

BETWEEN : RATU OSEA GAVIDI & OTHERS Appellants

A N D : R E G I N A Respondent

Mr. Koya & I. Khan, Counsels for the Appellants

Mr. S. C. Maharaj, Crown Counsel for the Respondent

J U D G M E N T

The appellants were jointly convicted and each fined \$100.00 for taking part in Lautoka in an unlawful assembly on 29.4.81.

Grounds (a), (b) & (c) of their appeal allege that the learned magistrate had not directed himself on certain aspects of the law. Failure of a magistrate to state in precise words that he is directing himself as to the law on a particular point of law is not a valid ground of appeal. As has been said many times a magistrate's judgment is not a model for a judge's summing-up. The magistrate knows the law; juries and assessors do not know it and hence the need for the judge to direct them as to the law. A magistrate's judgment may leave room to doubt whether he applied the law correctly or at all and grounds of appeal often allege that a magistrate erred in law and then set out the proposition of law which has not been properly followed. Grounds (a), (b) & (c) really indicate that the finding of guilt was one which no reasonable tribunal would have reached based on the whole of the evidence.

Section 86 of our Penal Code defines an "unlawful assembly" as follows:-

"86.- When three or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.

It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

When an unlawful assembly has begun to execute the purpose for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled."

000080 The accuseds pleaded not guilty and gave unsworn statements at the close of the prosecution case.

The prosecution evidence revealed that the Fiji Pine Commission were holding a meeting on 29.4.81 regarding some offers from British Petroleum. Only two persons from the Fiji Pine Commission gave evidence of the events of that morning. They were P.W. 1 Secretary and P.W.3 deputy manager of the Fiji Pine Commission.

Their evidence revealed that the Board meeting was scheduled for 9.30 a.m. However, the meeting attracted the attention of a large number of landowners who crowded into the grounds around the Fiji Pine Commission building where the meeting was to take place. The crowd including the accuseds ~~had~~ begun to collect shortly before 8.00 a.m. They erected a loud speaker system in the grounds or compound and directed it towards the Fiji Pine Commission building where the Board meeting was to be held.

The meeting did not commence until 10.00 a.m. and during the meeting the loudspeakers outside were also in use. Both P.W.1 & P.W.3 described the noise from the speakers as very loud.

The police arrived about 8.00 a.m. and in view of the size of the crowd it appears that their numbers were reinforced.

The large volume of noise from the loudspeaker substantially interfered with the progress of the Board's meeting inside the building according to P.W.1, but he did not sit in at the meeting and therefore his evidence was not the best evidence available. P.W.3 says that he was instructed to ask for the microphone to be toned down and he conveyed that request to the police. P.W.4 Corporal J. Koroi asked accused 1 to reduce the noise and accused 1 said "Can Fiji Pine Commission tell me the law which restricts me from installing the Public Address System?" If ever the voice of ignorance made itself audible Ratu Osea Gavidu (accused 1) did so by that stupid and provocative remark. P.W.4 J. Koroi reported accused 1's attitude to his superior S.S.P. Gounder. It appears that instead of demanding that the noise be reduced or cut out completely S.S.P. Gounder took no action and permitted the excessive noise to continue so that the meeting had to be abandoned.

P.W.1 stated, and the magistrate accepted his evidence, that the meeting at the Fiji Pine Commission was abandoned after 3<sup>1</sup>/<sub>2</sub> hours because of the noise. It may be that that was the object of the mass gathering.

P.W.1 said that although he was not afraid for his personal safety he was apprehensive. He did not explain what his apprehensions were, he did not say why he was apprehensive. He did not refer to any threats, gestures or

offers of violence which perturbed him.

P.W.3 said that he was too scared to go outside and ask for the speakers to be removed. No doubt he had reason to be scared but he was not requested to explain. His reasons could have been quite insubstantial. However, it seems that he passed that request on to the police who appeared to be too indifferent to carry out their duty <sup>to</sup> by silence ~~on~~ the unlawfully erected speakers.

