

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Appellate Jurisdiction

Criminal Appeal No. 91 of 1978

BETWEEN:

R E G I N A Appellant

-and-

BALWANT SINGH s/o Respondent
Raj Kumar Singh

Mr. M. Jennings, Counsel for the Appellant
Mr. A. Patel, Counsel for the Respondent

JUDGMENT

The respondent was convicted on 17. 3.78 for causing death by dangerous driving and was disqualified from driving for 12 months.

On 25. 3.78, only 8 days after his disqualification the appellant was seen driving. He was charged for driving whilst disqualified contrary to section 30 Traffic Ordinance, Cap.152 and pleaded Guilty.

The learned Magistrate fined him \$100.00 and imposed 6 months imprisonment suspended for 2 years.

The D.P.P. appeals against the sentence as being erroneous in law in that S.30(4) of the Ordinance requires an immediate custodial sentence unless special circumstances existed and he alleges that no special circumstances did exist.

S.30(4) enacts that the offender shall be liable to a term of not more than 6 months imprisonment, but "having regard to the special circumstances of the case" the court may impose instead a fine of not more than \$100.

In imposing a fine the learned magistrate said,
"Because he has no other traffic offence of any serious nature I am prepared to give him one last chance, ----."

That comment is somewhat difficult to appreciate because the appellant had only just been convicted of the very serious offence of causing death by dangerous driving and here he was, a few days later, committing another very serious offence.

The reasons given by the magistrate were peculiar to the appellant himself; they adverted to his past record as a driver and not to the circumstances of the particular case which the police had brought to the magistrate's attention. There have been numerous decisions to the effect that reasons peculiar to the driver such as his health, that as a cripple a disqualification would be of great hardship, that he would lose his job without a licence, or suffer other appalling hardship are not special reasons to the case itself.

It has been held in *Lines v. Henderson* 1951, 2 A.E.R. 650 that special circumstances and special reasons have the same meaning in regard to traffic offences of this nature.

A special reason is one special to the facts of the particular case, i.e. special to the facts which constitute the offence, and a circumstance peculiar to the offender as distinguished from the offence is not a special reason or circumstance, *Whittal v. Kirby* 1946. 2 A.E.R. 552.

A sudden medical emergency requiring the appellant to seek medical aid or transport a dangerously sick person could amount to a special circumstance if there was no qualified driver on hand. It provides a humane reason as to why the accused should overlook his disqualification for a short time.

The appellant said he took over the wheel from a mechanic who was not driving it properly but moving in a jerky manner. I could not regard that as an impelling reason for the appellant to take over the driving wheel.

It could be argued that the learned magistrate complied with the law and that he imposed a term of imprisonment albeit the term was suspended. I do not think that this is the type of offence which invites the use of a period of suspension. The appellant deliberately flouted an order of the court which was only a few days old.

I set aside the sentence imposed by the learned magistrate for this offence and substitute therefore a period of 3 months' imprisonment.

The \$100.00 fine if paid will be refunded.

LAUTOKA,
6th October, 1978.

(sgd.) J.T. Williams
JUDGE