

GURDIAL SINGH PARHAR

v.

REGINAM

[SUPREME COURT, 1963 (Knox-Mawer Ag. P.J.), 4th October, 1st November]

Appellate Jurisdiction

Criminal law—careless driving—defence of mechanical defect—onus on prosecution—Traffic Ordinance (Cap. 235) ss. 31, 65.

The appellant was charged with careless driving and put forward at the earliest opportunity an explanation that there was a sudden failure of brakes for which he was blameless. The prosecution did nothing to negative this defence.

Held.—Once an accused raises a defence of mechanical failure it must be considered with the rest of the evidence and the onus of proof remains with the prosecution. *R. v. Spurge* [1961] 2 Q.B. 205 followed.

Appeal against conviction.

Kearsley for the appellant.

Palmer for the Crown.

KNOX-MAWER Ag. P.J. [1st November, 1963]—

The appellant was convicted before the Magistrate's Court of the First Class, Nadroga, of careless driving contrary to section 31 read with section 65 of the Traffic Ordinance (Cap. 235).

The Crown does not support this conviction for reasons which the Supreme Court has considered sufficient to justify its allowing the appeal.

In *R. v. Spurge* [1961] 3 W.L.R. at p. 23 it was held *inter alia*—

- (a) that a mechanical defect in a motor vehicle may be a defence to a charge under section 11 of the Road Traffic Act 1930 if it causes a sudden total loss of control and is in no way due to any fault on the part of the driver;
- (b) that the onus of establishing such a defence does not rest on the accused;
- (c) that this defence will not be considered by the Court unless raised by the accused, but once raised, it must be considered with the rest of the evidence and the onus of proof still remains on the prosecution.

In the present case the appellant did raise this defence. Indeed he put forward his explanation of a sudden brake failure for which he was blameless at the earliest opportunity. Yet the police did not even examine the brakes. In fact the prosecution did nothing whatsoever to negative this defence, although the onus already lay upon the prosecution to do so. The appellant should therefore have been acquitted. The conviction has accordingly been quashed and sentence set aside.

Appeal Allowed.

Solicitor for the appellant: *K. C. Ramrakha.*

Solicitor-General for the Crown.