

IN THE SUPREME COURT OF SEYCHELLES

Ronzade Charles Isaac

v/s

The Republic

Criminal Appeal Number 13 of 2009

Mr Freminot for the Appellant

Miss Madeleine for the Respondent

Appellant present.

JUDGMENT.

Dodin. J

The Appellant, Ronzade Charles Isaac, was convicted on the 4th December, 2009, for the offence of negligent driving contrary to Section 24(1)(b) and Section 24(2) of the Road Transport Act, CAP 206 of the laws of Seychelles. The Accused was sentence to pay a fine of Sr. 4000/- by the end of April, 2010 in default of which he shall be liable to imprisonment for 1 moth. The Appellant being dissatisfied with the decision of the Learned Senior Magistrate now appeals against conviction and sentence.

The grounds of appeal are as follows:

1. That the Learned Senior Magistrate erred in accepting in totality the evidence of Prosecution Witnesses 3 and 4 when Prosecution witness 3 had alleged that it was the car driven by the Accused that caused the accident whilst Prosecution Witness 4 alleged that it was the pick-up that hit the car;

2. That both drivers were given Notices of intended prosecution but only the Appellant was charged;
3. That the point of impact where the debris lie was above a meter from the left hand lane of the road going towards Victoria which means that it was the pick-up that left its lane whilst going towards Victoria and hit the car on the Belvedere Road;
4. That the Appellant's car was hit on the rear left and landed with its front in a telephone booth on the right side of the road going towards Belvedere which does not make sense if the car had swerved in front of the pick-up; and
5. That if the pick-up was driving towards Victoria, the driver of the pick-up had time to see the car turning towards Belvedere from Victoria and brake in time to avoid the accident and not hit the car on the Belvedere Road.

Learned Counsel for the Appellant submitted at the appeal that the appeal will only be against conviction and no submission was made in the appeal against sentence. Indeed in the Memorandum of Appeal no prayer is made regarding the sentence imposed by the Learned Senior Magistrate. The court shall therefore proceed to consider the appeal against conviction only.

The court shall firstly dispose of 2nd and 5th grounds of appeal which are essentially based on law before considering the 1st, 3rd and 4th grounds which are founded on the facts of the case.

The 2nd ground of appeal does not arise from the trial in the Magistrate's Court or from the action of the investigating officers. Notice of intended prosecution is issued under Section 24(7)(a)(iii) of the Road Transport Act which states:

"...where a person is prosecuted for an offence under section 20 or under subsection (1)(b), (c) or (m) of this section he shall not be convicted unless...

(iii) within ...14 days [from the time the offence was committed] a notice of intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was served on him...”

The Appellant was duly served the said notice on the day of the accident as was the driver of the pick-up. The Appellant now raises as a ground of appeal the fact that the other driver was not prosecuted for the offence despite having been also served with the same notice at the time.

The Road transport Act does not require that each and every person who is served with a notice of intended prosecution following an accident to be prosecuted. Furthermore this provision gives a defence to an Accused person only if the notice of intended prosecution had not been served upon that Accused person within the stated period of 14 days. Moreover, the decision to prosecute is not necessarily made at the scene or time of the accident or even within a period of 14 days from the date of the accident. It is therefore reasonably prudent and certainly not illegal for an officer investigating an accident to ensure that such notices are issued to the parties involved.

Secondly, the fact that the other party to the accident has not been prosecuted has no effect on the establishing the guilt of an Accused person. In each case, the prosecution has to discharge the burden of proof and establish the liability of the Accused person beyond reasonable doubt. This ground of appeal therefore has no merit and is accordingly rejected.

In the 5th ground of appeal the Appellant places the obligation to avoid the accident on the driver of the pick-up which was travelling towards Victoria in the left lane. Whilst it is prudent for every driver to do his utmost to avoid an accident, the Road transport regulations are clear on the priorities of users of the road.

The case of The Republic v. Barbier 1991 No. 3 (Revision) makes the following pronouncement which is particularly enlightening in the circumstances of this case:

“It is a basic traffic rule that a motorist faced with a stationary vehicle or other obstruction on his lane of traffic should make sure before encroaching on the opposite lane to overtake, that it is absolutely safe to do so. The motorist on the opposite lane, in the circumstances has the right of way. Failure to take such precautions would render the motorist liable for the offence of negligent driving as known in the provision of the Road Transport Act.”

