

UGANDA / JUDGMENT

Sirichand v Queen (Criminal Appeal No. 193 of 1955) [1955] EACA 271 (1 January 1955)

[1955] EACA 271

COURT

East African Court of Appeal

BEFORE

O'Connor CJ, Rudd J

CASE / FILE NUMBER

Criminal Appeal No. 193 of 1955

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APPELLATE CRIMINAL

Before Sir KENNETH O'CONNOR, C. J. and RUDD, J.

YOGRAJ SIRICHAND, Appellant

THE QUEEN, Respondent

Criminal Appeal No. 193 of 1955

Criminal law—Traffic Ordinance, 1953—Section 47 (1) creates two offences— Need to specify offence charged—Risk of duplicity—Whether defective charge curable—Section 49 (b)—Duty upon road users to obey signs lawfully erected by highway authority—"Major" and "minor" roads—Whether "stop" sign denotes minor road-Effect of "stop" sign at road intersection-Road users entitled to assume traffic regulations will be observed.

The facts appear fully from the judgment.

Held (30-8-55).—(1) Two offences are created by section 47 of the Traffic Ordinance, 1953; (1) driving a motor vehicle on a road without due care and attention; and (2) driving a motor vehicle on a road without reasonable consideration for other persons using the road. A charge should clearly indicate which of the two offences is intended and should be worded in accord with the section and not merely with the marginal note. Were both offences constituted by the section charged in the same count, the charge would be bad for duplicity.

- (2) The particulars of the charge were open to objection in that it is not necessarily careless driving to enter a major road from a minor road and cause a collision, for the fact of collision is not *per se* conclusive of careless driving. The sole question for the court on a charge of driving without care that degree of care and attention that a reasonable and prudent driver in the circumstances would exercise?
- (3) The appellant had been given full notice of the nature of the charge he had to meet and no failure of justice had been occasioned by the form in which the charge was drawn. Applying section 381 of the Criminal Procedure Code, the Appellate Court would not reverse the conviction on this ground.
- (4) While the Traffic Ordinance or Rules, 1953, do not define "major" and "minor" roads, section 67 places upon the highway authority the duty of causing traffic signs to be placed on or near a road and such signs are deemed the contrary is proved. Section 49 (b) imposes a duty upon road-users to obey such signs. If a "stop" sign exists on a road at an intersection and no such sign exists upon the intersecting road then the latter, as regards that intersection, is the major road.
- (5) A road-user is entitled to assume that traffic regulations will be observed by other road-users and he may assume that traffic emerging from a minor road will obey a "stop" sign. The magistrate rightly, took this into account; but he did not decide upon this consideration alone but also took into account the speed at which the appellant's car was emerging from a road partially screened by buildings and formed a favourable impression of the other driver and an unfavourable view of the appellant.
- (6) The appellant had been about to drive across a major road at an hour of the day when considerable traffic was to be expected and about to cross the path of that traffic. It was for him to take care that he could execute the manoeuvre in safety. If the appellant had been advancing slowly and keeping a proper look-out he must have seen the other vehicle approaching in time to stop and let it pass and so was properly convicted.

Cases cited: *Bailey v. Geddes*, (1938) 1 K. B. D. 156; *Joseph Eva Ltd. v. Reeves*, (1938) 2 K. B. 393 C. A.; *Walles v. The Queen*, (1955) 29 K. L. R. 268; *Simpson v. Peat* (1952) 1 A. E. R. 447 C. A.

Appeal dismissed.

D. V. Kapila for appellant.

Havers, Crown Counsel, for the Crown.

JUDGMENT.—The appellant was convicted by a Nairobi resident magistrate on the 30th May, 1955, on a charge of driving carelessly contrary to section 47 (1) of the Traffic Ordinance, 1953. In brief, the case for the prosecution was that, on the 16th October, at about 6.30 p.m., one Bachan Singh was driving a Studebaker pick-up along Canal Road from Racecourse Road towards Mulji Jetha Mansions. When he got to the Khan Road junction a car emerged from Khan Road across his front going at a speed faster than he was travelling. A collision was caused. That car was

driven by the appellant. There was a stop sign on Khan Road.

The defence was that the appellant had not been careless; he had stopped at the junction of Khan Road with Canal Road: but not seeing any traffic on Canal Road, he continued: he could not see very far to the right in Canal Road, as double-storied buildings and parked vehicles obstructed his view: his car was stationary when hit. Counsel for the defence also attempted to argue that, notwithstanding that there was a stop sign in Khan Road and none in Canal Road, Khan Road was the major road because it was larger and carried more traffic. Counsel persuaded the first class magistrate, Brigadier Felix-Williams, to visit the scene of the accident. The magistrate recorded his opinion that, were it not for stop signs in Khan Road and not in Canal Road, he would have regarded Khan Road as the major road. The case was tried by another magistrate.