The learned magistrate accepted that P.W.s 1 & 3 were scared and he found that their fear was due ~~to~~ in some way to the behaviour of the crowd. The learned magistrate gave no reason as to why he attributed their fears to the behaviour of the crowd. No evidence was given as to any hostile behaviour other than the blaring of the loudspeaker which the police did nothing to prevent. He referred to the judgment in R v Komar 1973 A.E. and held that their fear was that of persons nearby and that such fear was sufficient to prove the unlawful nature of the assembly.

With the greatest of respect to the learned magistrate it appears to me that there should have been much more evidence from P.W.'s 1 & 3 to explain why they were afraid. What particular items of behaviour on the part of those assembled created fear. The wording of section 86 clearly demonstrates that instances of unlawful behaviour or unruly behaviour threatening the peace should be alleged and proved so as to show in the words of the section that members of the assembly did "conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear ....."

What did P.W.'s 1 & 3 see which suggested that violence, or a breach of the peace was likely? The words are not that the breach "might happen" but that it "was likely".

The police corporal P.W.4 referred to placards bearing insults against the Government. But such things are not by themselves very uncommon and are by no means invariably associated with unlawful assemblies. Of course those placards may have had a specially inflammatory significance in the particular circumstances connected with this assembly but no evidence was led by the prosecution about this. In fact the case was poorly prepared by the prosecution probably due to lack of expertise and experience.

In my respectful view no stranger to Fiji could read the court proceedings and find in the evidence any obvious justification for fear on the part of P.W.'s 1 & 3. Of course I am not a stranger to Fiji, or to the Wiji Pine Commission building and compound in question.

along with the public am aware that Ratu Osea (accused 1) and several other persons are anxious to place Fiji's Pine Industry in the hands of an alleged American ex-convict who is alleged to have a record in the U.S.A. for large scale fraud or dishonesty. It is public knowledge that the Fiji Pine Commission has been considering schemes from huge financially sound Corporations regarding the build-up of a timber and by products industry from Fiji's man made Pine forests. It is common knowledge that some of the accuseds and some landowners have tried to disrupt Fiji Pine industry by unlawfully blocking roads leading to forested areas and resorting to violence of that nature to force their <sup>own</sup> views upon the Government. The public are aware of these matters and of resultant prosecutions in connection therewith. May be the learned magistrate being aware of the presence of a reputedly antagonistic element in the assembly was misled into accepting as proved that there was an inflammatory situation on this day <sup>involving</sup> the Fiji Pine Commission which was likely to give rise to a breach of the peace.

One cannot take judicial notice of such matters. Evidence on all the above factors should have been led by the prosecution. Crown Counsel drafted the charges but the D.P.P.'s department neglected the need to present a full and comprehensive picture through the mouths of witnesses as to what was happening.

Proof should have been tendered among other things of the following circumstances surrounding the assembly. Was the Fiji Pine Commission considering any offers at its meeting? What was the agenda? Were the accuseds opposed to the proposals? Was it very unusual for 200 or 300 landowners to crowd into the Fiji Pine Commission compound on such a meeting? Did they come from an area under the influence of the accuseds? Did they come from the area where the road blocks had been unlawfully erected? Had the accuseds or the group of landowners a grudge because the Government would not trust the alleged American ex-convict with the entire fortunes of Fiji's Pine Forests? Such matters could be tied in with the placards which might then have been submitted as being inflammatory. Such evidence could support an allegation that the object of the assembly was to disrupt a lawful meeting of a legally constituted body by unlawful means and to force its abandonment. Such evidence all of which was available could have been the basis for other different charges in addition to that of unlawful assembly. No doubt P.M.'s 1 & 3 were afraid because they thought that there was an emotive situation which could easily explode into violence

but there is nothing in the record to show why they should have been in a state of fear. There is nothing which reasonably connects their fear with the behaviour of any of the persons assembled.

In my respectful view the evidence was substantially short of that needed to justify the convictions of the accuseds.

The convictions are quashed and the fines if paid shall be refunded.

LAUTOKA,

26<sup>th</sup> August, 1982

*J. T. Williams*  
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(J. T. Williams)

Judge

