

1.

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)  
 AT LAUTOKA  
 Appellate Jurisdiction  
Criminal Appeal No. 123 of 1978

BETWEEN:

<u>GUR NADAN</u> s/o Tangawalu	Appellant
- and -	
<u>R E G I N A</u>	Respondent

Mr. M.V. Pillai, Counsel for the Appellant  
 Mr. Fatiaki, Counsel for the Respondent

JUDGMENT

The appellant was convicted of careless driving.

He was one of two motor vehicles proceeding along Queen's Road towards Nadi and was the rear vehicle. As the car in front turned right the appellant was overtaking and the motor vehicles collided.

The appellant said in evidence that no signal was given by the car in front. In such circumstances he would regard it as safe to overtake.

The driver in front says he began signalling when the appellant was about 4 chains behind. If that is correct it was not safe for appellant to overtake.

The answer to that question depends upon which of the motorists was truthful.

2.

After hearing the evidence from witnesses whom he saw the learned Magistrate accepted the evidence of the motorist in front. He did not ignore a weight of evidence to the contrary; he did not accept the evidence of a witness who had fared badly in cross-examination or whose evidence was not straight forward.

There is nothing in the record which suggests that the Magistrate erroneously relied upon the prosecution witnesses. What conclusion I would have come to had I been in the Magistrate's place it is impossible for me to conjecture upon. I must be guided by his record and I see nothing erroneous in it. His deductions were sound.

The appeal fails. The conviction is upheld.

(Sgd. J.T. Williams)  
JUDGE

LAUTOKA,  
6th November, 1978.