W. L. I. VERRIER

v.

REGINAM

[SUPREME COURT, 1971 (Moti Tikaram P.J.), 5th March, 4th June]

Appellate Jurisdiction

Criminal law—traffic offences—driving motor cycle without safety helmet of type approved under the regulation—approval given by Principal Licensing Authority to certain brands of helmet—whether sufficient indication of type—Traffic Regulations 1967, regs. 53A, 121, 122—Traffic (Amendment) Regulations 1968, reg. 4—Traffic (Amenment) Regulations 1970, reg. 24—Traffic Ordinance (Cap. 152) s.86—Criminal Procedure Code (Cap. 14) s.290(2)—Penal Code (Cap. 11) s.38:
Criminal law—judgment—magisterial judgment—criticism of defendant in minor traffic offence—observations by Supreme Court on appeal.

Regulation 53A of the Traffic Regulations, 1967, provides that no person shall drive a motor cycle on any road unless the driver is wearing a safety helmet of a type approved by the Principal Licensing Authority. The Authority published a list of brands of safety helmet which it had approved under the regulation. The appellant was subsequently convicted of an offence against the regulation relating to an occasion when he was wearing no helmet at all. The appellant's contention was that the approval of "brands" of helmets did not constitute an approval of a type, and that until a type was approved he was not under an obligation to wear any helmet.

Held: 1. No motor cyclist who read the Principal Licensing Authority's notice could be misled or embarrassed and in naming certain brands of helmet the Authority achieved what the makers of the regulation expected.

2. The power to approve was a continuing one and it was open to the appellant to wear a brand already approved, to approach the Authority for approval of a helmet of the appellant's own choice, or to apply for exemption under regulation 121 of the Traffic Regulations, 1967.

3. The appellant had contravened the provisions of regulations 53A and was rightly found guilty. The case was not, however, one which called for the severe criticism of the appellant contained in the Magistrate's judgment or for the substantial fine imposed on a first offender; in the circumstances an absolute discharge would be ordered and an order for payment of costs in a reduced amount made.

Appeal to the Supreme Court against conviction and sentence imposed in the Magistrate's Court.

Appellant in person.

A *G. Mishra* for the respondent.

The facts sufficiently appear from the judgment.

4th June 1971

MOTI TIKARAM J. :

B This is an appeal against conviction and in the alternative against sentence and costs.

On the 18th of January, 1971 the Appellant was convicted by the Magistrate's Court of the First Class at Suva of the following offence :—

STATEMENT OF OFFENCE (a)

C

DRIVING A MOTOR CYCLE ON A ROAD WITHOUT WEARING A SAFETY HELMET :

Contrary to Regulation 53A of the Traffic Regulations 1967 (inserted by regulation 24 of the Traffic (Amendment) Regulations 1970) and regulation 122 of the Regulations 1967.

D

PARTICULARS OF OFFENCE (b)

WALTER LINDSAY ISAAC VERRIER on the 13th day of October, 1970, at Suva in the Central Division, drove a motor cycle on Renwick Road, without wearing a safety helmet of a type approved by the Principal Licensing Authority.

E The Appellant was fined $50 and ordered to pay $20 costs. In default of payment of fine and costs within 14 days the appellant was ordered to serve imprisonment for six weeks.

The Appellant has appealed against conviction on the following grounds :—

F "(a) That the trial Magistrate was wrong in law in failing to consider whether the words "type" and "brand" have the same meaning.

(b) That there was no evidence on which the Trial Magistrate could hold that the Principal Licensing Authority had approved a "type" of safety helmet.

G (c) That the trial Magistrate was wrong in law in holding that there was no duty upon the Principal Licensing Authority to publish the "type" of safety helmet which he had approved.

(d) That the trial Magistrate was wrong in law in holding that an offence is committed under the regulation whether a type of safety helmet had been approved or not."

H

As regards sentence and the order for costs the grounds are as follows :—

"(a) That the trial Magistrate erred in considering the offence to be a criminal offence and not a traffic offence.

(b) That the trial Magistrate showed bias against your petitioner by using the words "criminal behaviour of a most reprehensible kind" and called your petitioner "wicked." A

(c) That the trial Magistrate was wrong in law in suggesting that your petitioner could be sent to prison for a first offence of this nature.

