 85 of the Traffic Ordinance No. 11 of 1965. He was fined £8 and ordered to pay £4.4.0 costs.

B

This Appeal is against conviction and in the alternative against severity of sentence. The Appellant also complains that the costs awarded to the Prosecution are excessive. The grounds of Appeal are as follows :—

1. That the learned trial Magistrate erred in law and in fact in finding that the Appellant was guilty of Careless driving inasmuch as there was no evidence that the Appellant was driving without due care and attention. C
2. That the learned trial Magistrate erred in Law and in fact in accepting the evidence of the prosecution witnesses Hari Lal, Satyanand Sharma and Kesho Singh inasmuch as their evidence presented such inconsistencies and contradictions and were so unreliable that in view of the other evidence before the Court they should have been disregarded altogether. D
3. That the learned trial Magistrate erred in Law and in fact in holding that "On the absence of any such evidence the presumption on which the Court could safely act is that the van which the defendant was driving at the time when the collision occurred was N.166." E
4. That the learned trial Magistrate erred in Law and in fact in holding that "Although no one said that the bridge is on the King's Road but the Court and everyone including the defendant himself know that Natawa Bridge is on King's Road — it is a common knowledge." F
5. That the learned trial Magistrate erred in law and in fact in holding the defendant guilty of careless driving of vehicle No. N.166 on the King's Road inasmuch as there was no evidence that the defendant was driving the said vehicle on the King's road. F
6. That the verdict of the learned trial Magistrate is unreasonable and cannot be sustained having regard to the evidence as a whole. G
7. That the sentence and costs imposed by the learned trial Magistrate are excessive.

The Particulars of Offence contained in the charge read as follows :—

Particulars of Offence

George Wong on the 20th day of July, 1967 at Tavua in the Western Division, drove Motor Vehicle No. N.166 on the Kings Road without due care and attention.

H

A This prosecution arose as a result of a collision on Natawa Bridge between Tavua and Ba on the 20th July, 1967 between a heavy public service vehicle driven by Prosecution Witness Hari Lal and a bread van driven by the Accused.

B As regards the first ground of Appeal, there was ample evidence to justify holding that the Appellant was driving without due care and attention and I can find no substance in this ground. As regards ground 2, I cannot with respect agree with the Learned Counsel for the Appellant that the evidence of Prosecution Witnesses Hari Lal, Satya Nand and Kesho Singh ought to have been altogether disregarded. The Learned Trial Magistrate was in the best position to weigh the credibility of these witnesses and I can find no valid grounds for interfering with his evaluation. This ground of Appeal must, therefore, also fail.

C The Appellant's complaint contained in ground 3 of the Petition has substance in as much as the Learned Trial Magistrate certainly erred in law in holding that —

“In the absence of any such evidence the presumption on which Court could safely act is that the van which the Defendant was driving at the time when the collision occurred was N.166”.

D There is no such presumption. The rule as to negative averment has no application here either. However, the Learned Trial Magistrate's erroneous approach was in respect of a factor, namely proof of the registration number, which for reasons which will soon become obvious, cannot in my view affect the outcome of this appeal.

E The Prosecution alleged in the Particulars of offence that the Appellant drove “. . . . motor vehicle registered No. N.166” but led no evidence whatsoever that the vehicle which the Appellant was driving had the registered number specified. Nor was there any admission or denial on the part of the Accused either verbal or written that the vehicle he was driving and which was involved in the accident had the registered number alleged. Nor were the registered numbers of the vehicles involved in the accident recorded in the sketch plan drawn by the Police. Section 37 of the Traffic Ordinance Number II of 1965, (now Section 37, Cap. 152 of the 1967 edition of the Laws of Fiji) provides as follows :-

F “If any person drives any motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence.”

G It is the Appellant's contention that the Prosecution having specified the number of the vehicle, were under a duty to prove that number and that the failure to do so was a fatal defect. The Learned Counsel for the Appellant has cited in support of his argument the recent case of *Jones v. Metcalfe* [1967] 1 W.L.R. 1286. The Appellant in *Jones* case was charged with driving a motor lorry without due care and attention. On August 24th, 1966 there was a collision between two cars travelling in the same direction, one overtaking the other, caused by the action of a motor lorry travelling in the opposite direction. The number of the motor lorry was reported to the Police by an independent witness who, when giving evidence subsequently, could not remember the number; nor could he identify the Accused. On September 3rd, 1966, the Appellant had admitted to a Police Officer driving a vehicle with the number in question but denied that any accident occurred due to his manner of

driving. At the trial before the Justices, the Prosecution were unable to prove the number of the vehicle, the only evidence of the number being hearsay. One of the questions for the opinion of the High Court was whether or not there was any evidence to identify the lorry or the Appellant in relation to the evidence before the Justices. Allowing the Appeal, the Appellate Court held, *inter alia*, that the conviction must be set aside because there was no evidence before the Justices to identify the lorry which caused the collision as being the lorry driven by the Appellant, there being no connecting link between the evidence of the independent witness and that of the Police Officer. In *Jones'* case the proof of identity of the vehicle was of crucial importance to the Prosecution case whereas the same situation does not arise in the present case. Here the vehicle which the Appellant was driving was at the scene and he admitted driving it and gave his version as to how the accident took place. In my view, *Jones'* case is not an authority for the proposition that on a charge of careless driving, it is incumbent on the Prosecution to state the registration number of the vehicle in the Particulars of Offence. Nor is it an authority for the proposition that having alleged the registration number in the charge, it is a fatal defect not to prove that registration number. Indeed, if one studies the report of *Jones'* case carefully one would notice that the registration number of the motor lorry was not specified in the Charge. However, if prosecution chooses to specify the registered number of the vehicle in the Charge, it could be a fatal defect to prove a different number than that alleged.

