

IN THE SUPREME COURT OF SEYCHELLES

Criminal Appeal Side: CN 06/2017

Appeal from Magistrates Court decision 38/2016

[2018] SCSC

MICHEL BAILLON

Appellant

versus

THE REPUBLIC

Respondent

Heard: 4 October 2017 and 3 November 2017
Counsel: Mr. Nichol Gabriel Attorney at Law for the Appellant
Mrs. Carmen Cesar, State Counsel for the Respondent
Delivered: 26 January 2018

JUDGMENT

Burhan J

[1] The Appellant in this case was charged before the Magistrates' Court as follows:

Count 1

Negligent Driving contrary to Section 24 (1) (b) and Punishable under Section 24 (2) of the Road Transport Act Cap 206

Particulars of offence are that, Michel Baillon of Carana Mahe on the 26th day of June 2015, at MCB car park, Victoria, Mahe, drove motor vehicle registration number S20519 negligently having regards to all the circumstances of the case.

[2] After trial by judgment dated 7th April 2017, the Learned Magistrate found the Appellant guilty of the charge and proceeded to conviction.

[3] Thereafter on the 18th of April 2017, the learned Magistrate, sentenced the Appellant to a fine of SR 8000 (eight thousand) and suspended his driving licence for a period of 6 months.

[4] The Appellant seeks to appeal from the said conviction and sentence on the following grounds:

a) The Learned Magistrate erred in determining that the parking space where the accident happened was a public road.

b) The Learned Magistrate erred in convicting the Appellant in the absence of evidence pointing to the guilt of the Appellant.

c) In sentencing the Appellant, the suspension of the driving license of the Appellant was manifestly harsh and excessive.

d) The Learned Magistrate erred in suspending the driving licence of the Appellant without considering the special reasons as to why the driving licence of the Appellant should not be suspended.

e) The fine of SR 8000/= is manifestly harsh and excessive.

[5] The background facts of the case as borne out by the evidence of witness Cindy Cafrine, a security officer for Sentinel Security Services, was that on the 26th of June 2015, she was attached to the MCB carpark and around 10.30 a.m. she had gone to relieve the security for him to go for tea. When he had returned, she had gone to the car park which was full. She had seen that a car to her right was leaving. She had walked up to the 1st car in the line, vehicle S 15360 and told the driver, he had priority to park and that he could reverse into the parking. She had given a sign for the other car on her right to go, when a

car hit her and she fell and rolled. Prior to falling she had heard a lady say “there he hit him”. The vehicle stopped and she was picked up and taken to the English River Clinic. She stated the driver of the motor vehicle S15360 was the accused. Witness had suffered scratches to the arms, hands and knees. She had known it was the Appellant who had hit her, as she had spoken to him earlier when he was first in line to park and after the accident, he had got down and said it was not serious. She identified the Appellant as the driver of the vehicle S 15360.

[6] Witness Sarah Sabadin stated that on the said date, she was standing at the car park when she saw car S15360 reverse and hit a lady. She had screamed and the car had continued going. She stated in her evidence, she was afraid the car would go over the head of the lady as the car kept going. However the car had stopped and she had helped the lady up and called her Security Company. She too identified the Appellant as driver of the vehicle S15360. Under cross examination she stated the moment the Appellant hit the lady with his vehicle, she had screamed. Thereafter the prosecution closed its case.

[7] Having considered the Judgment of the Learned Magistrate, I observe that several major findings made by him are not in conformity with the evidence led or the particulars set out in the charge sheet.

[8] Firstly, I observe that the evidence indicates the Appellant was driving vehicle S15360 and was the first car parked in line awaiting for a parking space. When another car was leaving a parking space in the car park, the victim, who was assisting guiding the parking in the car park had told the Appellant as he was next in line, he could park in the space created by the vehicle that was leaving. However, the Learned Magistrate had come to a finding that the witness had identified the Appellant as driving motor vehicle S 20519 which is the incorrect registration number set out in the charge sheet and is contradictory to the evidence given by the victim.

[9] Whilst the evidence led by the prosecution establishes the fact that the Appellant was reversing into the parking space to park his vehicle, after waiting in line for a parking space, the Learned Magistrate has come to a wrong finding in paragraph 9 of his judgement that the Appellant was reversing out of the car park at the time the accident occurred.

- [10] He also refers to in paragraph 7 of his judgment that the “*crux of the Prosecution’s submissions is that there is sufficient evidence produced that the accused person whilst in control of his vehicle, allowed the same to smash into the said building causing damage.*” I see nothing to support this finding in the submissions of the prosecution nor has any evidence been led in respect of a vehicle smashing into a building.
- [11] It also appears that the particulars of offence refer to the vehicle number driven by the Appellant as S 20519. No attempt has been made by the prosecution to correct such error even after the evidence revealed that the Appellant was driving vehicle S15360.
- [12] Having considered the above findings made by the learned Magistrate which are not in conformity with the evidence led or the particulars in the charge sheet, it appears that the conviction is based on incorrect and unsupported findings and therefore, I am of the view that the conviction is unsafe. I proceed to quash the conviction and sentence. Considering the evidence led by the prosecution, I make order, a retrial take place before another Magistrate.

Signed, dated and delivered at Ile du Port on 26 January 2018

M Burhan
Judge of the Supreme Court