an appeal involving a question of law
... permitted consideration of evidence of
... injury + drunk driving

Traffic offences - Dangerous driving
Traffic Act § 38

IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

CRIMINAL APPEAL NO.17 OF 1981

Appellant objected to conviction for dangerous driving

Between:

WAZID ALI KHAN s/o Habibullah Khan — Appellant

- and -

REGINAM — Respondent

S.M. Koya for the Appellant
A.M. Seru for the Respondent

Date of Hearing: 9th November, 1981
Delivery of Judgment: **27 NOV 1981**

JUDGMENT OF THE COURT

Henry J.A.,

Appellant was convicted in the Magistrate's Court at Labasa of the offence of dangerous driving contrary to Section 38(1) of the Traffic Act (Cap.152). Particulars of the offence alleged that he drove his motor vehicle on the Labasa-Nabouwalu road in a manner that was dangerous to the public having regard to all the circumstances of the case. He was fined $40.00. His appeal to the Supreme Court was dismissed. The present appeal, by virtue of Section 22(1) of the Court of Appeal Act (Cap.12), is confined to grounds which involve a question of law only.

Appellant's car and one driven by Jitendra Prasad came into collision whilst travelling in opposite directions on a straight piece of road, 36 feet wide, unsealed and covered with gravel. After impact the respective cars came to rest in positions more particularly shown on a plan. This plan also purported to show a

point of impact, which was no more than an opinion of the maker of the plan, but the learned magistrate did not accept that it was correct.

The grounds of appeal are :

"1. WHETHER the Learned Appellate Judge erred in law in not holding that the Learned Trial Magistrate erred in not entertaining grave doubt or reasonable doubt upon the Prosecution's case as whole, in view of the the following circumstances :-

(i) because PW1 JITEND PRASAD, the driver of the White Corona Car which had collided with the Petitioner's car had falsely denied on oath that he had been at a party at a fellow teacher's place on the day in question;

(ii) because he had told PW7 PURAN, two days prior to the said PURAN giving his statement to the Police that the Police will come to the said PURAN about the incident and that he (PURAN) was not to mention anything about the alleged party;

(iii) because the Learned Trial Magistrate himself had ordered that a copy of the trial record be sent to the Director of Public Prosecutions to consider the question of prosecuting PW1 JITEND PRASAD, PW5 ASHOK KUMAR and PW7 PURAN for the Offence of Perjury;

(iv) because the Learned Trial Magistrate had wrongly arrived at the conclusion that after impact the impetus of the Petitioner's car was such that it came free from the other car and was thrown over on its side by its own momentum. The erroneous finding was merely a theory on the part of the Learned Trial Magistrate and not supported by evidence and it must have abide his final judgment;

(v) because the Learned Trial Magistrate having found that although he did not feel there was any credible evidence that PW1 JITEND PRASAD was drunk, he felt on evidence that PW2 SURENDRA'S assertion that PW1 JITEND PRASAD had been drinking, may be true, had erred in not taking into account this fact

> with other relevant facts in not holding that these facts constituted a reasonable doubt on the Prosecution's case entitling the Petitioner to an acquittal.
>
> 2. WHETHER the Learned Appellate Judge had erred in law in not holding that the Learned Trial Magistrate ought to have expressly taken into account evidence of the Petitioner and as to his past driving skill and experience for purpose of driving at a decision."

To these grounds counsel added a further ground which may be more conveniently considered after we have dealt with the above grounds.

Ground 1(iv) may be disposed of at once. This finding was not merely a theory - it was what, on incontestable evidence, actually happened. Grounds 1(i), (ii), (iii) and (v) may be considered together. The magistrate completely disregarded the evidence of PW1 Jitendra Prasad, PW5 Ashok Kumar and PW7 Puran. He expressed a clear decision to place no reliance on their evidence on any issue.

The learned appellate judge, after recounting the course of the judgment in the magistrate's Court, said that the court had then looked for other evidence of the manner in which Jitendra Prasad's car had been driven. The evidence of two independent witnesses was then reviewed and this evidence was accepted. Moreover, on the question of consumption of alcohol by Jitendra Prasad the learned magistrate found there was nothing to suggest that he was incapable of having proper control of his vehicle. The account given by appellant was not accepted. The case was properly determined on other evidence which both courts below accepted as credible. In our opinion Grounds 1(i), (ii), (iii) and (v) do not raise any question of law. They refer solely to evidence of matters of fact rejected by the courts below. This ground fails.

Ground 2

The record does not disclose any error of law. The evidence of the two character witnesses was expressly

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referred to by the learned magistrate when he was dealing with the evidence of appellant. This evidence was obviously weighed by him in coming to a conclusion on whether or not the account of the accident given by appellant was credible. This ground also fails.

The further ground added in this court was based on R. v Gosney [1971] 3 All ER 220 which held that in order to justify a conviction for dangerous driving there must not only have been a situation which, viewed objectively, was dangerous, but also some fault on the part of the driver. It was found in the courts below that appellant was driving too fast and that he caused the collision by driving over onto his incorrect side of the road. Appellant claimed that the presence of his car on the incorrect side of the road was a manoeuvre resulting from a dangerous situation caused by the other car swerving to its incorrect side. This evidence was rejected so it is clear that, objectively considered, appellant created a dangerous situation and was at fault by encroaching into the line of travel of an approaching car being driven on its correct side of the road. This ground fails.

Appeal is dismissed and the conviction is affirmed.

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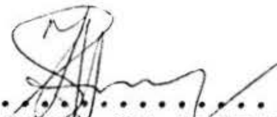
VICE PRESIDENT



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