It is enough to say that, having come to the clear conclusion which I have reached, namely, that there was an infringement of the principles of natural justice, it is unnecessary to go further into the matter. Accordingly I would grant the application with costs to be taxed against the respondent.

Freetown
Sept. 7,
1962
Bankole Jones
Ag.C.J.

[SUPREME COURT]

RODERICK MACKENZIE . . . . . *Appellant*

v.

COMMISSIONER OF POLICE . . . . . *Respondent*

[Mag.App. 17/62]

Criminal Law—Careless driving—Ability to control car—Whether sufficient evidence to support verdict—Effect of breach of Highway Code.

Road Traffic Act (*Cap.* 132, *Laws of Sierra Leone*, 1960), *ss.* 43 (1), 61—*Highway Code, rr.* 36, 37—*Road Traffic Regulations*, 1960 (*P.N.* 77 *of* 1960), *s.* 39 (1) (*s*).

At about 2 p.m. on February 18, 1962, appellant was driving his car about 30 m.p.h. along the main Hill Station Road from Wilberforce to Hill Station. Complainant's car was on Hill Cot Road approaching Hill Station Road. When appellant first saw complainant's car 50 to 60 yards away, appellant applied his brakes slightly and complainant's car appeared to stop. When the cars were about 30 yards apart, complainant suddenly turned into Hill Station Road proceeding about 10–15 m.p.h. Appellant immediately applied his brakes, reducing the speed of his car to about 5 m.p.h. The cars then collided.

Appellant was charged in the Magistrates' Court with driving his car without due care and attention contrary to section 43 (1) of the Road Traffic Act. He was convicted and sentenced to a fine of £15 or three months' imprisonment with hard labour. The trial magistrate concluded: "I have . . . come to the conclusion that the accused was driving at such a high speed that he could not control the car. . . ."

Against his conviction, appellant appealed on three grounds:

"(1) The learned magistrate was wrong in law in purporting to find the accused guilty of an offence for which he was not before the court.

"(2) The learned magistrate was wrong in law in not applying regulation 39 (1) (*s*) of the Road Traffic Regulations, 1960, to the facts of the case.

"(3) The verdict cannot be supported having regard to the evidence."

Held, allowing the appeal, (1) that there was no substance in appellant's first and second grounds of appeal; but

(2) That the magistrate's finding that appellant was driving at such a high speed that he could not control his car was not supported by the evidence; and

(3) That complainant's failure to observe rules 36 and 37 of the Highway Code could be relied on by appellant as tending to negative his liability.

Cases referred to: *Chapman* v. *Hobrough* [1955] Crim.L.R. 786; *Thompson* v. *Wigley* [1956] Crim.L.R. 205; "The Times," January 13, 1956; *Gibbons* v. *Kahl* [1956] 1 Q.B. 59.

Alfred H. C. Barlatt for the appellant.

Constant S. Davies for the respondent.

BANKOLE JONES AG.C.J. The defendant, in the court below, was found guilty of the offence of driving his car, C.3068, without due care and attention contrary to section 43 (1) of the Road Traffic Act, Cap. 132. He was convicted and sentenced to a fine of £15 or three months' imprisonment with hard labour. It is against this conviction and sentence that this appeal lies.

The facts briefly are as follows: According to the prosecution, the defendant was driving his car about 2 p.m. on February 18, 1962, along the main Hill Station Road from Wilberforce to Hill Station at high speed. Another car, that of the complainant, driven from the junction of a side road from Hill Cot Road into Hill Station Road, came into collision with the defendant's car. According to the defence, the speed of the defendant's car was about 30 m.p.h. when the defendant first saw the complainant's car 50 to 60 yards away. The defendant applied his brakes slightly and the complainant's car appeared to stop. As the defendant continued and about 30 yards away from him, the complainant shot up the side road. The defendant immediately applied fully his brakes, bringing the speed of his car to about 5 m.p.h. The complainant was then doing between 10 and 15 m.p.h. Both cars then collided.

The learned trial magistrate in his judgment, after stating the facts on both sides, concluded as follows:

> "I have carefully considered the evidence given for the prosecution and the defence and have come to the conclusion that the accused was driving at such a high speed that he could not control the car he was driving. I find the accused guilty as charged."

There are three grounds of appeal, namely, (1) The learned magistrate was wrong in law in purporting to find the accused guilty of an offence for which he was not before the court.

(2) The learned magistrate was wrong in law in not applying regulation 39 (1) (*s*) of the Road Traffic Regulations, 1960, to the facts of the case.

(3) The verdict cannot be supported having regard to the evidence.

As to ground 1, Mr. Barlatt did not give a name to the offence which he said the learned magistrate found the defendant guilty of, and for which he was not before the court. He, however, surprisingly argued against his own proposition, stating that the mere fact of driving at a high speed which makes it impossible for a driver to control his car is *not an offence* but merely an element to be taken into consideration in the case of a charge of dangerous driving, and never in that of driving without due care and attention. I am afraid I will not succumb to such a proposition. If the evidence supports the findings of the learned magistrate, then, of course, this court cannot and will not interfere with the verdict. Whether this is so in this case, that is, whether the evidence supports the findings, is a matter which does not demand consideration under this ground. I, therefore, find no substance in this ground.

I do not think ground 2 is important. I will now consider ground 3.

Now, although it is impossible to formulate exact standards in regard to offences under section 43 (1) of our Road Traffic Act, the following matters should be noted:

(a) The standard of care is to be measured objectively and not subjectively.

(b) It is determined by the essential needs of the public on the highway.

(c) Each case must depend on its own particular facts.

