IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No. 18 of 1984

000211

Between:

1. ABDUL KHALID s/o AMIR ALI
2. MOHAMMED SAFIQ s/o MOHAMMED TAIYAB
3. HAZRA BIBI d/o RAHAMATULLAH

Appellants

and

REGINAM

Respondent

Mr. A.K. Singh for the 1st Appellant
Mr. A. Kato for the 2nd and 3rd Appellants
Mr. G.E. Leung with Miss N. Shameem for Respondent

JUDGMENT

This is an appeal from the decision of the Magistrate's Court at Suva where on 13th January 1984, all three appellants were convicted of the offence of disorderly behaviour in a public place presumably contrary to section 4 of the Minor Offences Act, though this was not specified by the trial Magistrate.

Each of the appellant was bound over in the sum of $50 to be of good behaviour for twelve months.

This was to say the least a somewhat unusual case. Having found at the conclusion of the prosecution case that there was no case to answer against each appellant on the formal charge of affray contrary to section 101 of the Penal Code the trial Magistrate decided upon his own motion that the case should nonetheless continue on an unformalised charge of disorderly behaviour. He did so without any order for amendment of the charge which would have been open to him before he made his finding of no case.

The appellant's complaint is that the trial Magistrate should have complied with section 210 of the

Criminal Procedure Code and acquitted them. The section provides:

> "If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit the accused."

It was submitted that the section was mandatory and that all appellants should have been acquitted forthwith when the Court concluded that there was no case to answer on the formal charge before the Court.

Counsel for respondent relied on the provisions of section 169(2) of the Criminal Procedure Code which read -

> "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."

The trial Court relied on these provisions in finding each appellant guilty and convicting them of disorderly behaviour.

The question for this Court is whether the trial Court had proper jurisdiction to proceed with a charge which was not formally before the Court and to enter a conviction thereon.

It seems to me that section 210 of the Criminal Procedure Code could not be clearer in its intention and purpose. The terms of the section are clearly peremptory in nature and in the situation that arose in this case the trial Court had no option but to comply with the edict underlying the wording of the section. As a consequence of failing to give effect to the clear words of section 210, the trial Court created for itself a grave procedural

problem. In my respectful opinion the trial Court's reliance on section 169(2) of the Criminal Procedure Code was of no help in resolving the problem with which it was faced for the simple reason that the section was not intended to be available as a procedural aid at the conclusion of the prosecution evidence on the charge but only after all the evidence on the formal charge had been adduced prior to judgment. It was only then could section 169(2) of the Criminal Procedure Code be brought into play.

A trial Court has no power to substitute a charge at midstream of proceedings without a formal amendment to the original charge being ordered and formulated for the record. In such a case the pleas would need to be taken afresh and the defendant's rights must be explained. That was not done in this case. Indeed, no application for amendment could have been envisaged or anticipated by the prosecution because the trial Court had ruled before any formal amendment could be made that there was no case to answer on the affray charge. Thereafter and if I may respectfully say so, so far as further proceedings on the case were concerned the trial Magistrate had rendered himself functus officio.

In all the circumstances of this case I am satisfied that the trial Court acted beyond its jurisdiction in proceeding with the case against the appellants after it had made a finding of no case and failing to comply with the provisions of section 210 of the Criminal Procedure Code.

The appeal is allowed. The conviction of appellants for disorderly behaviour is quashed and the sentence set aside.

Chief Justice

Suva,
15th June 1984.