

7th May 1955

Judge:

Chev. Hon. Dr. W. Harding, B.Litt., LL.D.

The Police versus No. 22889451 Gunner Brian Wilson

Traffic — Dangerous Driving — Negligent Driving.

It is not easy to formulate in words the difference between dangerous driving and negligent driving. There are cases which are, on the face of them, glowing instances of dangerous driving; other cases are absolutely cases of negligence. It is the border-line cases that require consideration in the light of the difference between negligent or careless driving on the one hand and dangerous driving on the other, and where the difficulty arises.

It is safe to say that the difficulty is a question of degree, which is in the sense that dangerous driving implies something more serious than mere careless driving. Otherwise every case of

careless driving would be a case of dangerous driving; because, in a way, every act of negligence in driving, every infringement of the rules of safety laid down in the Highway Code, gives rise to a potential danger.

The solution of the difficulty lies in the appraisal of the circumstances of the case by the Court; after which appraisal the Court will rule out, or otherwise, a charge of dangerous driving as distinct from careless or negligent driving.

The Court; — Upon seeing the charge brought against the accused before the Criminal Court of Magistrates for Malta, i.e. that of having, on the 11th January, 1955, at about 11.55 a.m. driven motor car No. 01BH18 through San Maison Road, Floriana, in a dangerous manner;

Upon seeing the request made by the Commissioner of Police for the suspension of accused's driving licences;

Upon seeing the judgment given by that Court on the 5th March, 1955, whereby it found the accused guilty, and sentenced him to a fine (multa) of £2 and suspended his driving licence for a period of three months;

Upon seeing the application of accused to this Court, praying for a reversal of the afore-mentioned judgment and for his acquittal;

Upon hearing the evidence;

Upon hearing the submissions of Counsel for the Appellant and of Counsel for the Prosecution;

Considers;

The weight of the evidence discloses that the appellant, who was driving a service "jeep", did, in point of fact, at a certain part of the road, cross to the right side at a time when on-coming traffic, in the shape of two traffic police motor-cycles, was visible. One of the motor-cycles, the one driven by Sergeant-Major Gray, was forced to swerve to the right to avoid a collision. The appellant did not give any signal, either by hand or by the direction-indicator, to show that he was going over to the right side of the road. The purpose of the appellant in changing sides was to reach the service petrol-pump;

In so far as the exact locality of the point where the appellant drove his "jeep" to the right is concerned, and

the exact distance intervening between the "jeep" and the police motor-cycle at that particular moment, there are some understandable discrepancies in the evidence. In this connexion, the report filed by the expert appointed by the Court, Doctor of Laws Lorenzo Cassar, after holding an "in loco" on the spot, and five sketches annexed to his report, have been of great assistance to the Court. Even if one were to give the appellant the full benefit of his own version, it would seem that, at the time when the appellant started turning to the right, the distance between him and Sergeant Gray's motor-cycle was more or less 244 feet. Taking a speed of from 15 to 20 miles per hour for the motor-cycle, and a speed of from 10 to 15 miles per hour for the jeep, resulting from the evidence, that intervening distance would have been covered, at the combined speed of the two vehicles, in about five seconds. Of course, from an "agony of collision" point of view, one would have to take into account the average "reaction time" of the driver in an emergency;

In a monograph by Ruskin (Popular Mechanics Magazine, Feb. 1947), this writer says:— "Of course, the brakes are not actually applied from the moment you receive a signal to stop. There is a period generally called 'reaction time', which is the interval required to act after you receive a warning to stop on the brakes. This time varies from driver to driver; but it is estimated three-fourths of a second";

This would mean that, out of the five seconds above mentioned, about a second would be taken up in reaction time, and in that second — at the combined speed of 30 miles per hour — about 44 feet of the intervening distance would be covered (see Table in the book "Motor Claim Cases", by Leonard Bingham, 1946 edit.). The remaining four seconds would allow for evasive action, such as braking or swerving;

Now, the important point to decide is whether the appellant's driving was 'negligent' or 'dangerous' — a distinction which has, "inter alia", an important bearing on the period of suspension of the licence;

There does not appear to be any doubt that the appellant was driving 'negligently', as he certainly could have, in ordinary prudence, allowed the motor-cycles to pass, and, most certainly, could, and should have given a signal that he was turning to the right. So that, even taking the appellant's own evidence on all the points, he was undoubtedly driving negligently; in as much as an ordinary prudent driver would, either have allowed the on-coming traffic to pass, and not run the risk too closely, or, as is colloquially said, "cut it too fine", or, at the very least, would have given a timely warning signal;

The point is: was his driving also 'dangerous'?

