IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Appellate Jurisdiction

Criminal Appeal No. 20 of 1982

Between :

NATWAR LAL s/o Daya Bhai — Appellant

- and -

R E G I N A — Respondent

Mr. A. Singh — Counsel for the Appellant

Mr. S. C. Maharaj — Counsel for the Respondent

J U D G M E N T

The appellant was charged contrary to section 47 of the Penal Code with disorderly conduct in a police station, namely in the Ba Police Station charge room to which the public have access.

He pleaded not guilty but after hearing evidence, which consisted for the prosecution of the evidence of one witness, Police Corporal Sundar Singh, and the evidence of the appellant, the magistrate found the case proved, convicted the appellant and fined him $75. There were several grounds of appeal, that the magistrate failed adequately to direct himself as to the burden of proof and standard of proof, that he failed to fully and properly evaluate the evidence or consider the defence case. There is no substance in these grounds; the magistrate did properly direct himself and although the judgment is brief it is clear that the magistrate did fully and properly consider the evidence for the prosecution and the defence. He came to a conclusion that the prosecution had proved its case, and I see no reason to disagree with his conclusion that the appellant behaved in the police station in the manner described by Police Corporal Sundar Singh.

The first ground of appeal that there was no or not sufficient evidence to prove disorderly conduct does not appear to have any substance, but counsel was allowed to expand on this ground to argue that the evidence did not extend far enough to cover disorderly

conduct and he quoted various authorities to support his argument. To consider this argument it is necessary to consider the background to the incident and then the evidence of what Sundar Singh said happened at the police station.

It transpired from the appellant himself that a woman who worked for him borrowed some money from him and as some security for the loan he retained her passport. Whether this was exactly correct it cannot be said, but the woman went to the police station and reported that the accused had taken her passport by force and retained it. Quite properly Sundar Singh set out to investigate and sent a police constable to see the appellant and make enquiries. The appellant said he was asked to go to the police station and was threatened with arrest if he refused. Whether that is correct or not it is clear that the appellant went to the police station, not under arrest, and saw Sundar Singh in the charge room. What happened there was described by Sundar Singh, and although the appellant denied this account, the magistrate clearly accepted Sundar Singh's version.

The appellant entered the charge room with his breath smelling of liquor. He asked who was in charge and why he had been called. Sundar Singh told him and the appellant asked by what right he was called. He then got wild, pointing and kept banging the counter in spite of warnings. He called, "You dogs, bastard" making so much disturbance that people from outside came to listen. The appellant also threatened Sundar Singh to "fix him up" and then ran to his car. He was then arrested for disorderly behaviour.

In his arguments defence counsel relied heavily on the case of Mendonca v. Attorney General and Another, a civil action No. 22 of 1976, a judgment of the Fiji Court of Appeal which itself relied fairly heavily on the case of Melser v The Police (1967) NZLR (C.A.) 437. Statements on the law in Melser's case were accepted by the majority of the Fiji Court of Appeal without reservation namely -

> "a person may be said to be guilty of disorderly conduct which does not reach the stage that is calculated to provide a breach of the peace, but ... not only must the behaviour seriously offend against those values of orderly conduct but it must at least be of a character which is likely to cause annoyance to others who are present."

> "Disorderly conduct is conduct which is disorderly; it is conduct which, while sufficiently ill-mannered or in bad taste, to meet the disapproval of well-conducted and reasonable men and women, is also something more - it must ... tend to annoy and insult such persons as are

faced with it - and sufficiently deeply or seriously to warrant the interference of the criminal law. Just as, for obvious reasons, based upon the inherent right of all subjects of the Crown to make legitimate public protests against courses taken by authority, it is not enough that the conduct charged should be disapproved by the majority as merely ill-mannered or in bad taste, it is also apparent, in any deliberate consideration of the matter that it cannot on the other hand be necessary to go so far as to prove a likely or imminent breach of the peace. Conduct likely to provoke a breach of the peace may be the subject of another, and more serious charge, and something short of this will . . . sufficiently support a charge under the section now invoked."

Clearly there are fine distinctions as to what amounts to disorderly conduct as distinct from the more serious offence of breach of the peace on the one hand and, excusable but ill-mannered and ~~is~~ in bad taste conduct on the other hand. As was said in Police v Christie [1962] NZLR 1109.

"There are certain manifestations of conduct in a public place which are an affront to and an attack upon recognised public standards of orderly behaviour which well disposed persons would stigmatise and condemn as deserving of punishment. The standard fixed ought to be reasonable and such as not unduly to limit freedom of movement or speech or to impose conditions or restrictions that are too narrow. The conduct must be serious enough to incur the sanction of a criminal statute. A conviction ought not to be entered unless the conduct or behaviour is such that it constitutes an attack upon public values that ought to be preserved."

In this case the incident took place in a police charge office which is a place where public has access. The behaviour of the appellant was clearly disorderly, his manner, his raised voice, his reference to dogs and bastards, his banging the counter, his threats to "fix up" Sundar Singh. In fact his conduct, certainly his threat, brings the case very close to breach of the peace.

One of the arguments of defence counsel was that the appellant was ~~firstly~~ annoyed at the action of the police in humiliating him and that part resulting loss of temper and part justifiable protest provides a background such as that which swayed the court in Melser's case.

Of course the appellant should not have taken the woman's passport as security and the police were justified in investigating, particularly in the light of the actual complaint made by the woman. The appellant might well have felt embarrassed at having the police call at his house, and being asked to come to the police station.

As to the alleged threats made by the police to the appellant, the magistrate could not have taken them very seriously and I see no reason to take them any more seriously. The appellant went to the police station in answer to the request and he may well have been annoyed and considered that he was being unjustly embarrassed. If he expressed his annoyance rather more forcibly than he ought to have done that would not necessarily have involved the sanction of the criminal law.

But calling the police dogs and bastards, hammering the counter continually, threatening to "fix up" the corporal, those actions take the matter beyond what might be considered ill manners and abuse and into the realm of disorderly conduct.

In my opinion he was rightly convicted of disorderly conduct in a police station and the appeal against conviction is dismissed.

The sentence of $75 cannot be said to be harsh and excessive, and the appeal against sentence is also dismissed.

LAUTOKA,
7th May, 1982

(G. O. K. Dyke)
Judge