IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No.21 of 1983

Between:

RANJEET CHANDRA s/o Ram Din — Appellant

and

REGINAM — Respondent

G.P. Shankar for the Appellant
D. Thorley for the Respondent

Date of Hearing: 31st October, 1983
Delivery of Judgment: November, 1983

JUDGMENT OF THE COURT

Gould V.P.,

The appellant was convicted in the Magistrate's Court at Ba on the 28th February, 1983 of the offence of driving without due care and attention contrary to sections 37 and 85 of the Traffic Act. He lodged an appeal against his conviction to the Supreme Court, his petition being dated the 5th March, 1983. The appeal was summarily dismissed by a Judge of the Supreme Court of Fiji at Lautoka, on the 18th April, 1983 under the provisions of section 313(2) of the Criminal Procedure Code (Cap. 21 - Ed. 1978). The decision of the learned Judge was expressed in the following terms :

" The petition against conviction for careless driving reveals several purported grounds of appeal. Grounds 1(a) and (b) that the magistrate did not direct himself as to onus of and standard of proof are not grounds. Grounds 1(c), 1(d), 2, 3 and 4 are all to the effect that the decision is unreasonable or cannot be supported having regard to the evidence.

I have perused the record carefully. There was ample evidence to support the conviction and there is no material in the circumstances of the case which could raise a reasonable doubt that the magistrate was right if he believed the prosecution witnesses. He did believe them.

The appeal is summarily dismissed. "

From this decision the appellant has brought an appeal to this court under the provisions of section 22 of the Court of Appeal Act (Cap. 12) which has the effect of limiting the appeal to "any ground of appeal which involves a question of law only (not including severity of sentence)".

Section 313 of the Criminal Procedure Code is in the following terms :

"313(1) When the Supreme Court has received the petition of appeal and the record of proceedings a judge shall peruse the same.

(2) Where an appeal is brought on the grounds that the decision is unreasonable or cannot be supported having regard to the evidence or that the sentence is excessive and it appears to the judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing be summarily dismissed by an order of the judge certifying that he has perused the record and is satisfied that the appeal has been lodged without any sufficient ground of complaint.

(3) Whenever an appeal is summarily dismissed notice of such dismissal shall forthwith be given by the Chief Registrar of the Supreme Court to the appellant or his advocate."

This court has had to consider appeals of a similar nature in the past. In Asivorosi v. Reg. (Crim. App. 16/80) the court in its judgment said :

" In our view section 294(2) of the Criminal Procedure Code should be used only where it is patently clear to a judge that the appeal is limited to the grounds that the conviction was against the weight of evidence or that the sentence was excessive. Where there are other matters raised, or which appear on the face of the record indicative that the conviction may be vitiated then the section should not be used and the appeal should be heard and determined in the normal way. "

This passage was quoted in the judgment of the court in Sashi Suresh Singh (Crim. App. 58/82) where the procedure appertaining to summary dismissals was reviewed. We do not propose to repeat what was said in that judgment except for the following passage :

" The effect of the section where it is applied and implemented, is to deprive the appellant of the ordinary right to a hearing by himself or his advocate and for this reason it is in our opinion a procedure to be used sparingly. Furthermore, the power conferred is in the nature of a special jurisdiction which may only be exercised strictly in accordance with the section. "

To the case of Nemani Tueli (Crim. App. 3/83) we will refer in greater detail, as counsel for the respondent found one of the phrases used obscure. In that case this court found that grounds filed in the Supreme Court amounted to a submission that the decision was unreasonable or could not be supported having regard to the evidence. These being the words used in section 313 the learned Chief Justice clearly had jurisdiction to

deal with the matter summarily. Having arrived at that stage there were matters which could arise in the application of the remaining part of the section which might possibly involve an error of law. If any such error of law were found an appeal would lie to this court under section 22 of the Court of Appeal Act which provides for such an appeal. If no such error of law were found (and the court found none in the case before it) "no appeal lies under section 22 from the dismissal". That is the phrase which counsel for the respondent found obscure, but, properly understood in the context, it appears to us quite clear.

The present case can be disposed of quite briefly. The grounds contained in the petition were :

"1. THAT the learned trial Magistrate erred in law in not -

(a) directing himself as to onus of proof;
(b) standard of proof;
(c) fully and adequately evaluating the evidence and consider the contradictions and inconsistency in the evidence;
(d) giving any weight to the appellant's evidence.

2. THAT the learned trial Magistrate upon proper and full evaluation of the evidence ought to have held that the prosecution failed to prove the alleged offence on the part of the appellant. Alternatively the learned trial Magistrate upon full and proper evaluation of the evidence ought to have given the appellant the benefit of the doubt.

3. THAT the learned trial Magistrate failed to find any fault or element of carelessness on the part of the appellant.

4. THAT the decision is unreasonable and cannot be supported having regard to the evidence. "

Though we agree that the general burden of these grounds relates to the weight of the evidence we are, with

respect, unable to agree that 1(a) and 1(b) are not grounds at all. They may be weak or even bad grounds but, as we have pointed out in earlier cases the adoption of the summary procedure deprives a convicted person of his right to argue them. This should only be done in very plain cases where the section clearly applies. It has not been suggested that the inclusion of the grounds in question was a mere sham designed to take the case out of the ambit of section 313; if such a case should occur it would be dealt with on its own facts and circumstances.

In the result we are of opinion that the learned Judge did not have jurisdiction to deal with the case summarily under section 313; the grounds of the contemplated appeal were not limited to those specified in the section. The present appeal is allowed and the dismissal of the appeal by the Supreme Court is therefore set aside and the case remitted to the Supreme Court for listing and hearing in the ordinary way.

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Vice President

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Judge of Appeal

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Judge of Appeal