



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL APPEAL NO 231 OF 1981
PRAVIN MEGJI SHAH APPELLANT
Versus
REPUBLIC RESPONDENT
JUDGMENT

The appellant was convicted of dangerous driving contrary to Section 47(1) of the Traffic Act (Cap 403) and fined Kshs 1,000 in default one month imprisonment. This appeal is confined on question of facts only. As usual there were two versions as to what happened. The appellant was joining a major road when his car collided with that of the other driver. Both vehicles landed on one side. Mr Mahan for the appellant argued that there was no finding as to where the point of impact was.

I have perused the evidence on record and evaluating the same I find that there is clear evidence to the effect that the appellant was joining a major road as he drove out of Nyeri club.

The other driver was on the main road driving towards Kamakwa. The vehicles landed on one side –on the right hand side of the road of the other driver. It has been suggested that the other driver was at fault because he did not keep to his side. But this is not supported by evidence. If the appellant was a prudent driver as he wants us to believe and if indeed he stopped and then joined the road safely and carefully then there is no reason why the other vehicle should have swerved to the right. It swerved to the right because there was a sudden danger on its path. This sudden danger was caused by the appellant joining the main road without ascertaining that it was safe to do so.

Joining a major road without checking on other vehicles on the major road was dangerous piece of driving. In R v Evans[1962] 3 All ER 1086 dangerous driving was defined as follows:

“If a man adopted a manner of driving which at his trial on a charge of causing death by dangerous driving the jury think was dangerous to other road users in all circumstances then on the issue of guilt it matters not whether he was deliberately reckless, careless, momentarily inattentive or even doing his incompetent best.”

The above was also applied in the Tanzanian case of Pyrali v R[1971] EA 169 at p 171.

Hence in this appeal we have to consider the evidence before the lower court and the findings reached thereupon. This being an appellate court it has to evaluate the evidence on record and make its own conclusions and consider whether the decision reached should stand. In a case of this nature it was upon the prosecution to prove that the appellant’s manner of driving was dangerous having regard to all the circumstances of the case at the material time. A sketch plan was produced which showed how the vehicles swerved. It is not normal for a vehicle to swerve to its right without a reason (see Patel v R[1968] EA 97 at p 101). The other vehicle swerved because of the sudden danger posed by the appellant’s vehicle which shot onto the main road. That was fault on the part of the appellant and that fault constituted a dangerous situation. In R v Gosney[1971] 3 All ER 220 it was held by the court of Appeal Criminal Division, that in order to justify a conviction there must have been a situation which viewed objectively, was dangerous and also some fault on the part of the driver. In regard to this element of fault, Megaw LJ reading the judgment of the Court of Appeal said at p 224:

“Fault certainly does not necessarily involve deliberate misconduct or recklessness or intention to drive in a manner inconsistent with proper standards of driving. Nor does fault necessarily involve moral blame ... fault involves a failure, a falling below the care or skill of a competent and experienced driver, in relation to the manner of driving and to the relevant circumstances of the case. A fault in that sense even though it be a momentary lapse, even though normally no danger would have arisen from it, is sufficient.”

The above English decision was followed in *Atito v R*[1975] EA 278.

Having considered the evidence recorded by the lower court and having assessed the same I am of the opinion that there was sufficient evidence to lead the court to a finding of fact that the appellant's manner of driving was dangerous having regard to other road users. He was properly convicted. He was fined Kshs 1,000 in default one month imprisonment. This sentence cannot be described as excessive.

In view of what I have said above I find that this appeal has no merits and it is accordingly dismissed in its entirety. Order accordingly.

Delivered at Nyeri this 8th October, 1982.

E O'KUBASU

JUDGE