

## KAMCHAN SINGH *v.* THE POLICE

[Appellate Jurisdiction (Hyne, C.J.) March 31st, 1953]

*Principles in regard to appeals on fact and against sentence discussed—right of accused to be examined by his own doctor.*

The accused was convicted of the offence of driving a motor vehicle while drunk, contrary to section 59\* of the Traffic Ordinance, 1946, repealed by the Traffic Ordinance, 1954.

The accused appealed.

Two grounds of appeal were:—

- (1) The conviction was against the weight of the evidence.
- (2) The sentence was harsh and excessive.

**HELD.**—(1) An appellate Court will not allow an appeal on facts where the conclusion in the Court below is arrived at after careful consideration of the evidence, unless the conclusion arrived at was clearly and plainly wrong.

(2) The principles laid down in *Rex v. Ball* (35 Cr. App. R. p. 164) in regard to appeals against sentence affirmed.

Duties of the police in regard to medical examinations specified.

Cases referred to:—

*R. v. Kenneth John Ball* 35 Cr. App. R. 164.

*F. M. K. Sherani* for the appellant.

*W. G. Bryce*, Solicitor-General, for the respondent.

**HYNE, C.J.**—The appellant does not set out in his first ground of appeal all that is required. It is not sufficient merely to allege that the verdict is against the weight of evidence. In order to succeed the appellant must show that the verdict is unreasonable or cannot be supported having regard to the evidence. It is necessary for him to show that there was no evidence on which the Magistrate could reach the conclusion which he did reach if he properly directed himself. Whether the appellant was or was not drunk is a question of fact, and there is in my view sufficient evidence, if believed—and the learned Magistrate did believe the prosecution witness—to justify the conclusion at which he arrived.

An Appellate Court will not allow an appeal on facts where the conclusion in the Court below is arrived at after careful consideration of the evidence unless the Court finds that the conclusion arrived at was clearly and plainly wrong. In this case there is nothing to suggest that the conclusion was one at which the Magistrate could not reasonably arrive on the evidence.

This ground therefore fails.

---

\* Section 33 of the Traffic Ordinance, 1954.

As to the question of sentence, the Magistrate has given careful reasons why he imposed the sentence which he did. He imposed a fine which the appellant's Counsel regards as excessive, and the appellant's licence was also suspended for twelve months. The principles governing the review of sentences by an Appellate Court are laid down in *Rex v. Kenneth John Ball* Cr. App. R. Vol. 35, p. 164.

The Appellate Court does not alter a sentence merely because that Court might pass a different sentence. It is only when a sentence appears to err in principle that the Appellate Court will alter it. If a sentence is so excessive or inadequate as to satisfy the Appellate Court that when it was passed there was a failure to apply the right principles, then the Appellate Court will intervene. I do not think that there has been any failure to apply the principles laid down in *Rex v. Ball*, and although this Court might have inflicted a lesser fine, the fine imposed by the Magistrate, who was fully conversant with the circumstances and who doubtless was, and quite rightly, considering the public interest, was what he considered to be a reasonable fine in the circumstances. No adequate grounds have been urged for interfering with the sentence.

This ground of appeal therefore also fails.

I should like to add that I entirely agree with the observations of the learned Magistrate in the course of his judgment, namely:—

“ For the guidance of the Police however I feel I should state that it is most desirable that in all cases of ‘ *Drunk in Charge of a Motor Vehicle* ’ the accused should without delay be taken before a Medical Officer for examination. He should also in my opinion, not only be given every opportunity of being examined by his own doctor at the time at his own expense, should he express any wish for this, but also should be expressly informed by the Police of his right to be so examined, at the time he is arrested.”

Appeal against conviction and sentence dismissed.