

POLICE v. LA'AU FALETOIU

HIGH COURT. 1961. 22, September; 3, 17, November; 7, December.
MARSACK C.J.

Road Traffic Ordinance and Regulations - dangerous driving - attempting to pass without clear view.

The action of a driver of a big bus passing or overtaking another such bus on a narrow road, as was the case here, constitutes dangerous driving within the meaning of section 39 of the Road Traffic Ordinance 1960, unless the driver of the overtaking vehicle has taken all proper precautions to ascertain that there is no approaching traffic, or other obstacles on the road, and has good grounds for believing that the road is clear.

Defendant convicted of the
charge of dangerous driving.

PROSECUTION for dangerous driving under section 39 of the Road Traffic Ordinance 1960, and of attempting to pass another vehicle without having a clear view of the road under Regulation 71 of the Road Traffic Regulations 1961.

Sub-Inspector Young, for Police.
Metcalf, for defendant.

Cur. adv. vult.

MARSACK C.J.: Two charges are brought against the defendant, one of dangerous driving under section 39 of the Road Traffic Ordinance, 1960, the other of attempting to pass another vehicle without having a clear view of the road for three hundred feet under Regulation 71 of the Road Traffic Regulations 1961. The second charge must be taken in some respects as being an alternative to the first. One of the elements of the dangerous driving alleged against defendant is that of attempting to pass another vehicle when the road was not clear, and in the event of a conviction on the first charge, it would not be proper to enter a conviction on the second charge also.

The evidence is extensive and in many respects conflicting. The Court has been greatly assisted by the plans and photographs put in evidence by the prosecution, and by a visit to the scene of the collision at the request, and in the presence, of prosecutor and counsel for the defence.

Early in the morning of the 16th August 1961, a Gold Star bus, followed at a short distance by a bus driven by the defendant (which for the purpose of clarity will be referred to in this judgment as the Telefoni bus), were proceeding along the main West Coast road in an easterly direction towards Apia. At the same time a Government station wagon, driven by one Alosio, was travelling along the same road in the opposite direction, and was conveying Professor Davidson and Messrs Webb and McLean to Mulifanua for the purpose of catching the seven o'clock boat for Savai'i. In the neighbourhood of Puipa'a, the station wagon passed the Gold Star bus, and was almost immediately involved in a collision with the Telefoni bus which at that time was in the process of overtaking the Gold Star bus. Although daylight was approaching, the headlights of all vehicles were on; those of the Gold Star bus and the station wagon were dimmed as these two vehicles approached each other.

The impact was very violent and substantial damage was done to both the vehicles involved in the collision, particularly to the station wagon.

The main force of the impact affected the left front portion of the Telefoni bus, and the front of the station wagon from the left-hand door almost as far as the right front wheel. All four occupants of the station wagon suffered injuries which the surgeon, Mr Haycock, describes as serious. Mr Webb was an in-patient at the hospital for five weeks, Professor Davidson for a month, Mr McLean and Alosio for shorter periods.

Although as I have said the evidence on some points is conflicting, I find that the Gold Star bus, driven by one Palu, was at material times travelling at a reasonable speed and that prior to the overtaking of the Gold Star bus, the Telefoni bus was travelling also at a reasonable speed at a safe distance behind the Gold Star bus. The station wagon was approaching at a speed which was faster than that of the buses, but I am unable to say from the evidence produced before me that the speed of the station wagon was excessive. When the bus driver Palu first saw the station wagon approaching, the latter vehicle was travelling in the middle of the road, which is narrow at that point, varying approximately from seventeen feet to nineteen feet in width. Palu applied his brakes as a precautionary measure, and moved over as far as possible to his right side of the road. He also dipped his head-lights. The application of his brakes would cause a large red disc with the word Stop printed across it to appear at the back of his vehicle. The driver of the station wagon also dipped his head-lights and veered across somewhat sharply to his correct side. Defendant states that when he noticed the Gold Star bus slow down and move well over to the right, he thought it would be for the purpose of picking up one Vacluga, whose gateway is on the seaward side of the road at that point, and who frequently came to Apia by bus at approximately that time. This explanation is feasible. Defendant thereupon moved across to his left for the purpose of overtaking the Gold Star bus, and then for the first time saw the approaching station wagon. The combined speed of the two vehicles was too great to permit of their being brought to a standstill before a collision occurred, and, as has already been stated, the station wagon and the Telefoni bus met almost head-on in a very violent impact.

