

UGANDA / JUDGMENT

Walles v Queen (Criminal Appeal No. 114 of 1955) [1955] EACA 268 (1 January 1955)

[1955] EACA 268

COURT

East African Court of Appeal

BEFORE

O'Connor CJ, Windham J

CASE / FILE NUMBER

Criminal Appeal No. 114 of 1955

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APPELLATE CRIMINAL

Before SIR KENNETH O'CONNOR, C. J., and WINDHAM, J.

WLADISLAS EUGEN JOSEPH WALLES, Appellant

¶ .

THE QUEEN, Respondent

Criminal Appeal No. 114 of 1955

Criminal law—Traffic Ordinance, 1953—Section 47 (1)—Charge of careless driving -Whether contributory negligence of other driver relevant-Sole question for trial court carelessness of accused—Duty of accused to keep proper lookout before crossing major road—Duty on other driver to observe speed limit -How far accused may assume other driver's observance of speed limit-Distinction between traffic observed and not observed.

The facts fully appear from the judgment.

Held \$(1-7-55)\$.—(1) The sole question for a court trying a charge of careless driving under section 47 (1) of the Traffic Ordinance, 1953, is whether or not the person charged before it was exercising due care and attention, that is to say the degree of care and Whether the driver of another vehicle could, in the agony of the moment, have taken
better avoiding action is immaterial. The offence of careless driving can be committed although no accident takes place. Equally, because an accident does occur it does not follow that a particular person has driven without due care and attention.

- (2) A road user is entitled to assume that traffic regulations will be observed by other road users, and that principle applies in considering whether a person accused of careless driving has or has not been careless. He may assume that traffic travelling on a major road subject to a speed limit of 30 miles per hour will obey the regulation. But there can be no room for any assumption if the traffic in time. Once he has done so he has notice of any excessive speed and it is his duty to take reasonable care to avoid a collision, notwithstanding that the other driver is acting in breach of the speed regulation.
- (3) The accused driver emerging from a minor road had seen the other vehicle from the intersection of his road with the major road "quite far away" and travelling at a "terrific speed", yet he had elected to cross its course into and over the major road. The issue of the culpability of the other driver was irrelevant in the present proceedings, and the finding of the lower Court that the accused drove carelessly was the only one at which it could reasonably have arrived.

Appeal dismissed.

Cases cited: *Simpson v. Peat*, (1952) 1 AE. R. 447; *Bailey v. Geddes*, (1938) 1 K. B. D. 156; *Joseph Eva, Ltd. v. Reeves*, (1938) 2 K. B. 393 C. A.

Sirley for appellant.

Brooks, Crown Counsel, for the Crown.

JUDGMENT.—The appellant was convicted on 16th April, 1958, of careless driving contrary to section 47 (1) of the Traffic Ordinance, 1953. In brief, on 30th December, 1954, at about noon, a Bedford one-ton army lorry was being driven by Corporal Higginbotham along Sclaters Road towards Nairobi when it came into collision with a Peugeot pick-up which was being driven by the accused from Ring Road into the intersection of Ring Road and Sclaters Road. Corporal Higginbotham and Lance-Corporal Brenchley, who was sitting beside him, put the speed of the lorry at about 30 m.p.h. and estimated that the appellant's car was moving at 30-35 m.p.h. The appellant said that he approached the crossing at not

more than 20 m.p.h. There was a "Slow" sign on Ring Road and it is admitted that Sclaters Road is the major road. The appellant said that he stopped at the "Slow" sign and looked to his right. There was a row of trees and a hedge which partially obscured his vision, but he could see between trees and hedge. He thought that the road was clear. He then started his car and when he reached the line of the kerb he saw an army lorry approaching from him right, as he said, at a terrific speed, but he formed the impression that this lorry would pass behind him. The appellant crossed the intersection at 10-15 m.p.h.: the lorry appeared to swerve to the right and collided with the right rear-corner of the appellant's car at about the centre of Sclaters Road when the bonnet of the appellant's car was well over the crown of the road. It was proved that, at the place where the collision occurred, traffic was subject to a speed limit of 30 m.p.h.

The learned resident magistrate found that having regard to the trees and the hedge which, admittedly, obstructed the appellant's view where he did stop. he was careless in commencing to cross the junction without stopping for a second look. The magistrate, therefore, convicted the appellant of careless driving.

