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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBALE

HCT-04-CR-CN-0027/2001

(From Pallisa Traffic Case No. 36 of 2000)

ABBAS BAKWATA .....APPELLANT

VERSUS

UGANDA .....RESPONDENT

BEFORE THE HON. MR. JUSTICE RUGADYA ATWOKI

JUDGMENT

The appellant herein was charged in the Pallisa magistrate's court with two counts of traffic offences. In the 1st count he was charged with reckless driving c/s 118 (1)(a) and 138 (2)(b) of the Traffic and Road Safety Act 1970 (hereinafter referred to as the TRSA). In the 2nd count he was charged with causing bodily injury through reckless driving c/s 116 (1)(a) and 138 (2)(a) of the TRSA.

The facts from which the suit arose were set out in the judgment of the trial court. The 12 years old Amisi Odongo was riding a bicycle on the main road. He was carrying a friend one Asige on the carrier. The accused also on a bicycle entered the maim road in such a way that he knocked the bicycle of Odongo causing him and Asige to fall off. Asige sustained serious injuries, hence the charges.

Prosecution adduced evidence in court including that of the doctor who examined Asige. The accused denied the offence and gave evidence on his behalf. Court believed the prosecution evidence and convicted the accused and sentenced him in the following terms.

> 'Accused sentenced to fine of 1,500/- and two years imprisonment in default of payment of fine one week. This is on count 1.
>
> Count II Fine 1,500/- or 6 months imprisonment sentence of imprisonment to run concurrently. Deterrent sentence.'

Four grounds of appeal were set out in the memorandum of appeal as follows.

1. The learned trial magistrate on count 1 misdirected himself and erred in law and occasioned a miscarriage of justice by convicting the accused under S.118(1)(a) and erred in law in sentencing the appellant under S.138 (2)(b) of the TRSA.
2. The learned trial magistrate on count II misdirected himself and erred in law and occasioned a miscarriage of justice by convicting the appellant under S.116 (1) and erred in law in sentencing the appellant under 138(2)(a) of the TRSA.
3. The learned trail magistrate conducted the trial perfunctorily ered in law and in fact when he failed to evaluate the evidence available in court and when he failed to direct himself for the need for further evidence to substantiate the charges at decision in convicting the appellant, these failures occasioned a miscarriage of justice.
4. The trial magistrate's pronouncement of sentence is vague causing a miscarriage of justice. The sentence is excessive in the circumstances.

At the hearing of the appeal, Counsel Magirigi who appeared for the appellant abandoned the 1st and 2nd grounds of appeal. He argued the 4th and 3rd grounds in that order. Mr. Sydney Asubo learned Resident State Attorney did likewise, and I will deal with the grounds of appeal in like manner.

The 4th ground of appeal was a complaint about the sentence, that it was couched in vague language, and that in any event, it was excessive in the circumstances. I set out above the sentence as drawn by the trial magistrate. I agree with Mr. Asubo that the language of the sentence was not vague. In the 1st count, the accused was sentenced to a fine of shs. 1,500/- and imprisonment for 2 years, and in default of the fine, to an additional 1 week imprisonment.

Under S. 138(1(b) of the TRSA the maximum sentence is 2 years and minimum is 6 months imprisonment, or a fine not exceeding shs. 5,000/- or both. There was nothing illegal or irregular let alone vague about that sentence. The prayer that the file be sent back to the trial magistrate for clarification does not succeed.

If Counsel was not clear about the sentence he would have sought the clarification from he presiding magistrate at the time of sentencing or soon thereafter. He did not need to wait for an appeal to seek clarification on the sentence. It would appear that he understood the terms of the sentence and the accused even started serving sentence. This was a merely academic ground of appeal, and it is dismissed.

In the 2nd count of causing injury through reckless driving, the punishment section is S. 138 (1)(a). The sentence therein is a minimum fine of shs. 5,000/- and a maximum fine of shs. 10,000/-, or a sentence of imprisonment of a minimum of 2 years and a maximum of 5 years or both. The accused was sentenced to a fine of sh. 1,500/- or in default imprisonment for 6 months. The sentences of imprisonment were to run concurrently. Clearly the sentence in the 2nd count was illegal. It was below the legal minimum set out in the section above cited. Learned Resident State Attorney conceded to this and asked court to impose the lawful sentence. I would impose the minimum sentence of imprisonment of 2 years.

The appellant also argued that the sentence of imprisonment of 2 years in the 1st count was excessive in the circumstances. This was the maximum sentence. I would have agreed, but in view of the imposition of a similar sentence of imprisonment in the 2nd count, and considering that the sentences of imprisonment are to run concurrently, I would not disturb that sentence as this would be of no practical effect. The 4th ground of appeal is accordingly dismissed.

The 3rd ground of appeal was on evaluation of evidence. There was the evidence of Odongo the rider of the bicycle plus that of an eye witness. The evidence of these witnesses was that the accused just rushed into the main road without regard to whoever else was on it, thereby knocking the complainants. There was the evidence of the doctor who examined Asige and testified to her injuries, which he classified as harm. The evidence of the accused corroborated that of the prosecution in material particulars. He admitted riding the bicycle, and that in the process the bicycle of Odongo fell down, and that Asige sustained injuries.

From the above evidence the learned trial magistrate was justified to find as he did that the prosecution proved its case to the required standard. I would not fault him on the conclusion he reached as I would have reached the same conclusion. While the prosecution case could have been better handled, there was no iota of doubt that the offences were committed as alleged and by the accused. The 3rd ground of appeal would also be dismissed.

The appeal is therefore dismissed. The sentence in the 2nd count is set aside and instead, a sentence of imprisonment for 2 years is hereby substituted. The sentences of imprisonment are to run concurrently.

RUGADYA ATWOKI
JUDGE
07/08/2008.