

Johnson v Finbow

(1983) 5 Cr. App. R. (S.) 95

Robert Goff L.J.:

There is before the court an appeal by way of a case stated by the justices for the South East London Area. The case concerns the interpretation of section 19(1) of the Transport Act 1981; and, in particular, it is concerned with the number of penalty points to be endorsed in the particular circumstances of this case.

The facts disclosed by the case are as follows. The appellant, Miss Johnson, was charged with two offences arising under section 25 of the Road Traffic Act 1972. The first offence was that, being the driver of a motor vehicle and an accident having occurred owing to the presence of that motor vehicle on the road whereby damage was caused to a vehicle other than that vehicle or a trailer drawn thereby, she did fail to stop and give her name and address and also the name and address of the owner and the identification marks of the vehicle when required to do so by a person having reasonable grounds for so requiring, contrary to section 25, Schedule 4 to the Road Traffic Act 1972, as amended.

The second offence, charged on the same day, was again that being the driver of a motor vehicle and an accident having occurred owing to the presence of that motor vehicle on the road whereby damage was caused to a vehicle other than that vehicle or a trailer drawn thereby, not having given her name and address to any person having reasonable grounds to require it, she did fail to report the accident at a police station or to a police constable as soon as reasonably practicable within 24 hours of the occurrence, contrary to section 25, Schedule 4 to the Road Traffic Act 1972, as amended.

I will briefly set out the finding of fact. They are as follows: (a) The appellant was the driver of a motor vehicle which was involved in an accident whereby damage was caused to another vehicle. (b) The appellant stopped at the scene, but not for long enough to enable any person to request her name and address or other particulars. (c) The appellant did not subsequently report the accident to the police.

On the basis of those findings of fact, the appellant was convicted of both charges. The question then arose as to the number of penalty points to be endorsed in respect of those offences. This depended on the construction to be placed on section 19(1) of the Act of 1981, which I think I ought to read in full for the purposes of this judgment. "Where a person is convicted of an offence involving obligatory or discretionary disqualification and the court does not order him to be disqualified (whether on that day or any other conviction) but orders particulars of the conviction to be endorsed under section 101 of the 1972 Act, the endorsement ordered shall include: (a) particulars of the offence, including the date when it was committed; and (b) the number of penalty points shown in respect of the offence in Schedule 7 to this Act (or, where a range of numbers is so shown, a number falling within the range)." Then

follow the words which are important in the present case: "but if a person is convicted of two or more such offences the number of penalty points to be endorsed in respect of those of them that were committed on the same occasion shall be the number or highest number that would be endorsed on a conviction of one of those offences."

The penalty points applicable in respect of the offences of which the appellant was convicted in this case are, in the case of the first offence, a minimum of five and a maximum of nine penalty points; and in respect of the second, a minimum of four and a maximum of nine.

The decision of the magistrates was as follows: "We decided that these offences merited the minimum number of points in each case, namely, five and four. Since the first offence occurs at the time and place of the accident and the second occurs at some later time and different place these offences were not committed on the same occasion. For the offences before us, the appellant's licence was endorsed with a total of nine points." They then referred to the fact that she had had a previous offence worth three points, and since she therefore had a total of 12 points, they disqualified her under section 19(2) of the Transport Act 1981 for six months and imposed fines of £50 and £25 respectively.

The question which has been posed for the opinion of this court is derived from the words in the concluding part of section 19(1), "on the same occasion." The question is: "Where there are convictions on two informations under section 25(1) and section 25(2) of the Road Traffic Act 1972, and the offences arise out of the same accident whether it is correct to hold as a matter of law that the offences are deemed not to be committed 'on the same occasion' within the meaning of section 19(1) of the Transport Act 1981, with the result that at least nine penalty points will be endorsed on a defendant's licence for such convictions."

It seems to me that we must apply common sense in the approach to the matter. No doubt, there are many cases where it is perfectly obvious whether or not one or more offences were committed on the same occasion; and it is very striking that counsel, who have given us every assistance and drawn our attention to the schedule to the Act of 1981 in which are set out the number of penalty points to be imposed in relation to a whole series of offences, could not point to any case comparable to the present where there has been an accident and where both the offences which are committed arise out of the same accident but there is a gap in point of time between the commission of the two offences. That gap could be as much as 24 hours, which is the maximum gap which could elapse between the two offences, if both are committed.

Faced with the question: Were these offences committed on the same occasion? it can be said that they were not committed at the same moment; they were not both committed, for example, at the moment of the accident: one was committed when the accident occurred or shortly thereafter, and one was committed some time after that. Therefore, looking at the language alone, it can be argued that the two offences

were not committed on the same occasion.

On the other hand, looking at the matter more broadly (and, for my part, I think more sensibly), and looking at the context in which the two offences were committed, it can be said that the lapse of time, although significant, is not sufficiently great to be able to say, as a matter of common sense, that those offences were committed on different occasions. It is true that they were committed at different moments of time; indeed, they might even have been committed on different days. But looking at the matter sensibly, it seems to me that they were committed on the same occasion. They certainly arose out of the same accident ... that may not be enough of itself, but it certainly provides a link. And when one sees how closely they are connected with the accident, and how very similar, in fact, the two offences are in their nature, then I think the proper conclusion is to say that when arising out of the same accident both these offences were committed, then they were committed on the same occasion, within the meaning of those words used in section 19(1).

I would like to draw attention to some of the consequences that would result if a contrary conclusion was reached. I have already mentioned the range of penalty points to be imposed in respect of each offence. It follows that, if the contrary view is correct, then the minimum number of penalty points to be imposed in respect of both these offences was that imposed by the magistrates in the recent case, namely, nine. If we compare that result with (according to the schedule) 10 points being imposed for reckless driving; 10 points being imposed for being in charge of a motor vehicle when unfit through drink or drugs; and eight points for taking in Scotland a motor vehicle without consent or lawful authority or driving, or allowing oneself to be carried in a motor vehicle so taken, we can see that a most disproportionate result would occur if the two offences at present under consideration were dealt with as they were in the present case in comparison with penalties to be imposed in other cases, especially as there may very well be other offences committed on the same occasion as those other offences.

Indeed, one could get a case where, if the magistrates were to look at the two offences charged in this case separately, and assess each as worth six penalty points or more (which is right in the middle of the range specified in the schedule for each offence), they would get up to 12 points, on the basis of which they might have to disqualify the person charged, pursuant to section 19 of the 1981 Act. These results appear to me to be extravagant and fortify me in the view that I have formed as a matter of construction on the common sense basis of the meaning to be attached to these words, "on the same occasion," in this subsection.

For my part, I would hold that that is the meaning to be attributed to those words. It follows that I, for my part, would answer the question, posed to the court, in the negative.

McNeill J.:

I agree.