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IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No. 22 of 1983

Between:

SASHI SURESH SINGH
s/o Sashi Mahend Singh — Appellant

- and -

R E G I N A M — Respondent

Dr. M.S. Sahu Khan for the Appellant
A. Gates for the Respondent

Date of Hearing: 7th July, 1983.
Date of Judgment: 7th July, 1983.

REASONS FOR JUDGMENT OF COURT

Speight J.A.

The appellant was convicted in the Magistrate's Court in Suva of the offence of disorderly behaviour. He appealed to the Supreme Court against that conviction. That appeal was dismissed on the 29th April, 1983 by Mr. Justice Kearsley. From that dismissal he further appeals citing as his grounds certain alleged errors of law on the part of the learned Appeal Judge.

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After hearing Counsel for the Appellant the Court announced that the appeal was dismissed, and that reasons would be put in writing at a later date. The reasons for that decision are now set out.

The case was a very simple one. The appellant had been a spectator at a football match between two local teams. He was the selector and assistant coach of one of the teams. His team lost the match.

The prosecution case was that shortly after the game had concluded, and after the referee had walked out of the ground, the appellant had rushed at the referee and sworn at him and threatened him with assault. A police inspector who was in-charge of control at the ground spoke to the appellant who was still in a bad mood, and swore again, so he was arrested. The inspector was the only prosecution witness.

The appellant gave evidence. He agreed that he had spoken to the referee immediately after the game asking him about an alleged infringement during the course of play. He denied swearing at the referee as had been alleged by the police inspector. One other significant witness was called for the defence, a Mr. Chand. He is also a football referee and he was acting as replacement linesman and claimed to have watched events carefully. He gave the same version of the incident as the appellant had given in evidence, namely that the appellant had questioned the referee after the match about a penalty but without threat or abuse. The learned magistrate's judgment was brief and can be quoted in full.

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" JUDGMENT

The question for the Court to decide in this case is, does it accept the evidence of PW1, a senior police officer? I found him an excellent witness and clearly reliable.

I find as a fact and am satisfied beyond reasonable doubt that Accused, in his disappointment over the result of the match, behaved as PW1 described.

Such behaviour clearly amounts to disorderly behaviour in law. Accused has deliberately lied and I reject his account, nor do I believe the evidence of DW1.

I find Accused guilty of the offence of behaving in a disorderly manner.

I might add that, on Accused's own account, his remarks to the referee were highly questionable and improper for someone in his position, though that is not strictly in point.

Convicted as charged. "

On appeal to the Supreme Court numerous grounds, six in all were advanced. Some of these were related to factual matters and as this is a second appeal on point of law they need not be traversed. Points of law were raised however as to -

(1) improper procedure on the part of the magistrate in evaluating the evidence;

(2) failure to correctly apply the law in relation to lies told in evidence;

(3) failure to make specific findings before coming to a conclusion;

(4) failure by the learned magistrate to comply with sections 154 and 155 of the Criminal Procedure Code.

The learned judge ruled against the appellant on all these issues in a reasoned judgment occupying 11 pages. From that dismissal the appellant appeals again to this Court on the following grounds.

"1. THAT the Learned Appellate Judge erred in law in not holding that the learned trial Magistrate erred in law and in fact in not properly and/or adequately evaluating the evidence of the prosecution on the one hand and the evidence of the Appellant and the defence witnesses on the other.

2. THAT the Learned Appellate Judge erred in law in not holding that the learned trial Magistrate erred in law and in fact in not considering the defence case at all and/or not considering the defence case adequately and/or properly before arriving at his conclusion.

3. THAT the Learned Appellate Judge erred in law in not holding that the learned Trial Magistrate erred in law and in fact and misdirected himself as to:-

(i) The issues of lies told by a witness in Court;

(ii) The issue of burden and onus of proof.

4. THAT the Learned Appellate Judge erred in law in not holding that the learned Trial Magistrate erred in law and in fact in not making specific findings of fact as required of him before coming to a conclusion.

5. THAT the Learned Appellate Judge erred in law in not holding that the learned Trial Magistrate did not adequately and/or properly comply with Sections 154 and 155 of the Criminal Procedure Code.

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6. THAT the Learned Appellate Judge erred in law in not holding that there was no evidence that what took place was at a public place."

In the course of submissions Mr. Sahu Khan abandoned ground number 6 and he dealt with grounds numbered 1 and 2 together. After hearing his submissions the Court indicated to counsel for the Respondent, Mr. Gates, that it did not wish to hear from him and that the appeal was dismissed.

As mentioned already this is a record of those reasons.

The first point argued (grounds 1 and 2) was developed as a result of the sequence in which the magistrate made his findings. In the judgment set out above the magistrate is recorded as saying that he found the police inspector an excellent witness and clearly reliable and that he was therefore satisfied beyond reasonable doubt that the appellant being disappointed over the loss of the match had behaved as the prosecution witness had described and that amounted to disorderly behaviour in law. He then, and as Mr. Sahu Khan complains, mentioned the defence evidence for the first time when he said that the appellant had lied (in his evidence) and his account was rejected nor was the other defence witness believed. The magistrate then went on to make a finding of guilty. As we understand it the complaint is of the sequence in the magistrate's phraseology. It is submitted that the magistrate should have mentioned the defence evidence at an earlier point of time and should have said that he had considered it before stating that he preferred the prosecution version. With respect we think this is a hair splitting objection.