The question for determination is as to whether the act of defendant in drawing out from behind the slowing Gold Star bus and endeavouring to pass it, constitutes driving which, having regard to all the circumstances of the case, was dangerous to the public. I think that the passing by one big bus of another on a narrow road, as was the case here, constitutes dangerous driving within the section, unless the driver of the overtaking vehicle has taken all proper precautions to ascertain that there is no approaching traffic, or other obstacles on the road, and has good grounds for believing that the road is clear. It is difficult to understand why defendant was unaware of the approach of the station wagon, except on the hypothesis that he was not keeping a proper look-out. Two of the passengers in his bus had seen the lights of the station wagon at a sufficient distance to have convinced defendant, had he also seen them, that there was approaching traffic, and that it would be dangerous to attempt to pass at that point. One of these passengers, Tulafono, was sitting at the right of the front seat and saw the station wagon at a distance of about thirty yards. He saw it to the inland side of the Gold Star bus. The other, Siva, states that he noticed the lights of the approaching vehicle to the seaward side of the Gold Star bus, at a time when the Telefoni bus was still behind the other bus. Siva's view would probably not have been as clear as that of the driver, as he sat exactly behind the driver, but three seats back. Another passenger, Sagaga, who was sitting midway between the right side and the left side of the Telefoni bus, states that he did not see the approaching vehicle until they drew out to the left for the purpose of passing the Gold Star bus, when it was too late to avoid the collision. Sagaga's view forward would not be as clear as that of the driver, and in any event he was not under an obligation, as the driver was, to keep a proper look-out.

It is perfectly true that the Gold Star bus would present a substantial obstacle in the way of the vision of persons travelling in a vehicle behind it, and that vision with regard to an approaching vehicle might be still further impaired if the approaching vehicle were travelling in the middle of

the road and not on its correct side. But the plans produced and an inspection of the scene of the collision indicate very clearly that the road curves round appreciably to the right, a very short distance to the east of the spot where the collision occurred. Consequently, the view of the driver of the second bus would not have been so impeded by the bus in front that he would not have been able to see the lights of the approaching vehicle coming round the curve. Moreover, if the driver's view of the road ahead is partly shut out by the vehicle immediately before him, his obligation to take care in the matter of drawing over to his wrong side is thereby made greater.

Under Regulation 71 of the Road Traffic Regulations 1961, a driver is required to have a clear view of the road and the traffic thereon for a distance of at least three hundred feet, before he is entitled to overtake or try to pass another vehicle proceeding in the same direction. It is common ground that defendant had no such clear view when he moved out to the left for the purpose of passing the Gold Star bus. Defendant's own estimate of the limit of his clear view was sixty feet, but I am unable to accept the evidence that his unobstructed vision extended as far as that. If it had, there was little if any likelihood of a collision. Counsel for defendant argues that strict compliance with this regulation would make driving in Western Samoa a virtual impossibility. I agree that the burden placed upon motorists by the regulation is a very onerous one in Western Samoa where there are few stretches of broad, straight, open highway. But I find as a fact that the defendant attempted to overtake when the road was not clear, and that if he had been keeping a proper look-out, he would have known that the road was not clear. I do not accept the defendant's evidence that he applied his brakes, and had thus reduced speed to eighteen to twenty miles an hour before the collision occurred. It would have been prudent also if defendant had sounded the horn, which he did not, when he made up his mind to pass the Gold Star bus, but it is impossible to say that his doing so would necessarily have alerted the driver of the station wagon in time to avoid the collision.

I accordingly conclude that the action of the defendant in attempting to pass the Gold Star bus almost on a bend in the road, when the roadway ahead was not clear, constituted in the circumstances of the case driving which was dangerous to the public. Consequently, he will be convicted on the first charge.

For reasons I have already given, his conviction on the first must be followed by a dismissal of the second charge. Moreover, there appears to be some doubt as to whether non-compliance with the provisions of Regulation 71 of the Road Traffic Regulations 1961 is constituted an offence either by those Regulations or by the Ordinance itself. This point, however, was not argued before me and it is not necessary for me to decide it.

It is perhaps proper to refer to the fact that a certain amount of evidence and some argument were directed towards showing that responsibility for the collision was not that of the defendant alone, and that there had been at least contributory negligence on the part of Alosio, the driver of the Government station wagon. It is, however, no part of my function in these present proceedings to assess degrees of responsibility, if such exist, for that collision. That question might be important in other proceedings, but not in these. I have merely to determine whether or not the evidence satisfies me that defendant, at the time and place specified in the information, drove his vehicle in a manner which was dangerous to the public. I have given my reasons for holding that the evidence impels me to enter a conviction against the defendant under section 39 of the Road Traffic Ordinance, 1960.