IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No. 72 of 1959

Between:

RAM DAYAL — Appellant

v.

REGINAM — Respondent

Criminal Procedure Code (Cap. 9)—contents of judgment—requirements of s. 155 (2).

In this appeal the appellant contended that the conviction must be quashed because the judgment recorded by the trial Magistrate offended against subsection 155 (2) of the Criminal Procedure Code (Cap. 9) in two ways. This subsection reads:

> " In the case of a conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted, and the punishment to which he is sentenced."

The appellant argued firstly that the judgment did not specify that he was " convicted " ; and secondly that the judgment did not specify " the offence of which and the section of the Penal Code " under which he was convicted, as required by this subsection.

Held.—(1) Although the Magistrate had not used the word " convicted ", his finding of " guilty " left no room for ambiguity; if, strictly, subsection 155 (2) required the actual use of the word " convicted ", then s. 325 (1) of the Criminal Procedure Code was applicable, for no miscarriage of justice had occurred: *Regina v. Raghunandan*, Revisional Order No. 17 of 1958 distinguished.

(2) The trial Magistrate had specified by number each count upon which he found the appellant guilty, and there was therefore no uncertainty as to the offence of which, and the section of the Penal Code, under which the appellant was convicted; in any case there had been no miscarriage of justice and subsection 325 (1) of the Criminal Procedure Code would apply.

Appeal dismissed.

Case distinguished: *Regina v. Raghunandan*, Revisional Order No. 17 of 1958.

A. Lateef for the appellant.

J. F. W. Judge, Crown Counsel, for the respondent.

KNOX-MAWER, Ag. J. [12th February, 1960]—

The appellant was charged before the Magistrate's Court of the First Class at Tailevu under three counts; in the first, with using indecent language in a public place contrary to section 199 (*r*) of the Penal Code; in the second,

with assaulting a police officer in the execution of his duty contrary to section 273 (*b*) of the Penal Code; and in the third count, with resisting a police officer in the execution of his duty contrary to section 273 (*b*) of the Penal Code.

The trial Magistrate recorded a finding of guilty upon the first and third counts, and a finding of not guilty upon the second count. The appellant was sentenced to one week's imprisonment in respect of the first count and to three months imprisonment in respect of the third count. The sentences were ordered to run concurrently.

Learned counsel for the appellant has now confined this appeal to one ground only. He has argued that the conviction must be quashed because the judgment of the trial Magistrate does not comply with the provisions of section 155 (2) of the Criminal Procedure Code. This subsection is as follows:—

> " (2) In the case of a conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted, and the punishment to which he is sentenced."

It is contended that the judgment offends this subsection in two ways. Firstly it does not specify that the accused person is " convicted ".

In *Regina v. Raghunandan* (Revisional Order No. 17 of 1958) where an accused having pleaded guilty to certain offences before the Magistrate's Court was committed for sentence to the Supreme Court under section 211 (*a*) Criminal Procedure Code, the learned Chief Justice, referring to the similar use of the word " convicted " in section 211 (*a*) of the Criminal Procedure Code remarked:—

> " Furthermore, although it might be inferred from the finding of 'guilty' that the Magistrate had formally convicted the accused, in view of the wording of 211 (*a*) of the Criminal Procedure Code 'and such person is convicted by such Magistrates' Court of that offence', it is necessary to enter a formal conviction."

In the final paragraph of his judgment, the learned Chief Justice proceeded " as no conviction has been entered in these cases, they are remitted to the Magistrate. His order committing the accused to this Court for sentence is a nullity."

However if the *ratio decidendi* of this latter judgment is studied it will be seen that the essential reason why the cases were remitted to the trial Magistrate was that the finding " guilty " had been recorded as each count was put to the accused and he had replied " guilty " but before the prosecutor had stated the facts and the accused had been asked whether or not he admitted such facts. No such problem arises in this case, which is therefore entirely distinguishable. Here, the trial Magistrate concluded, in his judgment: " I therefore find as follows:—

> Accused (1)—1st count—guilty
> 2nd count—not guilty
> 3rd count—guilty.
>
> Accused (2)—2nd count—not guilty
>
> Accused (3)—2nd count—guilty ".

Although it is true that he has not used the word " convicted ", there can be no doubt from this finding that the accused was in fact convicted upon the first and third counts. There is no ambiguity. Moreover, if compliance with the strict letter of the subsection requires the actual use of the word " convicted ", the proviso to section 325 (1) of the Criminal Procedure Code is certainly applicable for no miscarriage of justice has occurred by this omission.

Learned Counsel for the appellant has further contended that the judgment offends section 155 (2) of the Criminal Procedure Code in another way, in that it does not specify " the offence of which and the section of the Penal Code under which the accused is convicted ". In so far, however, as the trial Magistrate has specified by number each count upon which he has found the appellant guilty, there is no room for any uncertainty in this respect. Moreover it can not be suggested that any miscarriage of justice has occurred by this omission to comply strictly with the subsection, and the proviso to section 325 (1) is therefore applicable.

The appeal against sentence has not been formally abandoned by the appellant. In view of the criminal record of the appellant the sentence imposed is certainly not excessive.

The appeal against both conviction and sentence is dismissed.