

IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
Criminal Appeal No. 3 of 1984

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Between:

THE DIRECTOR OF PUBLIC PROSECUTIONS

and

RAM LAKHAN
s/o Gaya Dass

Mr. J. Sabrawal for Appellant
Mr. A. Ali for Respondent

JUDGMENT

This is an appeal by the Director of Public Prosecutions against the acquittal in the Suva Magistrate's Court on 14th October, 1983 of the respondent on a charge of careless driving contrary to section 37 of the Traffic Act.

The respondent was acquitted because the trial Magistrate held on the material before him that no notice of intended prosecution was served on the respondent as required by section 41 of the Traffic Act.

Counsel for the Director complained inter alia that the trial Magistrate erred in law when he dismissed the case because the defence did not raise at the appropriate time, i.e. before the prosecution case closed that it was relying on the fact that no warning under section 41 of the Act was given to the respondent before he was charged with the present offence.

It is common ground that the issue relating to the warning of intended prosecution was not raised by the defence until after the prosecution case had closed. With respect it is a little difficult to understand why the defence failed to raise the issue during the presentation of the prosecution case. Clearly natural justice required that if the issue was important enough for the defence as it apparently was the defence was procedurally bound in fairness to put the

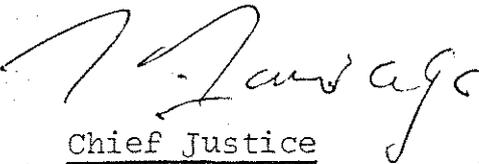
prosecution upon inquiry regarding the matter when it was possible to do so. The defence failure in this regard had precluded the prosecution from providing evidence on the matter.

I am clearly of the view that in failing to cross-examine the relevant prosecution witness on the question of warning under section 41 of the Act, the defence had forfeited any right to claim any tactical benefit from such a procedural omission.

Justice and fairness required that the defence put its case to the prosecution and in choosing not to do so, the defence should not have been allowed by the trial Court to raise it during the course of the defence case.

In my view the consequence of the issue not being put to the prosecution when the opportunity arose is that the defence must now be deemed to have conceded the issue when the prosecution case closed and that it was wrong for the issue to be raised in the manner it was later done by the defence. To hold otherwise would reduce to a travesty the adversarial procedure under which Court trials under our system of justice are conducted.

The appeal is allowed. The order of acquittal is set aside and the case is remitted to the Magistrate's Court for the trial Court to proceed with and adjudge the case on its merits according to the charge and the evidence adduced thereon.


Chief Justice

Suva,
13th April, 1984.