I take notice that in this case the circumstance was one of overtaking. Nevertheless the same principle would apply to a motorist intending to cross the opposite lane to reach a side road. There is uncontested evidence that the Appellant was travelling from Victoria towards the south and then attempted to turn into the Belvedere Road. The duty was on the Appellant to ensure that the lane on his right which he intended to cross to reach the Belvedere Road was not occupied by oncoming traffic and that it was absolutely safe to cross. It was not the obligation of the pick-up driver to look out for and avoid inconsiderate drivers who might negligently or recklessly cross the opposite lane without due regard and respect to other road users. This ground of appeal is therefore devoid of any merit and is rejected accordingly.

The findings on the 1st ground of appeal will effectively determine the outcome of grounds of appeal 3 and 4 since all three grounds deal with the point of impact. The discrepancy which the Learned Counsel for the Appellant has raised in ground 1 is on the factual determination of which of the two vehicles impacted onto the other whilst grounds 3 and 4 addresses the place of the impact.

On the 1st ground of appeal, Learned Counsel for the Appellant submitted that the Learned Senior Magistrate erred in accepting the totality of the evidence of both Prosecution Witnesses 3 and 4 as there was discrepancy in the evidence of the

two witnesses in that Prosecution Witness 3 gave evidence that it was the car driven by the Appellant that hit the pick-up whilst Prosecution Witness 4 gave evidence to the effect that it was the pick-up driven by the police officer that hit the car being driven by the Accused.

On the 3rd ground of appeal Learned Counsel for the Appellant submitted that since the debris lie about a meter from the lane towards Victoria, the pick-up must have hit the car on the Belvedere Road.

On the 4th ground of appeal the Learned State Counsel submitted that since the Appellant's car sustained damage on its rear left side and landed with its front propelled into a telephone booth on the road towards Belvedere, the Learned Senior Magistrate could not have reasonably concluded that the car had swerved in front of the pick-up.

Learned Counsel for the Appellant further submitted that the position of the car and the debris on the sketch plan indicate strongly that the car driven by the Accused was hit from behind on the Belvedere Road propelling it forward into the telephone booth and is not consistent with the said car being hit sideways whilst crossing the road in front of the pick-up.

Learned State Counsel submitted in response that there was no contradiction in the respective versions of evidence given by Prosecution Witnesses 3 and 4. Learned State Counsel submitted that the Learned Senior Magistrate found the evidence of Prosecution Witnesses 3 and 4 to be consistent and credible as well as being corroborated by the sketch plan of the scene of the accident.

Learned State Counsel further submitted that the sketch plan supports the version of the prosecution witnesses that the car which was going towards the south from Victoria turned suddenly in front of the pick-up and within a distance which did not allow the driver of the pick-up to brake to avoid it and therefore it was the car that was responsible for the collision. The driver of the car failed to observe road transport regulation by giving the pick-up truck which was in its correct lane and travelling towards Victoria the right of way.

The issue of the sketch plan shall be considered first. A sketch plan of a scene of an accident does not necessarily indicate the point of impact of the vehicles involved. Such plan only indicates the position at which the vehicles have come to stop. It is also common knowledge that that debris from the impact of moving vehicles would be affected by vehicular movements and velocity at the point of impact. It is therefore not reasonable to conclude that the position of the debris must be also the exact position of impact. However the sketch plan and the position of the debris could assist the court in determining the most probable and reasonable explanation of the sequence of the accident and hence circumstantial evidence which assist the court in determining the veracity and cogency of the witnesses direct evidence, including the evidence of the Accused if the Accused chooses to give sworn evidence, which the Appellant chose to do in this case.

The use of a sketch plan was considered by the court in the case of Republic v. Hoareau [1977] SLR 13 Case No:4.

“When a police officer is investigating a motor vehicle accident he should take the usual measurements at the scene and make note of them. He should also...make a rough sketch plan of the scene showing the relative positions of the vehicles involved, if there are more than one, where possible, and the relative positions of any victims, together with point of impact where this can be done.”

The Court further stated:

“This sketch plan may be used in Court by the Police Officer when giving evidence as an aid to his memory but need not be produced unless its production would assist the Court or if it is specially called.”

After considering the evidence of the prosecution the Learned Senior Magistrate stated the following with regard to the sketch plan:

“... the court notes the position of the pick-up and the yellow car on the sketch plan marked exhibit R1 in relation to the bus stop and the Belvedere Road which gives a very clear indication that the accident occurred whilst the yellow car was still on the main road moving towards Belvedere Road

hence explaining its position in relation to the Airtel phone box. It is abundantly clear from a careful examination of the sketch plan that the yellow car could not have been parked in the alley towards Belvedere as per the version of the Accused...”.