I therefore hold that on a charge of careless driving, it is not essential for the Prosecution to state in the Particulars of Offence the registration number of the motor vehicle which the Accused is alleged to have been driving at the time of the offence. In my view the registration number in the particular circumstances of this case was a mere surplusage. Suffice it to say that if the number is stated in the charge, then the mere failure to prove the number is not fatal, provided the Prosecution has not proved a number different to that alleged and provided, of course, the necessary ingredients of the offence of careless driving are established. In the present case, no evidence of the registration number was led at all so the question of proving a number other than the one alleged did not arise.

Courts appear to be divided on the question as to whether it is desirable or not to specify the registration number of the vehicle in driving cases.

One of the essential ingredients of the offence of careless driving is that it should be proved that the Accused was driving a motor vehicle. "Motor vehicle" by Section 2 of the Traffic Ordinance, Cap. 152 is defined as follows :-

"Motor vehicle" means any vehicle propelled by mechanical power and constructed for use on roads and not on rails or specially prepared ways, and shall include any vehicle riding on a cushion of air, a trailer, and any other vehicles of a class declared by the Governor by notice in the Gazette to be motor vehicles :

Provided that —

- (a) a mechanically propelled vehicle, being an implement for cutting grass, which is controlled by a pedestrian and is not capable of being used or adapted for any other purpose; and

(b) any other mechanically propelled vehicle controlled by a pedestrian which may be specified by the Governor by notice in the Gazette,

A shall be deemed not to be a motor vehicle;"

There was ample evidence in this case to establish that the van which the Appellant was driving at the time of the alleged accident was a motor vehicle within the meaning of the law. This being so, ground 3 of the Petition of Appeal must therefore fail.

B Grounds 4 and 5 of the Petition of Appeal can be dealt with together, the essence of the complaint being that in the absence of any specific evidence to prove that the Defendant drove his vehicle on King's Road, there was no material before the Court to entitle it to take judicial notice that Natawa Bridge is on King's Road. The charge alleged that the offence took place at Tavua on the King's Road. It is undoubtedly true that no one mentioned King's Road in evidence. The Crown nevertheless seeks to support the conviction, arguing that the Learned Trial Magistrate was entitled to take judicial notice that Natawa Bridge is on the King's Road. Whilst I am not entirely satisfied that the Learned Trial Magistrate was entitled to take judicial notice of the existence of Natawa Bridge and thereby concluding that it was on King's Road, in my view failure to specifically prove that Natawa Bridge was on King's Road was not fatal in this case. An examination of the Trial record shows

C D that there was unchallenged evidence including the Appellant's written statement, whereby it was established :-

(i) that the accident took place on Natawa Bridge about five miles from Tavua;

(ii) that this bridge is part of the road leading from Tavua to Ba;

E (iii) that at the material time the Appellant was proceeding from the direction of Tavua towards Ba and the other bus was approaching the bridge from the Ba end.

An essential ingredient of the offence of careless driving is that the offending vehicle must be driven on a road. By Section 2 of the Traffic Ordinance "road" means "Any highway and any other road to which the public has access and includes bridges over which a road passes".

F There is no doubt in this case that the accident took place on "a road" within the meaning of this definition. The existence of King's Road as a public road is recognised by regulations made under Section 10, of the Roads Ordinance, Cap. 151, and I refer to Roads and Rail Traffic Regulations at page 5973 of Vol. 9 of the 1967 edition of the Laws of Fiji wherein not only is King's Road proclaimed to be a public road but its location and description are given as follows :-

G "King's Road — Commencing at the Walu Bay Roundabout in the city of Suva; thence following a general north-easterly direction to Nausori; thence continuing through Korovou, Tailevu to Viti Levu Bay; thence following generally the coast through Rakiraki, Tavua and Ba, entering the town of Lautoka by Drasa Avenue to end at the Tavewa Avenue Junction. Distance about 165 miles."

H By virtue of this proclamation and description, it is in my opinion open for the Courts not only to take judicial notice of the fact that King's Road is a public road but also to take judicial notice of its

location. In the light of description quoted, there was, in my view, sufficient evidence in this case to hold that the accident took place on King's Road. Even if that were not so, the Appellant cannot in any way complain that he has been either misled or embarrassed in his Defence or that there has been any miscarriage of justice. Nor could there be any basis for a complaint that the conviction is bad for uncertainty.

The Prosecution having proved

- (a) that the Defendant drove a motor vehicle without due care and attention,
- (b) that such driving took place on a road within the meaning of law,
- (c) that there was no uncertainty as to the place of accident, namely the Prosecution having proved that the offence took place on a particular named bridge forming part of the vehicular road from Tavua to Ba,

I hold that grounds 4 and 5 of the Appeal must fail also. In the result, I must therefore dismiss the Appeal against conviction.

As regards the Appeal against sentence and the Order for costs, I find no merit whatsoever and the Appeal in this regard is also dismissed.

Although this Appeal is dismissed on legal grounds, I feel I ought to draw attention to the fact that the investigation of this careless driving case and the subsequent prosecution was carried out in a somewhat haphazard manner which does not reflect credit on those responsible.

Appeal dismissed.