

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No. 74 of 1981

114

000382

Between:

PARMANAND s/o SHIRI PAL NANDAN

and

REGINAM

Appellant in person.

Mr. S. Chandra for respondent.

JUDGMENT

This is an appeal by the appellant against his conviction in the Suva Magistrate's Court on two counts; on first count of driving a motor vehicle whilst under the influence of drink contrary to section 39(1) of the Traffic Act for which he was sentenced to a fine of \$175 or six months' imprisonment and disqualified from driving for eighteen months; and on second count of dangerous driving contrary to section 38(1) of the Traffic Act for which he was sentenced to a fine of \$75 or three months' imprisonment and disqualified from driving for six months.

There is only one ground of appeal which in terms reads:

"The learned Magistrate erred in law in hearing the case in your petitioner's absence when he had no power to do so under section 199 of the Criminal Procedure Code (Cap.21)."

On 20th November 1980 appellant was present in the Suva Magistrate's Court with his counsel, Mr. Iqbal Khan when the charge was read and explained to him after which he pleaded not guilty to both counts in the charge. The case was adjourned to 22nd December which was followed by three further adjournments about which appellant was aware as he was present in Court upon each time when the respective adjournments were ordered.

On the last occasion of these adjournments which was on 14th May 1981, the case was adjourned to be heard in Taveuni on 1st June 1981 so as to enable the evidence of the medical witness (Dr. Lal) to be taken. At the hearing in Taveuni Mr. H. Lateef appeared on behalf of appellant who was absent by choice, a fact that was specifically noted in the learned Magistrate's record.

The trial next resumed in Suva when appellant and his counsel were both present. On prosecution's application the case was adjourned to 8th October, 1981 on which date the appellant did not turn up in court but his counsel who did, complained to the court that appellant had not been to see him as he had been requested to do. Counsel consequently sought the court's leave to withdraw from the case, which was granted.

The court thenceforth continued with the hearing of the case in the appellant's absence on the basis that it had powers to do so under the provisions of the Criminal Procedure Code.

Counsel for respondent submitted that the position in this case was covered by section 203(1) of the Criminal Procedure Code which as far as material reads as follows:

"203.-(1) If at the time or place to which the hearing or further hearing is adjourned, the accused person does not appear before the court which has made the order of adjournment, such court may, unless the accused person is charged with felony, proceed with the hearing or further hearing as if the accused were present, ..."

A "felony" is defined in section 4 of the Penal Code as meaning:

"An offence which is declared by law to be a felony or if not declared to be a misdemeanour, is punishable, without proof of previous conviction, with death, or with imprisonment for three years or more."

Drunken driving and dangerous driving are both punishable with imprisonment for less than three years i.e. two years.

Neither of the offences concerned in this case is a "felony" within the above definition. That being so, it follows that under section 203(1) of the Criminal Procedure Code the trial court was perfectly entitled if it saw fit to proceed with the adjourned hearing in the absence of the appellant, as in fact happened. Appellant had only himself to blame for choosing to be absent from the court when his case was being dealt with. At all material times he had ample notice concerning the state of the proceedings against him.

I have perused the provisions of section 199 of the Criminal Procedure Code upon which this appeal is based and can find nothing in them to support this appeal. I am satisfied that the appellant has no proper ground of complaint in this case.

In the result the appeal fails and is dismissed.

(T.U. Tuivaga)
Chief Justice

Suva,
22nd January, 1982.