The court finds the Learned Senior Magistrate’s interpretation and use of the sketch plan as an aid in determining the sequence of the accident to have been most satisfactory in all respects.

According to the record of the Magistrate’s Court, both Prosecution Witnesses 3 and 4 stated in evidence that the police pick-up was travelling from Plaisance towards Victoria and was driving at a reasonable speed in the left hand lane of the road until arriving opposite the Mont Fleuri Police Station where the accident occurred.

Both Witnesses also corroborated each other on the fact that the car driven by the Appellant was facing Plaisance and was coming from Victoria. The Appellant also admitted as much in evidence before the Magistrate’s Court. The difference in the accounts of the two witnesses is that Prosecution Witness 3 stated:

“...arriving opposite Mont Fleuri Police Station one yellow car S1776 was parked just opposite Mont Fleuri Police Station on the bus stop leading towards south near the police station. Suddenly the yellow car swerved in front of the pick-up towards Belvedere and hit the pick-up. The pick-up applied the brakes and stopped and the car accelerated and stopped in a call box...”

Prosecution Witness 4 stated:

“...the accident happened at around 2 pm opposite the Mont Fleuri Police Station. We were driving from Plaisance to Victoria on the left side of the road arriving opposite Mont Fleuri Police Station I saw a yellow car come from Victoria cross in front of the pick-up towards Belvedere Road. Then PC

Souffe applied the brakes and the pick-up collided with the car and then stopped and the car stopped on the right side of Belvedere Road...

Learned Counsel for the Appellant's argument is that the court must find the statement that the car "hit the pick-up" by Prosecution Witness 3 to be substantially different and contradictory to the statement of the 4th Prosecution Witness who described the accident as "the pick-up collided with the car" and thus find that by accepting in totality the evidence of the prosecution witnesses, the Learned Senior Magistrate was in error in the light of the difference in the accounts of Prosecution Witnesses 3 and 4.

The evidence of Prosecution Witnesses 3 and 4 are essentially consistent and other than the description of the impact, the two witnesses' evidence corroborated each other. The question that the Learned Senior Magistrate had to determine was not how each witness perceived the impact or which vehicle impacted the other but which vehicle was driven in a negligent in a negligent manner resulting in the collision.

The impact is only one of the many indications which could help to determine which vehicle was at fault. The other considerations were the directions the vehicles were travelling, the side of the road each was using, the right of way each should have had, the maneuverings of each vehicle and whether the movements of the vehicle was reasonable considering the movements of traffic on the road at the particular time.

The principle to be applied to determine negligent driving is therefore not just the point of impact but as the Learned Senior Magistrate rightly considered and applied in this case, which principle has been long established in several similar cases considered by the Learned Senior Magistrate. In the case of Tirant v. The Republic [1982] SLR 28 the court stated thus:

"Negligent driving in criminal law means a non-intentional failure to conform to the conduct of a reasonable driver, endowed with ordinary road sense and in full possession of his faculties.

The offence of negligent driving is committed when a driver fails to reach the objective standard of a reasonable man, and does not necessarily involve an enquiry into the responsibility of other users of the highway for causing the accident. A person may be held guilty of negligence although his driving was not the sole cause of the accident."

In considering the judgment of the Learned Senior Magistrate I find that the Learned Senior Magistrate had considered all the circumstances of this case before reaching the conclusion that the Appellant was negligent. I also find that even if the Learned Senior Magistrate had concluded that the pick-up hit the car all witnesses are consistent on the fact that the point of impact was on the main road and not on Belvedere road and that it was the Appellant's vehicle which suddenly crossed the opposite lane where the oncoming pick-up had the right of way. The maneuver of the Appellant in the circumstances fell below the standard of a reasonable driver placed in the same circumstances. The question of which vehicle impacted onto the other in the circumstances was not the determining factor in the finding of negligence in this case. There were other strong evidence to support the Learned Senior Magistrate's findings.

Secondly the consideration given by the Learned Magistrate to the sketch plan which also indicated the positions of the vehicles and the debris was correct and supported by direct evidence of the witnesses. This court therefore finds no reason to determine otherwise, hence the 1st 3rd and 4th grounds of appeal are respectively rejected.

For the reasons given above, the conviction of the Appellant is upheld and the appeal is hereby dismissed accordingly.

C. G. DODIN

JUDGE

Dated this 9th day of August, 2010.