IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CN 01/2015

Appeal from Magistrates Court decision 27/2013

[2016] SCSC

LYDIA HOAREAU
Appellant

versus

THE REPUBLIC
Respondent

Heard: 28th October 2015 and 9th December 2015

Counsel: Mr. Nichol Gabriel Attorney at Law for Appellant

Ms. Michelle St. Ange, Assistant State Counsel for the Republic

Delivered: 19th February 2016

JUDGMENT

Burhan J

[1] This is an appeal against conviction and sentence.

[2] The Appellant was charged in the Magistrates' Court as follows:-

Count 1

Negligent Driving Contrary to Section 24 (1) (b) and (2) of the Road Transport Act Cap 206.

The particulars of the offence are that Lydia Hoareau, residing at Pascal Village, Mahe, on the 28th day of February 2012, at Pascal Village, Mahe, having regards to all the circumstances of the case drove motor vehicle namely car registration No.S3174 on the public road negligently.

[3] The learned Magistrate by judgment dated 14th November 2014, found the Appellant guilty of the said offence and proceeded to convict and sentence the Appellant to a fine of Seychelles SR. 4500/- and in addition imposed a term of 5 months imprisonment for default in payment of fine.

[4] Learned counsel for the Appellant has appealed from the said conviction and sentence on the following grounds-

"1. The learned Senior Magistrate erred in law and in fact by failing to give any weight to the evidence of the Appellant.

2. The learned Senior Magistrate erred in law and in fact by convicting the Appellant on insufficient and uncorroborated evidence.

3. The learned Senior Magistrate erred in law and in fact by failing to consider the inconsistencies in the evidence of the Respondent and his main witness".

[5] The background facts of the case as borne out by the evidence of the main prosecution witness Jude Bijoux is that on the 28th of February 2012 around 8.30 a.m, while he was driving his vehicle a Hyundai I 20 bearing registration number S 10350 along a secondary road on his way to Pascal Village, a collision occurred between the vehicle driven by him and that driven by the Appellant. At the time of the collision, there was a lady by the name of Marianne in the front seat who he states since then had left the country while his 2 month year old baby daughter was in the rear seat.

[6] According to the prosecution version as witness was passing the residence of Mrs Hoareau the Appellant, he had heard hooting and though he had checked both the front and the rear he had not seen any vehicle. As witness had passed the house of the Appellant, he had seen a pick up come out of the driveway of her house at a speed and his car had hit into it. Her vehicle and gone back a bit and after parking on the side, he had got down and checked the baby.

[7] The Appellant had admitted it was her fault and he could claim insurance. Witness stated that due to this admission on her part, he had not gone to the police station but had gone to the insurance company H Savy and Company and informed them formally. Witness further stated his car was damaged as a result of the accident and described the damage to court.

[8] However when witness had got a quotation for the repair and gone to the police, his insurer had informed him that the accused was not accepting fault. According to the evidence of witness Mr. Bijoux, the honking was for a period of about 2 seconds and then stopped, the visibility was good and the weather was good that day. He further stated, the place where the accident occurred was a bit steep and at the time of the accident there was a hedge which had now been cut, which obstructed the view of the road from the driveway of the house of the accused. His mother in law Maize Cedras stated that she had gone to the scene soon after the accident had occurred to take over the child and she too had heard the Appellant, admitting it was her fault.

[9] The Appellant in defence made an unsworn statement from the dock and admitted that she was driving the vehicle on the said date and that her vehicle collided with vehicle bearing registration number S 10350. She further stated she had checked both sides and thereafter the crash had occurred.

[10] The evidence of Mr. Jude Bijoux indicates that he was driving on the secondary road when the Appellant had just hooted twice and come at a speed onto the said road from her driveway. It is apparent from his evidence that the Appellant had not taken the precaution of stopping at the entrance of her driveway and observing the passing vehicles which was her duty to do so as she was entering a secondary roadway used by other vehicles. As she had suddenly driven onto the roadway, his vehicle had collided with that of the Appellant. It is further in evidence that a hedge obstructed the view of the Appellant and she had come at a speed onto the roadway which was at a higher incline

than her drive way.

[11] The evidence of this witness was under oath and though subject to the rigours of cross examination, no material contradictions were forthcoming. As opposed to this evidence, the unsworn evidence of the Appellant from the dock by the Appellant which was subject to the infirmities of not being under oath and not tested by cross examination merely stating that she checked both sides and then the accident happened, holds much less weight and value than the testimony of Mr. Jude Bijoux which had no such infirmities and had no material inconsistencies or contradictions ***R v Campbell 69 Cr. App. R. 221.*** Therefore learned Senior Magistrate cannot be faulted for giving more value to the weight of the prosecution evidence and for proceeding to accept the evidence of the prosecution in this case.

[12] It would be pertinent at this stage to refer to the case of ***R v Hansen Perherlmer SC. Criminal Side 48 of 2010*** in the Seychelles which made reference to the test to be applied when determining whether a person acted negligently. The test as set down in the case of ***Simpson v Peat (1952) 2 QB*** 24 reads as follows:

"The test which is an objective test, may be stated as follows; Was the accused exercising that degree of care that a reasonable and prudent driver would exercise in the circumstances….".

[13] Having thus accepted the evidence of the prosecution, the act of the Appellant in tooting her horn and driving from her driveway onto the secondary road without stopping and checking the passing by vehicles, clearly indicates that the Appellant was not exercising the degree of care that a reasonable and prudent driver would exercise in the circumstances. The fact that she had to increase speed as she was coming uphill and her view was obstructed by a hedge further aggravates the negligence on her part. It cannot be said therefore that the learned Magistrate convicted on insufficient evidence.

[14] It is also apparent that she had admitted her fault in the presence of several eye witnesses and the corroborated evidence of these witnesses had not even been denied by the Appellant in her unsworn statement.

[15] For the aforementioned reasons, the grounds of appeal mentioned by learned counsel for

the Appellant bear no merit. I hold the conviction of the Appellant of the offence charged is well founded and I see no reason to disturb the findings of the learned Magistrate in regard to conviction and proceed to uphold the conviction.

[16] In regard to sentence, the learned Magistrate has imposed a fine of SR 4500/=. According to the prevailing law, the learned Magistrate is empowered to impose a fine of SR 10.000 and a term of imprisonment of up to 2 years. Therefore it cannot be said that the noncustodial sentence of a fine of SR 4500/= is harsh and excessive. The sentence is affirmed.

[17] The appeal against conviction and sentence stand dismissed.

Signed, dated and delivered at Ile du Port on 19 February 2016.

M Burhan
Judge of the Supreme Court