

A

KARAN SINGH

v.

REGINAM

B

[SUPREME COURT, 1967 (Knox-Mawer J.), 23rd May, 29th June]

Appellate Jurisdiction

C

Criminal law—practice and procedure—minor cognate offence—conviction of behaving in a disorderly manner in a public place on a charge of being drunk and disorderly in a public place—Penal Code (Cap. 8) s.197(d)—Criminal Procedure Code (Cap. 9) s.164—Criminal Procedure Code (India) s.238—Criminal Procedure Code (Kenya) s.172—Criminal Procedure Code (Tanganyika) s.181.

Criminal law—conviction—minor cognate offence in relation to offence specified in charge—Penal Code (Cap. 8) s.197(d)—Criminal Procedure Code (Cap. 9) s.164.

D

The offence of behaving in a disorderly manner in a public place contrary to section 197 (d) of the Penal Code is a minor cognate offence in relation to the offence of being drunk and disorderly contrary to the same section. A person charged with the latter offence may therefore, on appropriate evidence, be convicted of the former, by virtue of the provisions of section 164 of the Criminal Procedure Code.

Cases referred to: *Babu Lal v. R.* (Cr. App. No. 13 of 1966 — S. C.; unreported); *Robert Ndecho v. R.* (1951) 18 E.A.C.A. 171; *Ali Mohammed Hassani Mpende v. Republic* [1963] E.A.294.

E

Appeal by case stated against a conviction by the Magistrate's Court.

S. M. Koya for the appellant.

J. R. Reddy for the respondent.

KNOX-MAWER J. : [29th June 1967]—

F

This is an Appeal by way of case stated against a decision of the Magistrates Court of the First Class, Tavua.

The Appellant was charged before the Magistrates Court with the following offence:—

STATEMENT OF OFFENCE

DRUNK AND DISORDERLY: Contrary to Section 197(d) of the Penal Code, Cap. 8.

G

PARTICULARS OF OFFENCE

KARAN SINGH son of Indar Singh on the 1st day of October, 1966, at Tavua in the Western Division, was drunk and disorderly in a public place namely, Kings Road.

He pleaded not guilty. At the conclusion of the trial, the learned Magistrate found the following facts proved beyond reasonable doubt.

H

(a) that the Appellant was not drunk at the material time;

(b) that the Appellant had acted in a disorderly manner at the material time.

The learned Magistrate thereupon convicted the Appellant of the offence of behaving in a disorderly manner in a public place contrary to Section 197(d) of the Penal Code. The question stated for the opinion of this Court is whether the learned Magistrate was entitled to do this. A

The issue turns upon the provisions of Section 164 of the Criminal Procedure Code. This reads as follows: —

164(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it. B

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it. C

In considering the meaning of these provisions in an earlier case (*Babu Lal v. Regina* Criminal Appeal No. 13 of 1966) this Court stated as follows: —

The Section (Section 164) corresponds to Section 238 of the Indian Criminal Procedure Code, Section 172 of the Kenya Criminal Procedure Code and Section 181 of the Tanganyika Criminal Procedure Code. The meaning of this Section is discussed in *Sohoni's Code of Criminal Procedure* 15th Ed. 1372 et seq. in *Robert Ndecho and Anor. v. Rex*, 18 E.A.C.A. p. 171 and in *Ali Mohammed Hassani Mpende v. Republic* [1963] E.A. 294 (Spry J.). D

I am satisfied that, like the corresponding sections of the Indian and African Codes, Section 164(1) of the Fiji Criminal Procedure Code envisages a process of subtraction in which "the court considers all the essential ingredients of the offence charged, finds one or more not to have been proved, finds that the remaining ingredients include all the essential ingredients of a minor, cognate, offence and may then, in its discretion, convict of that offence." E

(See the judgment of Spry J. *supra* at p.296.)

I am also satisfied that the word "minor", in the context of this section, means "lesser". I refer here to the judgment of the Court of Appeal for Eastern Africa in *Robert Ndecho and Anor.*, *supra* at p.173, where the court refers to a "lesser" offence. F

I have given very careful thought to the argument of learned counsel for the Appellant in the present case. I have finally concluded that the offence of behaving in a disorderly manner in a public place is a 'lesser' offence than that of being drunk and disorderly in a public place. Not only is it 'lesser' in that one less ingredient has to be established but, although the same *maximum* punishment is provided, nevertheless, in my view, the offence of behaving in a disorderly manner in a public place should, *mutatis mutandis*, attract a lesser penalty than that of being *drunk and disorderly* in a public place. These are, of course, cognate offences. G

Hence it was open to the learned trial Magistrate to convict the Appellant of this 'minor' offence within the provisions of Section 164 Criminal Procedure code. The answer to the question stated is therefore in the affirmative and this Appeal must be dismissed. H