This is a point which presents a certain amount of difficulty. There are cases which are, on the face of them, glowing instances of dangerous driving. Other cases are obviously cases of negligence. It is the borderline cases that require consideration in the light of the difference between negligent or careless driving on the one hand, and dangerous driving on the other;

It is not an easy matter to formulate in words this difference between the two offences. The sitting Judge, in the numerous cases that have come before this Court, has not attempted any clear-cut definition, but has merely stated that, in order that there may be the offence of dangerous driving, there must be something more serious than merely careless driving. Otherwise, every case of careless driving would be dangerous driving, because, in a way, every act of negligence in driving, every infringement of the rules of safety laid down in the Highway Code, gives rise to a potential danger;

Since then, the sitting Judge has had the opportunity of examining the approach of English Judges and Magistrates with regard to this point, and it would appear that the same difficulty of laying down a clear-cut distinction was experienced, and also that the practical solution was more or less the same;

In the "Criminal Law Review" (April, 1955), in an article by Hails, it is thus stated:— "The difference between the two offences has not to this day been authori-

tatively defined. In a case heard a year or so ago, at the Birmingham Assizes, reported so far as we know in the local press, Mr. Justice Sellers said, by way of "obiter dictum", that for an offence under section 11 it is necessary to prove some 'deliberate' act as opposed to mere inadvertence, and we have heard the view advanced in argument. We have never heard any case law cited in support of the theory, and we think we are right in saying that the reasoning behind it has never received either judicial assent or dissent, apart from the one case we have mentioned. There can be little doubt that in Magistrates' Courts up and down the country it is the practice to regard the difference between the two offences purely as "a matter of degree". It may be that this is the reason why in a number of police cases it is the custom to lay two informations against a driver, one under section 11 and another under section 12, in the hope of securing a conviction on one or the other";

In his text-book "Road Traffic Prosecutions" published recently, 1953, Wilkinson states:— "Though some books cite many decisions on the meaning of the term 'dangerous driving', it is submitted that 'each case must be decided on its facts', and little help can be gained from High Court decisions";

In another text-book just published, "The Law of Road Traffic", by M.R.R. Davies, 1954, this writer summarises several judgments of the English Courts on charges of dangerous driving, an examination of which shows that no attempt was made to define the difference, but only specific points were considered, such as whether excessive speed alone, or an error of judgment alone, could amount to dangerous driving. The only generalisation is found at page 130, where it is stated that "regard must be had to the circumstances of each case";

The sitting Judge, with all due respect, feels unable to agree with the word "deliberate" used by Mr. Justice Sellers as a criterion of differentiation; because, at least against the background of Maltese legal principles, it would be highly risky to use a word which implies malice,

where only what is legally implied by the Latin word "culpa" is concerned. The sitting Judge feels that it is safe to state, as above, that the difference is a question of degree, which is, in effect, what this Court said in other cases, in the sense that dangerous driving implies something more serious than merely careless driving;

Now, turning once more to the facts of the present case, it is not one which falls in the category of glaring cases of 'dangerous' driving; nor is it one which falls in the other category of an obvious case of 'negligent' driving. The Court, however, feels, on a balance of appraisal of the circumstances of the case, that it falls short of that degree of reprehensible driving which would place it in the class of cases of dangerous driving, and that it should be more properly considered to be a case of negligent driving under section 14, Chap. 105. In coming to this conclusion, the Court has addressed its mind to these facts; the speed at which the jeep was being driven was considerably low; the appellant may have thought in the circumstances that there was a sufficient margin of safety; he did not drive over to the right side of the road altogether abruptly, but more or less gradually; nor did he so out of sheer reckless driving, but in order to approach the petrol-pump; the line of vision at the time was not obstructed, and the road was a straight one. All in all, the offence does not seem to come up to dangerous driving; but there was negligence in not allowing the on-coming traffic to pass, and, more particularly, in going over to the right side without giving any warning signal;

The Court thinks it proper to say that the circumstances above mentioned, taken each one alone, are in no way a criterion of distinction between dangerous and careless driving; it is only a "set" of circumstances, and it is against the back-ground of the whole picture that they have inclined the Court to rule out the charge of dangerous driving;

For these reasons, the Court disposes of the appeal as follows;

Varies the judgment of the Court below; acquits the

appellant of the charge of dangerous driving; but finds him guilty of the charge of negligent driving; and whilst the fine of £2 (payable within six days) is retained, the period of suspension of the licence is reduced to eight days.