In this Court, Mr. D. V. Kapila, for the appellant, argued that there was no mention of major and minor roads in the Traffic Ordinance and that it did not follow that because a stop sign was erected in Khan Road, it was, therefore, a minor road. He argued that it was competent for a magistrate to visit the scene and to decide for himself, notwithstanding the existence of any traffic sign, whether the road was or was not a minor road.

We are unable to accept this argument. Section 67 of the Traffic Ordinance, 1953, places upon a highway authority the duty of causing traffic signs to be placed on or near a road and, if a stop sign is placed at a road junction, it is deemed to have been lawfully erected till the contrary is proved (section 67 (4)), and there is a duty upon users of the road to obey that sign (section 49 \$(b)\$). "Major" and "minor" roads do not seem to be defined in the Traffic Ordinance 1953, or in the Traffic Rules, 1953; but the meaning in ordinary speech is well understood. We are of opinion that if a stop sign exists on a road at an intersection and no stop sign exists upon the intersecting road, the intersecting road is the major road as regards that intersection.

Mr. Kapila attacked the judgment on the ground that the learned magistrate had based his finding solely upon the consideration that the appellant was on a minor road and that Bachan Singh had the right of way. We do not so read the magistrate's judgment. The magistrate certainly took this factor into consideration and he was right in so doing. Road users are entitled to assume that traffic regulations will be observed by other road users (*Bailey v. Geddes*, (1938) 1 K. B. D. 156; *Joseph Eva Ltd. v. Reeves*, (1938) 2 K. B. 393; *Walles v. The Queen*, (1955) 29 K. L. R. 268. But the magistrate did not decide on this consideration alone. He also took into consideration the speed at which the appellant's car was emerging into a road partially screened by buildings, and he formed a favourable impression of Bachan Singh as a witness and an unfavourable impression of the accused. We think that a passage in the case *Walles v. The Queen* (*supra*) recently decided by this Court, is in point: -

"He" (the appellant in that case) "was about to cross a major road at an hour of the day when considerable traffic along it was to be expected. He was about to cross the path of that traffic. "It was for him to take care

that he could execute the manoeuvre in safety" (Simpson v. Peat, (1952) 1 A. E. R. 447, 449 C. A.) "If he had been advancing really slowly and keeping a proper look out, he must have seen the vehicle approaching in time to stop and let it pass."

We see no reason for differing from the conclusion of the learned magistrate on the evidence.

Mr. Kapila attacked the particulars of the charge as being vague and defective. The charge was as follows: -

"Charge: Driving carelessly, contrary to section 47 (1) of the Traffic Ordinance, 1953.

Particulars of Offence: Yograj Sirichand on the 16th day of October, 1954, at 6.30 p.m. at Nairobi in the Extra-Provincial District of Nairobi, drove a motor van No. C4051 in the junction of Canal Road and Khan Road carelessly by entering a major road (Canal Road being the major road) from a minor road (Khan Road being the minor road) and causing a collision between his vehicle and a motor pick-up No. H142 which was travelling along the said major road."

The particulars of this charge were open to objection in that it is not necessarily careless driving to enter a major road from a minor road and cause a collision. The offence of careless driving can be committed although no collision takes place (Walles v. The Queen, Simpson v. Peat (supra)). Per contra the fact that a collision takes place is not per se conclusive of careless driving. The sole question for the court on a charge of driving without due care and attention contrary to section 47 is "Was the defendant exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances?"

Two offences are created by section 47 of the Traffic Ordinance, 1953, i.e. (1) driving a motor vehicle on a road without due care and attention and (2). driving a motor vehicle on a road without reasonable consideration for other persons using the road. It is desirable that a charge under section 47 should clearly indicate which of the two offences is charged and should use the wording of the section and not merely the wording of the marginal note "careless driving". Care must be taken that both offences constituted by section 47 are not charged in the same count or the charge will be bad for duplicity. The charge in this case would have been sufficient and not open to objection if the Statement of Offence had been "Driving a motor vehicle on a road without due care and attention contrary to section 47 of the Road Traffic Ordinance, 1953"; and if the particulars had been in some such form as: "Yograj Singh, on the 16th day of October, 1954, at or about 6.30 p.m. at Nairobi in the Extra-Provincial District of Nairobi, drove a motor vehicle (motor van No. C4051) out Road on to Canal Road without exercising due care and attention".

We are satisfied, however, that the appellant was given full notice of the nature of the charge that he had to meet and that no failure of justice has in fact been occasioned by the form in which the charge was drawn. Applying section 381 of the Criminal Procedure Code, we do not propose to reverse the conviction on this ground.

The appeal against the conviction is dismissed. There is no appeal against sentence.

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