

POLICE v EMIL FABRICIUS

High Court Apia
10, 17 June 1943
Herd CJ

CRIMINAL OFFENCES (Threatening, abusive, or insulting words or behaviour towards or in respect of officials) - s 154 Samoa Act, 1921 - No language in section restricting offence to officials as such.

(Provoking breach of peace by threatening, abusive, or insulting words or behaviour) - s 183 Samoa Act, 1921 - Breach of peace "may be occasioned" by persons "who get to know of" the words or behaviour complained of.

PROSECUTION under ss 153, 154 & 183 the Samoa Act, 1921.

Philipp for Police.
Jackson for defendant.

Cur adv vult

HERD CJ. In this case the defendant was charged with three offences as follows:-

- (1) publishing a defamatory libel under section 153 of the Samoa Act, 1921;
- (2) using insulting words . . . whereby a breach of the peace may have been occasioned under section 183 of the Samoa Act, 1921; and
- (3) using insulting words in respect of an officer of the Samoan Public Service under section 154 of the Samoa Act, 1921.

I have already dismissed the charge of defamatory libel, there being no written word, or other tangible or visible form given to the statement complained of. Although a slander it was not a libel.

The facts showed that the defendant had on at least three occasions on the same day made imputations against the chastity of one of the female typists belonging to the Samoan Public Service, the first in the presence of one witness only, the second in the presence of relatives of the girl concerned, and the third in the presence of those relatives and the girl herself.

No evidence was proffered for the defence but it was suggested, (a) that the words used amounted to a friendly warning about what others or another had said, and were therefore not insulting; (b) in respect of the charge under section 183, that the words were used to the girl's family, and that no breach of the peace was likely; and (c) in respect of the charge of insulting a public servant, that to constitute an offence the insult must bear some relation to the duty of the public servant.

I do not come to the conclusion that these words were merely a friendly warning and not insulting. If such had been the intention of the accused his proper course would have been to inform the girl herself alone, and to tell her who was making the alleged statement against her.

He did not do this, but instead made the statement to others, and when pressed for the name of the person who told him the girl was unchaste

refused to disclose it.

I conclude that the words were insulting.

As to the defence that no breach of the peace was likely, the words were used by a man in the presence of women only, and it is true that in this case the women showed no disposition to take physical measures themselves which would break the peace, but the allegation was such as would naturally arouse very strong resentment and might, in my opinion, have given rise to a breach of the peace either by the women themselves, or by their male relatives when they got to hear of it.

Indeed, there have been cases where precisely that has happened. Brothers have considered themselves bound to take physical reprisals, the direct traceable cause of the trouble being an imputation against their sister's chastity.

As to the argument that section 154 should be applied in respect of insults to public servants only where the insult relates in some way to the work of the servant, defence counsel admits that in the only reported case Slipper v. Braisby [1930] N.Z.L.R. 953 the point was not raised. I think it would be a tenable argument only if there were any hint in the language of the section to suggest that the insult must be against the public servant as such, but I think the language is plain, clear and unequivocal. There is nothing in the Act itself to suggest any other meaning, and I do not think it is within the province of a Judge to modify the language of an Act to bring it into accord with his own views of what is right: see Abel v. Lee (1871) L.R. 6 C.P. 365.

I think the legislature has seen fit to define persons of a particular public occupation, and to protect them especially against threats, abuse, and insult.

I therefore convict in respect of charges (2.) and (3.). The Samoa Act, 1921 imposes the greater penalty under section 154. On the charge under that section defendant is fined £5.0.0. On the other charge he is convicted and discharged.