

A **ARCHAIYA**

v.

REGINAM

B [SUPREME COURT, 1964 (Hammett Ag. C.J.), 10th April, 1st May]

Appellate Jurisdiction

Criminal law—traffice offences—driving in a manner dangerous to the public—speed as a factor in the manner of driving—Traffic Ordinance (Cap. 235) s.32(1).

C The appellant was convicted of dangerous driving, in that he drove a motor vehicle in a manner which was dangerous to the public having regard to all the circumstances of the case. The vehicle in question was a six ton tanker fully laden with diesel oil and the evidence established that the appellant drove it over an exceptionally rough part of the road while approaching the crest of a hill, at a sustained speed of fifty miles an hour; a great deal of dust and stones
D was thrown up by the wheels.

Held: 1. The “speed” factor is one of the many to be taken into account when it has to be considered whether the “manner” in which a vehicle is being driven is dangerous to the public: it is a fallacy to suppose that the “manner” of driving concerns only the way in which control is exercised over the steering mechanism.

E 2. In each case it is a question of degree and matter of fact, and in the present case it could not be held that the decision of the Magistrate’s Court was unreasonable, or that there was no evidence of the manner in which the vehicle was being driven.

F Appeal against conviction by a Magistrate’s Court.

K. C. Ramrakha for the appellant.

G. N. Mishra for the Crown.

The facts appear from the judgment of the Acting Chief Justice.

G HAMMETT Ag. C.J.: [1st May, 1964]—

The appellant was convicted of the offence of Dangerous Driving contrary to Section 32(1) of the Traffic Ordinance and sentenced to a fine of £15 and disqualified from holding a driving licence for 6 months.

H The particulars of offence were as follows:

“ARCHAIYA s/o Yankat Sami, on the 12th day of November, 1963, on Kings Road, Drasa, Lautoka in the Western Division,

drove a motor vehicle in a manner which was dangerous to the public having regard to all the circumstances of the case."

Counsel for the appellant abandoned at the hearing the second ground of appeal against conviction, and relied only on the two following grounds which he argued together: A

- "(a) That the decision is unreasonable and cannot be supported having regard to the evidence.
- (c) That the conviction is bad in law in that the only evidence against Your Petitioner was the speed at which he was driving his vehicle and there was no evidence of the manner in which he was driving the same." B

Section 32(1) reads as follows:

"If any person drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public having regard to all the circumstances of the case including the nature, condition and use of the road and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road, he shall be guilty of an offence and shall be liable upon conviction to imprisonment for two years or to a fine or to both such imprisonment and fine." C

The evidence showed that the appellant was driving a 6 ton Bedford Diesel Tanker laden with a little under 1,500 gallons of diesel fuel, the weight of which would be considerable, and probably in the neighbourhood of 5 or 6 tons, along the Kings Road, the main highway between Lautoka and Ba. On a part of this road where the surface was exceptionally rough the appellant drove this vehicle very fast. He was followed by a Police Officer in a car and it was found that over a distance of about a half a mile as it approached the crest of the hill, the appellant was driving this heavily laden tanker at sustained speeds of about 50 m.p.h. D

At this speed the vehicle threw up a great deal of dust and stones from its wheels. Such a heavy vehicle is limited by law to a maximum speed of 30 m.p.h. E

It was submitted by Counsel for the appellant that on these facts the Court below could, on the charge before it, have convicted the appellant of the lesser offence of exceeding the speed limit or, if he had been so charged, of driving at a "speed" which was dangerous to the public. He contended, however, that since the only evidence of danger arose from the "speed" at which the vehicle was driven, no conviction could lie on the offence as charged of driving in a "manner" which was dangerous to the public. F

It is clear that since the facts in this case do amount to the offence of driving at a "speed" which was dangerous to the public, as is conceded by Counsel for the appellant, it would have been more appropriate to have charged the appellant with that offence. What has to be determined in this appeal is whether the conviction of driving in a "manner" which was dangerous to the public was unreasonable and one that cannot be supported by the evidence in this case. G

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The "speed" factor is one of the many considerations that may be taken into account when it has to be considered whether the "manner" in which a vehicle is being driven is dangerous to the public.

A In driving a motor vehicle the driver exercises control over its movement by the coordinated efforts of his hands and feet applied to the steering mechanism, the engine controls and the braking system. It is a fallacy to suppose that the "manner" of driving concerns only the way in which control is exercised over the steering mechanism.

B The speed, the direction and changes in speed and changes in direction of the vehicle are all matters which affect the "manner" in which a vehicle is being driven.

It is a question of degree and matter of fact whether on any given set of primary facts, a vehicle can properly be held to be driven in a manner which is dangerous to the public when all the circumstances are taken into consideration, including the use of the road and the amount of traffic which is not only actually on it at the material time but which also might reasonably be expected to be on it.

C

In this case the appellant's manner of driving which was held to be dangerous was to hurtle this heavily laden fuel tanker at break-neck speed towards the brow of a hill, on a particularly bad patch of the main highway in such a manner that dust and stones were flying in all directions from its wheels.

D

After giving the matter careful consideration I am of the opinion that, in the particular circumstances of this case, there are insufficient grounds for me to hold that the decision of the Court below was unreasonable or that there was no evidence of the manner in which this vehicle was being driven.

E

This was a bad case and the sentence imposed was, in my view, neither wrong in principle nor manifestly excessive.

The appeal is dismissed.

Appeal dismissed.