(d) That the order for costs is manifestly excessive and unreasonable having regard to the fact that (i) only one prosecution action was called, (ii) he was a policeman, (iii) he arrived late (iv) he was only asked one question in cross-examination and (v) no witness was present at the first hearing. B

(e) That the sentence was manifestly excessive and unjust in itself and particularly so since in case No. 4601/70 which was heard immediately after your petitioner's case, the defendant Michael Low was convicted on exactly the same facts and fined $10.00 with no order for costs. He did, however, plead guilty." C

Regulation 53A of the Traffic Regulations, 1967 reads as follows :—

"53A. No person shall, after the 31st day of August, 1970, drive a motor cycle on any road unless the driver and every passenger other than passengers in a side car is wearing a safety helmet of a type approved by the Principal Licensing Authority and unless such helmet is securely fastened by the holding strap provided." D

Regulation 122 of the Traffic Regulations, 1967 provides that —

"Any person contravening or wilfully failing to comply with any of the provisions of this Part of these Regulations shall be guilty of an offence and on conviction shall be liable to a fine not exceeding twenty-five pounds or to imprisonment for a term not exceeding three months." E

The facts on which the learned trial Magistrate convicted the Appellant are not in dispute. On Friday 11th of September, 1970 by Legal Notice No. 1138 the Principal Licensing Authority caused the following notice to be published in the Royal Gazette No. 42, Vol. 97 at page 411 :— F

"TRAFFIC REGULATIONS, 1967

For public information, it is hereby notified that the following brands of safety helmet have been approved for use by motor cyclists and passengers, pursuant to the provisions of regulation 53A of the Traffic Regulations, 1967 :— G

CROWN
CENTURION
SHOEI
H. R.
KUNOH. H

J. V. VERRAN,

Principal Licensing Authority."

On 13th of October, 1970 the Appellant drove a motor cycle on Renwick Road without wearing a safety helmet. Indeed he was not wearing any helmet of any type at all. He was booked and prosecuted.

The Appellant's contention is that until the Principal Licensing Authority had approved a "type" of helmet, a citizen was not under an obligataion to wear anything. He submits that the word "brand" used by the Principal Licensing Authority has a different connotation from the word "type" used in the Regulation. He then referred to various meanings given to the words "brand" and "type" in Shorter English Oxford Dictionary. In short the Appellant argued that in publishing the brands approved by him the Principal Licensing Authority was not doing what the law required him to do.

In the court below the Appellant had called the Assistant Controller of Transport and Civil Aviation as his witness. His evidence was to the effect that on behalf of the Principal Licensing Authority he approved the brands mentioned in Legal Notice No. 1138 after satisfying himself that the brands specified were suitable for use, which he did by checking pamphlets and specification of brands approved by other countries. He also testified that if the appellant himself had approached him with another brand of helmet and requested permission to use it, he would have considered the request on the same lines, that is to say whether the brand was safe and suitable for use. He said that he used safety requirements of another country as his guide lines, when, to use his own words, "I may not have the facility for carrying out the research myself."

It is therefore clear that the helmets approved by the Principal Licensing Authority had the attributes of safety and suitability, in other words, the brands of helmet actually approved were types which the Principal Licensing Authority considered after examination to be suitable for use as a protective device. It is not the Appellant's contention that the brands approved were unsuitable or unsafe; nor is it his contention that they were not available. Indeed at the hearing of this appeal he conceded that they were available.

As I understood the Appellant it is his submission that by reason of the use of the word "type" in Regulation 53A the Principal Licensing Authority was duty bound to give specifications relating to size and shape and also details as to texture of material etc., in order to comply with the Regulation. There is no definition of the word "type" given either in the Traffic Ordinance or in the Regulations made thereunder.

The law of the country makes it an offence for any person to drive a motor cycle on any road unless he is —

(a) wearing a safety helmet of a type approved by the Principal Licensing Authority;

(b) and unless such a helmet is securely fastened by the holding strap provided.

It is true that the general meaning of the word "type" has reference to general form, structure or character distinguishing a particular kind, group or class of objects. Hence it can be said that a type is a pattern or model after which something is made. It is also an individual specimen representative of a species. A type can also be a distinguishing mark by which something is symbolized or figured. A "brand" is an article with a trademark. In this particular case the evidence reveals that the brands of helmet approved had certain attributes of safety and suitability. This means that the articles approved were makes of helmet which were capable of being identified by trademarks. Although etymologically the word "type" and the word "brand" are not synomyms, in this particular case in approving certain brands of helmet by notice the Principal Licensing Authority was in effect signifying his approval of certain makes or types of helmets which were found to be suitable and which were finished products with brands. To this extent each approved brand was representative of a species. In short the Authority was endeavouring to achieve the general by means of the particular.

