NORMAN SARU -v- REGINAM

High Court of Solomon Islands
(Muria ACJ)
Criminal Case No. 5 of 1992
Hearing: 27 April 1992
Judgment: 29 April 1992

J. Wasiraro for Appellant
F. Mwanesalua, DPP, for the Respondent

MURIA ACJ: The Appellant appeared before the Magistrates Court, Central, charged with Careless Driving and also with Failing to stop and report after an accident. He pleaded guilty to both charges and he was fined $200.00 on each count. In addition, he was disqualified from driving for 18 months. The appellant now appeals against the order of the Magistrates Court disqualifying him from driving.

The Appellant was a taxi driver who was driving along Kukum Highway at about 6.00 o'clock in the evening on 16 February, 1992. When he approached the junction leading up to Kola Ridge he signalled to turn up the Kola Ridge Road. He was rushing and as a result when he turned into the Kola Ridge Road, he hit a pedestrian knocking him down and received injuries. The Appellant did not stop nor did he report the accident to the Police. It was the victim who later reported the matter to the Police. Those briefly are the facts of the case.

Mr Wasiraro submitted on behalf of the Appellant that the Magistrate erred in disqualifying the Appellant from driving for 18 months. Secondly Mr Wasiraro submitted that the sentence was manifestly excessive in view of the fact that the Appellant was heavily fined and in addition, ordered to be disqualified from driving for 18 months.

In support of his submission, Mr Wasiraro argued that the Magistrate had put too much weight on the view he took that the offence of careless driving was serious and that such offence was very common in Honiara. That Mr Wasiraro argued could result in the Appellant being used as the scape-goat. Secondly, Mr Wasiraro argued that the Magistrate erred in not taking into account the fact that the Appellant was a taxi driver whose living depends on his driving and as such in the exercise of his discretion the

Magistrate should distinguish between the position of drivers who earn their living by driving and drivers who just drive for social reasons or just for pleasure.

The learned Director submitted that the Magistrate had not erred in exercising his discretion to disqualifying the Appellant for 18 months. He further submitted that it would be wrong to create two levels of sentencing based on the distinction between drivers who drive for a living and drivers who do not drive for living.

The principle on which this Court will act in an appeal case is stated in *Berekame -v- DPP (1985/86) SILR 272* and *Saukoroa -v- R. (1983) SILR 275* where both cases followed the case of *Skinner -v- The King (1913) 16 CLR 336* where it was stated that:-

> *".....a Court of Appeal is not proned to interfere with the judge's exercise of his discretion in apportioning sentence, and will not interfere unless it is seen that the sentence is manifestly excessive or manifestly inadequate. If the sentence is not merely arguably insufficient or excessive, but obviously so because, for instance the judge has acted on a wrong principle or has clearly overlooked or understated, or overstated, or misunderstood, some salient feature of the evidence, the Court of Criminal Appeal will review the sentence, but short of such reason, I think it will not."*

In the light of the above principle I will now have to consider whether or not I should interfere with the learned Magistrate's discretion in the exercise of which he imposed a $200.00 fine on each of the two counts and further disqualified the Appellant from driving for 18 months.

In his reasons for judgment, the learned Magistrate stated:-

> *"First, take into account the seriousness of this offence. You struck down a pedestrian and drove away without stopping and not even reported the mater to the police. Careless driving is so common in Honiara. Drivers don't care when driving.*
>
> *Driving a motor vehicle is not driving a toy. Thus you have to be very careful because it is dangerous once you don't."*

Clearly, the learned Magistrate was there contemplating the seriousness of the offence of careless driving and the experiences he had in this type of offence. No one can reasonably suggest that a Magistrate who has to deal with this sort of offence on regular basis should ignore his experience of the rate at which the offences of carèless driving are coming before the Court. That would be, in my view, turning a blind eye to reality. Drivers of motor vehicles which are licensed to carry passengers from the public must exercise extra due care and attention. This includes taxi drivers who are frequently coming before the courts on charges of careless driving and other traffic offences. The public must be protected against such careless and inconsiderate drivers.

In the present case the learned Magistrate quite properly took into account the fact that the carelessness of the Appellant resulted in a pedestrian being knocked down and sustained injuries. The Appellant could not care-less of what he had done and so did not stop nor reported the matter to the Police. The learned Magistrate gave the Appellant credit for pleading guilty. The learned Magistrate was even more generous to the Appellant by treating him as a first offender although he had one in 1987 for a similar offence. Having taken all those factors into account, I cannot see how this Court can say that the learned Magistrate acted on a wrong principle when he imposed the fines and disqualified the Appellant from driving.

The burden is on the Appellant to show the error alleged to have been made by the Court below. The Appellant has failed to point to any such error and so the first ground complaining that the learned Magistrate erred in disqualifying the Appellant must be dismissed.

The other point raised by the Appellant is that the total fines of $400.00 together with the 18 months disqualification from driving is excessive. The Appellant does not dispute the fines imposed on him but he says that in the light of the substantial fine, the punishment is in effect excessive when the 18 months disqualification is added onto the fine.

I have already held that the Magistrate did not err when he imposed the fines and the disqualification on the Appellant. However whilst an order for disqualification is appropriate, the length of the period of such disqualification must be considered especially where the accused is a driver by occupation. In this case the Appellant is a taxi driver and he earns his living by driving. Any disqualification from driving imposed on him is likely to work financial hardship on him and the Court ought to bear that in mind when considering the period of disqualification.

I feel the learned Magistrate did not sufficiently consider the effect of such disqualification will have on the Appellant when he decided that the length of period of disqualification was to be 18 months. That being so this Court is entitled to interfere with that part of the sentence imposed by the Court below and vary the period of disqualification to one of 6 months.

Before I leave this matter, there arose in the course of argument by counsel that in the exercise of its discretion the Court should draw a distinction between drivers who drive for living and other drivers who simply drive for social or casual purposes. I accept that in the exercise of its discretion, under section 28(2) of the Traffic Act the Court will take into account the fact that a driver who drives for living will no doubt

be caused financial hardship because of the disqualification from driving imposed on him. But in my view financial hardship becomes only a material factor to be taken into consideration by the Court when it comes to deciding the length of the period of disqualification. This is indicative by the use of the words:-

"*.....for such period as the court thinks fit.*"

in section 28(2) of the Act. Those words clearly give the Court power to consider other factors when it comes to fixing the disqualification period.

However, I do not envisage that it is the intention of Parliament that courts when deciding the initial question as to whether or not an accused should be disqualified from driving, should bear in mind the distinction between drivers who drive for living and other users of motor vehicles. Had Parliament intended that such a distinction must be made, it would have said so. As such the only proper occasion when the question of financial hardship can be considered in cases of disqualification from driving is when the Court comes to deciding the length of the period of disqualification.

I have taken into account the financial hardship of the accused and that I do so in order to fix the period of disqualification as the Court thinks fit in this case.

The appeal is allowed in part and the order of disqualification of 18 months is varied to one of 6 months.

The appellant will no doubt realise that a further offence of this nature will not receive sympathy either from this Court or the Magistrates Court.

(G.J.B. Muria)
ACTING CHIEF JUSTICE