

Appellate Jurisdiction
Criminal Appeal No. 114 of 1980

000116

Between:

BUDHU PRASAD s/o JAG PRASAD

Appellant

and

REGINAM

Respondent

Mr. Iqbal Khan for the Appellant
Mr. R. Lindsay for the Respondent

JUDGMENT

On 16th September 1980 appellant was convicted after trial by the Suva Magistrate's Court on two counts, namely -

First Count: Driving a motor vehicle whilst under the influence of drink and was sentenced to a fine of \$150 and disqualified from holding or obtaining a driving licence for two years.

Second Count: Dangerous driving and was sentenced to a fine of \$75 and disqualified from holding or obtaining a driving licence for one year.

Appellant appeals against his conviction for dangerous driving and also appeals against sentence on the ground that it was harsh and excessive.

The facts as accepted by the learned Magistrate show that at about 9 p.m. on the 23rd August last year a police landrover driven by police constable Peni of the Nasinu Police Station was travelling towards Nausori along the Kings Road. As he approached the junction to Nasinu Road, a minor

road a blue van driven by the appellant came out fast from Nasinu Road causing the police landrover to stop suddenly resulting in an accident with a car which was following closely behind it. Appellant's van which had none of its lights on at the time proceeded up as far as the central white line on Kings Road before it stopped and soon after which it rolled back slowly to Nasinu Road where it finally came to a halt at the entrance. Appellant was found to be smelling strongly of liquor and subsequent tests which he underwent at the Valelevu Police Station confirmed that he was in fact under the influence of drink.

With regard to the appeal against conviction for dangerous driving I can find no grounds upon which the appeal might be sustained. I think it goes without saying that anyone who drives a motor vehicle without any lights on and does not stop at a road junction before entering a major road as appellant did that night according to the evidence before the Court does so at grave risk not only to himself but to other road users as well. Such driving manoeuvre was highly reprehensible because of the danger it created on the road. In my view the learned Magistrate was perfectly justified in convicting appellant for dangerous driving. Accordingly the appeal against conviction would be dismissed.

With regard to the appeal against sentence it is to be noted that appellant is sixty years of age. He lost his wife about a year ago. He has four children and is self-employed as a small-time market farmer. This is his second conviction for driving under the influence of drink.

In my view the most effective sanction for a motoring offence of a serious nature is not so much in the imposition of a heavy fine upon an offender who can ill afford to pay such fine but in the length of the period of disqualification. Bad drivers should be kept off the road as much as possible. By doing so they will cease to be a menace on the roads.

In all the circumstances of this case and particularly considering appellant's humble and rather modest background I feel a fine of \$150 imposed on him on the first count was too high when coupled with a lengthy disqualification period. I am satisfied this amount ought to be reduced to the same amount as that imposed on the second count, namely \$75 or three months' imprisonment. It is ordered accordingly.

T. U. Tuivaga
(T.U. Tuivaga)
Chief Justice

Suva,
6th February 1981.