BORGE v BALDECHINO

Supreme Court
Flaxman, C.J.
27 October 1958.

Traffic — warning that prosecution will be considered — whether any particular form of words necessary — Traffic Ordinance, s. 39.

No precise formula is necessary when giving the warning required by s. 39(a) of the Traffic Ordinance (Cap. 154, 1965-69 Ed.); it is sufficient if the words used would effectively convey a warning to a reasonable man and indicate the likely future action.

Cases referred to in the judgment.

Jessopp v Clarke, (1908) 72 J. P. 358.
Parkes v Cole, (1922) 86 J.P. 122.

Appeal by case stated

This was an appeal by way of case stated from a decision of the justices overruling a submission that there had not been sufficient compliance with the requirements of s. 39 (then numbered 37) of the Traffic Ordinance.

J.J. Triay for the appellant.
The Attorney General (W.G. Bryce) for the respondent.

14 November 1958: The following judgment was read—

Under section 37 [now s. 39] of the Traffic Ordinance, where a person is prosecuted for an offence of exceeding the speed limit, or of reckless or dangerous driving, or of careless driving, one or the other of three conditions must first be satisfied before he can be convicted. The condition with which we are concerned in this appeal by way of case stated is that

> "he was warned at the time the offence was committed that the question of prosecuting him for an offence under some one or the other of the provisions aforesaid would be taken into consideration."

This provision is similar to that contained in section 21(a) of the Road Traffic Act of 1930 in force in the United Kingdom.

The appellant contends that the justices were wrong in law in overruling a submission on his behalf that the provisions of s. 37 had not been complied with, and that the appellant could not be convicted. I have to decide whether or not, on the facts as found by the court, there was a sufficient warning within the meaning of the section, and whether the justices came to a correct decision in point of law. Their determination and opinion was that the words of the informant to the appellant that he was going to be reported constituted a sufficient warning within the meaning of s. 37(a) of the Traffic Ordinance.

The justices have, inter alia, found as facts

> "(c) That he (the informant) there approached the appellant and informed him that he had reason to believe that he being the driver of G8716 had turned towards the left without signalling and without looking whether the road was clear ahead
>
> (d) That the informant further stated to the appellant that this amounted to driving without due care and attention and warned him that he was going to be reported."

In the course of argument I have been referred to two cases reported in the Justice of the Peace, dating from 1908 and 1922 respectively. These relate to prosecutions under s. 9 of the Motor Car Act, 1903 (now repealed) which dealt with the specific offence of driving at a speed in excess of that permitted by law, and which provided that where a person was prosecuted for that offence he "shall not be convicted unless he is warned of the intended prosecution at the time the offence was committed."

The first of these cases is *Jessopp v Clarke* [1], and the other is *Parkes v Cole* [2]. The latter has been cited in support of the appellant's case, and the respondent on his part refers to the former.

I may say at once that I do not think either of these cases is really in point here, and I find little in the decisions or dicta which aids in the determination of this appeal. At the dates of the decisions the requirement of law was not the same as that at present existing, and the necessity of a warning was confined to the single offence of exceeding a speed limit, and the warning required was one of "intended prosecution."

The section with which we are now concerned requires that the person must be warned, that he must be warned that the question of prosecuting him for some one or the other of the offences named in the section would be taken into consideration, and that the warning must be given at the time the offence was committed. I shall consider how far the facts as found by the justices shew that these requirements were complied with. It seems to me that they were. There is no requirement of law that the warning need be other than an oral one, and the fact that the informant's words were spoken "at the time the offence was committed" is not in dispute. The purport of the justices finding of fact as to a warning was that the appellant was told that certain acts of his amounted to driving without due care and attention, and that he was going to be reported. Unless the warning is to take the form of a precise formula, such as "I warn you that the question of prosecuting you for the offence of careless driving will be considered", which I do not think is the intention of the section, it seems to me that the words of the informant were such as effectively to give any reasonable man the warning contemplated by it, and sufficiently indicated the likely future course of action. In my opinion a statement by a policeman to the effect that a person has broken one of the provisions of the Traffic Ordinance relating to speed, reckless, dangerous or careless driving and that he intends to report him, is a sufficient warning that proceedings will be considered.

In the present case there was a sufficient warning within the meaning of s. 37 of the Traffic Ordinance, and I send the case back to the justices for disposal according to law.

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[1] 72 J.P. 358. [2] 86 J.P. 122.