Whether the Principal Licensing Authority was under a legal obligation to publish a notice of a type of helmet approved by him is of academic interest insofar as this case is concerned since a notice was in fact published, the real point at issue being whether the use of words by the Principal Licensing Authority conformed to the intention of the Regulation. In my view no motor-cyclist who reads the notice can be misled or embarrassed by the nature of the notice published. I also agree with the learned trial Magistrate that the nature of the notice cannot affect the validity of the Regulation itself. Furthermore the list given by the Principal Licensing Authority was not exhaustive and indeed was added to by Legal Notice No. 1410 dated 6.11.70. In my opinion the Central Traffic Authority which made the Regulations by virtue of powers vested in it by Section 86 of the Traffic Ordinance, never intended that the Principal Licensing Authority should specify by notice the specifications as to size and shape and dimensions of an approved helmet or state the texture or quality of material to be used in the making of such a helmet. It would be impossible for instance to lay down the size of helmet to be used because individual heads differ not only in shape but also in size. In my view the primary object of the Regulation is to ensure the safety of the motorcyclist by seeing that he wears a helmet of a type, make or brand that would achieve that object. In naming certain brands of helmet which had the attributes of safety and suitability the Principal Licensing Authoriity was in fact achieving what the Central Traffic Authority expected him to do especially since the list was not exhaustive and was to be added to from time to time. The Principal Licensing Authority was invested with a general power to approve a type of helmet and this power was not limited to be exercised on one or any particular occasion only. It was a continuing power which included the power to approve a particular helmet submitted to it for that purpose. For instance if the Appellant had approached the Principal Licensing Authority with a particular type, brand or make of helmet for approval, it would have been within the power of the authority to approve the use of that particular helmet by the Appellant if he considered it to be suitable bearing in mind the object of the legislature. Furthermore a motorcyclist could also approach the Central Traffic Authority for exemption from using any

helmet whatsoever. Regulaton 121 of the Traffic Regulations, 1967 (as amended by Regulation 4 of the Traffic (Amendment) Regulations, 1968) reads as follows:—

> "The Authority may grant exemptions either generally or specially from any of the provisions of this Part of these Regulations."

The law as it stood on the material date insofar as the Appellant is concerned namely 13th of October, 1970 left three courses open to the Appellant (and indeed to any motorcyclist intending to ride a motor cycle on a public road) namely —

(i) to wear a brand of helmet already approved by the Principal Licensing Authority,

(ii) to obtain approval for wearing a helmet of a particular type, make or brand of the motorcyclist's choice, and

(iii) to obtain complete exemption from wearing any helmet whatsoever.

In my view a person is not entitled to ride a motor cycle on a public road without wearing an approved safety helmet unless he has exemption to do so. I am therefore of the opinion that the Appellant by not wearing any helmet whatsoever had, on the particular facts and in the particular circumstances of this case contravened Regulation 53A of the Traffic Regulations, 1967 and was therefore liable to be convicted and punished under Regulation 122. Consequently I uphold the learned trial Magistrate's finding that the Appellant was guilty as charged.

As regards severity of punishment and the complaint against the quantum of costs the Crown concedes that the fine of $50 for a first offender was excessive. The Director of Public Prosecutions also stated that although no costs had been asked for by the Crown, costs had been incurred and awarding of costs was a discretionary matter. I note that the Appellant himself asked for a sufficiently large fine to enable him to lodge an appeal. I am sure by this he was asking for a fine exceeding $10 whereby he could appeal without having to seek the leave of the Supreme Court under Section 290 (2) of the Criminal Procedure Code, Cap. 14. However I notice from the language and comment of the learned trial Magistrate that he was minded in any case to impose a substantial punishment and indeed for reasons given by him he observed — "it is difficult not to impose imprisonment upon the Defendant but I shall refrain from doing so on account of his age". The learned trial Magistrate was also of the opinion that the Appellant had deliberately flouted the law and therefore since the non-compliance could lead to serious consequences, he felt that the appellant's conduct took the case right outside the normal kind of traffic offence and "it can be fairly stigmatised as criminal behaviour of a most reprehensible kind." The Appellant complained to this court that in addition he was called "wicked." He was distressed that the learned trial Magistrate should have thought fit to use language of this nature. It is desirable that as far as practical, Magistrates ought to avoid using language with emotional overtones especially where a first offender is involved in a traffic charge of this nature which is at most a

quasi-criminal case. No doubt there are occasions when chastisements from the Bench in the strongest possible terms are called for but this was not one of them. In fairness to the learned trial Magistrate I must however say that he appears to have been convinced that the Appellant's non-compliance with the regulation was a deliberate flouting of the law for the sake of it. However from the arguments presented by the Appellant both in the court below and before this court, it would appear that whatever views he might have held on the propriety of requiring citizens riding motor cycles to wear helmets, he was also genuinely of the opinion, for reasons given by him, that he was under no legal obligations to wear a helmet. I am sure that the somewhat intemperate language has caused unnecessary distress to the Appellant who is a first offender and is, in the words of the learned trial Magistrate himself, a senior citizen. Consequently whilst upholding the learned trial Magistrate's findings that the Appellant was guilty as charged, I am of the view that the ends of justice in this appeal would be met if the Appellant were granted an absolute discharge under Section 38 of the Penal Code. Consequently having regard to the circumstances of the case, the nature of the offence and the unblemished character of the Appellant, I set aside the conviction and the fine and grant the Appellant an absolute discharge under Section 38 of the Penal Code. The Appellant shall however pay the costs of the prosecution in the court below which I reduce from $20 to $10.00.

A B C D

I notice that an omnibus default order was made in respect of fine and costs. This practice is incorrect. If the court is minded to make a default order in respect of the fine as well as costs then a separate default order should be made in respect of each item.

Conviction and fine set aside — absolute discharge substituted.

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