Mr. Sirley, for the appellant, devoted a considerable part of his argument to persuading us, by reference to the evidence and recourse to mathematics, that the lorry must have been travelling at a much faster speed than 30 m.p.h. and the car at a much slower speed than the 30-35 m.p.h. estimated by the prosecution witnesses. We think that Mr. Sirley was right and that, clearly the lorry must, on the evidence, have been travelling at a speed considerably in excess of 30 m.p.h.

Mr. Sirley then argued that the appellant should not have been convicted; because the accident was caused by the fact that the lorry did not keep straight on but swerved to the right when its driver saw the appellant's car emerge from the turning on his left and attempt to cross in front of him.

We cannot accede to this argument. The learned resident magistrate was not presiding over a civil court charged with the duty of ascertaining which vehicle caused the accident or whether there was contributory negligence. The sole question for him was: "Was the defendant exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances?" (Simpson v. Peat, (1952) 1 A. E. R. 447, 449.) "The offence" (of careless driving) "can be committed although no accident takes place. Equally, because an accident does occur, it does not follow that a particular person has driven ... without due care an attention". (**ibid.** at page 449.) To swerve to the right when a vehicle suddenly emerges from the left is a natural reaction, but whether the swerve caused the accident or not and whether the driver of the lorry in the agony of the moment could have taken better avoiding action or not was immaterial in the proceedings before the learned magistrate and is immaterial in this Court. The lorry driver was not charged in these proceedings, and the sole question for the learned magistrate was to ascertain whether or not the defendant charged before him was exercising due care and attention.

On the appellant's own showing, he approached a major road and stopped to look in a place where a hedge and trees partially obscured his view. He saw nothing on Sclaters Road and advanced, and he reached the line of the kerb, he saw an army lorry approaching "at terrific speed" and he formed the impression that the lorry would pass behind him; so he did not attempt to stop, but pressed on and crossed the major road; his bonnet was across the centre line when the lorry seemed to swerve to the right and struck the rear of his car.

Accepting the defendant's own story, we think the learned magistrate was right in convicting him of driving without due care and attention. He 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*) (*supra*). If he had been advancing really slowly and keeping a proper look-out, he must have seen the lorry approaching in time to stop and let it pass. He says that he did see it "when it was quite far away". If so, it was grossly careless to attempt to cut across its bows.

The only matter which gave us any difficulty was the question of whether or not the appellant was entitled to assume that traffic on Sclaters Road would not exceed a speed of 30 m.p.h. There is a line of cases (civil actions for damages for negligence) to the effect that, road-users are entitled to assume that traffic regulations will be observed by other road-users. (See e.g. *Bailey v. Geddes*, (1938) 1 K. B. D. 156; *Joseph Eva Ltd. v. Reeves*, (1938) 2 K. B. 393 C. A.) In our view, that principle may also apply in considering whether a person accused of careless driving has or has not been careless. It may be that this principle would have been applicable to the present case, if the appellant had not seen the approaching lorry "quite far away" and still pursued his course. The distinction is drawn by Sir Wilfrid. Greene, M. R., in *Joseph Eva Ltd. v. Reeves* (*supra*) at page 401. In that case, one Reeves, the driver of a car, while crossing traffic lights which were showing green, collided with a van which (unseen by Reeves) had emerged from the cross-road on the left against the lights. The Master of the Rolls said:-

"In my opinion Reeves was entitled to assume that traffic approaching the crossing from the west would act in obedience to the statutory regulations and he was not bound to assume or provide for the case of an eastbound vehicle entering the crossing in disobedience to the red light. This does not, of course, mean that, if he had noticed the appellant's van in time, it was not his duty to take all reasonably possible steps to avoid coming into collision with it notwithstanding that the appellants' van was acting in breach of the regulations."

That was the converse of the present case. But the application of it to our case is that even if the army lorry was in breach of traffic regulations in exceeding 30 m.p.h. on Sclaters Road, that did not absolve the appellant, who, on his own showing saw the lorry, "quite far away", from his duty to take care in crossing the major road. On the appellant's own showing, the lorry was approaching at "terrific speed". Yet, he advanced across its course. As has already been said, we are not, in these proceedings, and the magistrate was not, in the proceedings before him concerned with the question of whether or not the driver of the lorry was also culpable. He is not before us and was not before the magistrate. The sole question before us is whether the learned magistrate could, upon the evidence before him, reasonably and properly come to the conclusion that the appellant had been guilty of the offence of careless driving with which he was charged. We think that he could: and, indeed, that the magistrate's conclusion was the only one at which he could reasonably have arrived.

The appeal must be dismissed.

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