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It should be remembered that this was a professional magistrate of great experience used to hearing and adjudicating many of such cases and to determining whether or not evidence given before him proved an allegation made. It should not be overlooked that, as the record showed, counsel for the defence had addressed the Court immediately prior to the magistrate's pronouncement. Doubtless that address had analysed the evidence, brief as it was, and had commended for consideration the defence point of view. It is unrealistic to suggest that when this experienced magistrate was asking himself the question as to whether he accepted the police officer's evidence, that he had completely shut his mind to the defence evidence that he had heard few minutes before and, as just mentioned, to defence counsel's submissions.

In dealing with the evidence of one side and another the magistrate must start with one version or another and the proper one to start with is the prosecution evidence otherwise he would be accused of reversing the onus of proof. Having said he accepted that evidence as reliable he is quite entitled to say that it constitutes the ingredients of the offence charged. It seems to us immaterial that his rejection of the defence evidence is not mentioned until that point of time and, it will be noted, before the pronouncement that the accused was guilty.

These two points can also be considered in conjunction with ground number 4 - that the magistrate did not make specific findings of fact before coming to a conclusion. With respect it appears to us that he had made such specific findings bearing in mind the simplicity of

the issue. One police witness said that the appellant abused the referee and swore at him. The defence evidence was that no abuse and no swear word was uttered. One wonders what specific findings of fact are expected of the learned magistrate other than that he believed the affirmative and disbelieved the negative version concerning this momentary exchange of words. Recently an admirable passage has appeared in a New Zealand Court of Appeal judgment which is worth quoting. In R. v. Macpherson (1982) 1 N.Z.L.R. 650, a similar matter was under consideration. On page 652 the following passage appears.

> "The estimation of reliability of a witness is a daily, difficult and anxious task of many tribunals. All other aids to discrimination failing, the adjudicator is driven back to his own judgment which in this context is knowledge of human nature and affairs which is probably at the core of the decision of a jury. If that be objected to as lacking perceptible indices, the short answer is that no other alternative both satisfactory and practicable presently exists."

We endorse this view as being appropriate to the submissions raised in grounds 1 and 2 and 4.

Ground 3 alleges error of law on the part of the judge in failure to hold that the magistrate had erred in law in dealing with (i) the issue of lies and (ii) burden and onus of proof. Authorities were quoted and an examination of them makes the situation quite clear. Again there are two New Zealand cases, Gibbons 1973 N.Z.L.R. 376, which in its turn relied on Dehar 1969 N.Z.L.R. 763. Gibbons makes it clear that the fact that an accused person has told what are demonstrated to be lies either at interview or in

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evidence is not of itself proof of his guilt. Lies may be told for many reasons and a jury should only take an adverse inference if the fact that the lie was told is incompatible with any other conclusion but that he was guilty. A similar point is made in the English case of Broadhurst 1964 A.C. 441:

> "Save in one respect a case in which an accused gives untruthful evidence is no different from a case in which he gives no evidence at all. In either case the burden remains on the prosecution to prove the case beyond reasonable doubt."

However, and of particular relevance to the present case, is Dehar (supra) in which it was said:

> "There may be cases where the rejection of the explanation given by the accused almost necessarily leaves the jury with no choice but to convict as a matter of logic."

The present case is such a one. The police officer said the accused swore at the referee. The appellant said he did not swear. The magistrate concluded that the appellant was lying which could leave only one conclusion open.

The other point under ground 3 was that the magistrate allegedly erred by misdirecting himself as to onus of proof. We can see nothing in this point as he specifically mentioned the onus and the standard and said that he was satisfied.

Finally ground 5 complains that the judge should have held the magistrate to have erred in law by not complying

with sections 154 and 155 of the Criminal Procedure Code. These sections require that the judgment shall be pronounced in open court, and when appropriate read out by the presiding magistrate with opportunity for the accused person to be present. The additional requirement is that the judgment shall contain (a) the points for determination (b) the decision thereon and (c) the reasons. The complaint made here is that reasons were not given within the meaning of Section 155. We think that this misapprehends the meaning of the rule and the effect of what the learned magistrate did.

(a) He stated the question that the Court had to decide. (b) He made the decision that the accused was guilty and (c) the reason he gave was that he believed the prosecution witness and disbelieved the defence evidence on the single simple point in issue.

In our view the rule does not require that the reasons for disbelief of a witness should be recited. The earlier quotation from Macpherson given above states an adequate background for this conclusion, but it was even more succinctly said by Grant J. (as he then was) in Barkat Ali v. Reginam 18 F.L.R. 130. This case was in appellant's list of authorities but the following passage was not drawn to our attention:

> ".... The trial Magistrate records the points for determination in the first paragraph, then sets out the evidence including that on which the prosecution relied to establish the points for determination, gives his decision thereon in the final paragraph specifying (partially by reference to the first paragraph) the offence of which and the law under which the accused is convicted and

in the penultimate paragraph gives the reasons for his decision, namely that having reviewed the evidence he accepts that of the prosecution witnesses and rejects that of the accused. No more is necessary. A magistrate is not obliged to give reasons for his acceptance or rejection of the evidence of any particular witness and so long as the evidence to which he has referred and which he accepts is sufficient to establish the ingredients of the offence there has been no failure to comply with the statutory requirements of Section 154 of the Criminal Procedure Code."

In our view this correctly states the position as we have already more briefly related it and we see no validity in the ground advanced.

For the reasons we have given the appeal was dismissed.

Ahmed

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Vice President

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Judge of Appeal

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Judge of Appeal