(d) Due regard ought to be given to regulations made under the Act.

(e) In practice, the requirements of the Highway Code of Sierra Leone form a guide as to whether or not an offence has been committed.

I think it ought to be made quite clear from the outset that charges of driving without due care are, as a general rule, questions of fact for the magistrate. In the case of *Chapman* v. *Hobrough* [1955] Crim.L.R. 786 it was held by the Divisional Court, consisting of Lord Goddard C.J., Omerod and Barry JJ., that it was not for the appeal court to sit as an appellate tribunal of fact. The function of that court was only to see whether there was evidence to support the magistrate's decision: see also *Thompson* v. *Wigley* [1956] Crim.L.R. 205; "The Times," January 13, 1956. In *Gibbons* v. *Kahl* [1956] 1 Q.B. 59 at p. 64, the Divisional Court, consisting of the same judges as in *Chapman* v. *Hobrough*, held that the appeal court will not interfere with the finding of magistrates unless those findings are perverse. Lord Goddard in his judgment said, inter alia:

> "We are bound by the facts found by the justices and we can only go against those facts if we come to the conclusion that the justices are perverse which may mean . . . that they have taken into account matters which ought not to have been taken into account, or shut their eyes to the obvious."

Let us apply these principles to the present case. The learned magistrate came to the conclusion that the defendant was driving at such a high speed that he could not control his car. Could it be said that such a finding of fact was supported by the evidence? It seems to me, with respect, no. In the first place, to drive a car at about 30 m.p.h. along a main road like the Hill Station Road about 2 p.m. on any day cannot be described as "driving at such a high speed." In the second place, all the evidence goes to show that the defendant had perfect control of his car. He slowed down whilst reaching the bend at the junction of Hill Cot Road. He saw the complainant's car "hesitate." This was the word used by the complainant's witness, his wife. The defendant continued and within 30 yards from the bend, the complainant's car shot up into the main road. Whereupon the defendant fully applied his brakes, which reduced his speed to about 5 m.p.h., but, nevertheless, the accident occurred. No driver in the circumstances could have done more to avert an accident. Clearly, the learned magistrate took into account, which he should not have done, in all the circumstances, the speed of the defendant's car, which was certainly not such a high one. Also, with respect, he shut his eyes, inadvertently, I think, to an obvious matter, which was not brought to his notice, namely, the following rules of the Highway Code, that is, rules 36 and 37.

Rule 36. At a road junction, look right, then left, then right again. Do not go on until you are sure it is safe to do so.

Rule 37. At a road junction, give way to traffic on the major road. If in doubt give way.

Applying these rules to the present case, the evidence was to the effect that the complainant's wife saw the defendant's car at a distance of about 120 yards

away, whereas the complainant said he did not see the car even at a distance of between 40 and 50 yards away. He said he saw it as he took the curve. Certainly this state of the evidence showed that the complainant's conduct absolved the defendant of any blame, if any attached to him at all, because such conduct was a breach of the above rules, rules which derive judicial recognition in accordance with the provision of section 61 of our Road Traffic Act.

In the circumstances, therefore, and for the reasons given, the appeal must succeed and I accordingly quash the conviction and sentence and enter a verdict of not guilty.

I order that if the defendant has paid the fine it be forthwith remitted to him.

[SUPREME COURT]

Freetown
Sept. 7, 1962
Dobbs Ag.P.J.

ATTORNEY-GENERAL . . . . . *Appellant*

v.

GRACE GREYWOODE, REBECCA PATNELLI AND LAMIN BULLY . . . . . *Respondents*

[Mag.App. 36/62]

Criminal Law—Larceny—Receiving—Appeal against acquittal—Whether ownership of goods proved—Unlawful possession—Whether accused, at time of receiving, knew that goods were stolen.

Summary Conviction Offences Act (*Cap.* 37, *Laws of Sierra Leone*, 1960), *ss.* 12, 13, 14—*Criminal Procedure Act* (*Cap.* 39, *Laws of Sierra Leone*, 1960), *s.* 75 (3)—*Courts* (*Appeals*) *Act*, 1960 (*No.* 18 *of* 1960), *s.* 7 (4).

The three respondents were charged before the Senior Police Magistrate with larceny contrary to section 12 of the Summary Conviction Offences Act. The magistrate acquitted the respondents, after holding that "no ownership of the goods has been proved" and that there was no evidence against the third respondent. He also remarked that "The prosecution . . . has never at any time sought to prove that, at the time when first and second accused received the bedspreads, they knew that they were stolen property." The Attorney-General appealed against the acquittal of the first and second respondents.

Held, allowing the appeal, (1) that the magistrate was correct in acquitting the first and second respondents of the charge of larceny; but

(2) that the magistrate, in accordance with section 75 (3) of the Criminal Procedure Act, should have considered the question of whether the first and second respondents were guilty of receiving.

The court also said, obiter, "I do not agree that in the circumstances such a charge (a charge of unlawful possession under section 13 of the Summary Conviction Offences Act) could have been laid."

Cases referred to: *Rex* v. *Kamara*, 3 Sierra Leone Law Recorder 16; *Hadley* v. *Perks* (1866) 35 L.J.M.C. 177; *Helwani* v. *Commissioner of Police* (1944) 10 W.A.C.A. 197; *Rex* v. *Sbarra* (1918) 13 Cr.App.R. 118; *Rex* v. *Fuschillo* (1940) 27 Cr.App.R. 193; *Rex* v. *Young and another* (1952) 36 Cr.App.R. 200; *Cohen* v. *March* [1951] 2 T.L.R. 402.