IN THE FIJI COURT OF APPEAL
Criminal Jurisdiction

Criminal Appeal No. 62 of 1981

BETWEEN:

PETER CHARLES GLASS — Appellant

- and -

REGINAM — Respondent

Peter Knight for Appellant
K.R. Bulewa for Respondent

Date of Hearing: 4th March, 1982
Date of Judgment: 19th March, 1982

JUDGMENT OF THE COURT

Marsack, J.A.

Appellant was convicted in the Magistrate's Court sitting at Suva on 11th June, 1981 on three charges:

1. Unlawfully killing a bird
2. Criminal trespass
3. Unlawfully wounding an animal

and on conviction fined $30, $20 and $30 respectively. Appellant appealed to the Supreme Court on 25th September, 1981; his appeal was dismissed. This present appeal is brought against the judgment of the Supreme Court, and by virtue of Section 22(1) Court of Appeal Act is limited to questions of law.

The relevant facts may be shortly set out. Appellant and one M.J. Scott were neighbours living in Veiuto Road, Suva. Mr. Scott (referred to as "the complainant") kept two dogs and four chickens in his compound. Appellant was disturbed at night by the barking of the dogs and other noises. In May 1980 he went on to the complainant's

property in the small hours of the morning, and rattled an iron bar over the wire hurricane shutters. This noise woke the members of the complainant's household; and appellant then expressed annoyance at the barking of the dogs and asked that they be tethered.

Later in the month appellant again entered the compound in the early hours, seized a chicken, wrung its neck and pulled off its head. The next day appellant sent $3 to the complainant's house as compensation for this bird, but the payment was rejected.

On 9th June, 1980 complainant wrote to appellant warning him to keep off the latter's compound or he would be treated as a trespasser. Then for some weeks appellant refrained from entering Mr. Scott's compound.

On 23rd August, 1980 appellant wrote to complainant stating that the latter's dogs were no longer tethered; that they were barking persistently and disturbing the sleep of the appellant and his family. The following morning, 24th August, complainant found one of his dogs wounded and bleeding around the throat and muzzle. The animal was examined by a veterinary surgeon who expressed the opinion that the wounds could have been caused by the pipe used to rattle complainant's hurricane shutters.

Appellant and his wife both denied that appellant had left his home on the night of 23-24 August.

At the hearing before this Court his appeal against conviction on the first charge was withdrawn. This left two counts of appeal which may be shortly set out as under:

(1) The learned Magistrate erred in law in taking the killing of the chicken into account on the charge of wounding the dog;

(2) there was insufficient evidence on which to convict the appellant on counts two and three.

On the first ground the main burden of counsel's argument was that evidence of the prior killing of the chicken was in law inadmissible in respect of the wounding of the dog. Towards the conclusion of his judgment the learned trial Magistrate said:

> "The similarities between the "chicken" and the "dog" incidents and the circumstantial evidence as a whole lead me to the irresistable conclusion that the same person was responsible for both acts."

In the course of his argument counsel for the appellant contended that the similarities between the killing of the chicken and the other offences charged were not such as to justify his finding on the second and third charges. In support of his argument counsel pointed out what he referred to as "dissimilarities" affecting the issue. The authorities which he cited - mostly concerning sexual offences - all deal with an innate disposition of the accused to commit a certain type of crime, as shown by his conduct in other similar conditions. In those cases it is the general character of the accused which evidence is called to prove. But that is not the basis of the judgment in the present case. No attempt was made to establish appellant's proclivity to be cruel to animals. Here, the evidence against the appellant was directed towards showing that he and he alone could have been responsible for the wounding of the dog. In this connection the whole course of conduct of the appellant in respect of the disturbance by himself and his family by the noises coming from complainant's compound is strictly relevant. As the learned Chief Justice pointed out in his judgment, the basic issue in this case is one of identity. The actual injuries to the dog are not in dispute; the only question then is, who was responsible? The whole course of conduct of the appellant most relevant to this matter must necessarily begin from his first entry into the complainant's compound in May 1980, and the action taken by him on that occasion. His subsequent entry when the chicken was killed follows naturally as part of the same line of evidence.

Accordingly we can find no reason for holding that that particular piece of evidence was not strictly admissible, nor was it unduly prejudicial to the appellant.

As to the second ground of appeal: it is true that there was no direct evidence to prove the wounding of the dog by the appellant. No witness saw what took place, and no witness saw the appellant actually present in the compound on that occasion. His conviction was thus based on the circumstantial evidence; which, as stated in Taylor (1928) 21 Cr Ap R 20, is very often the best evidence. It is for this Court to consider the whole of the evidence to determine as a matter of law if that evidence is sufficient to support a conviction. It may perhaps be useful to set out briefly the points to which the circumstantial evidence was directed:

(a) Appellant, but no other neighbour, took up a hostile attitude on the subject of disturbances by the noise from complainant's dogs and chickens;

(b) Appellant came into complainant's compound in the early hours of the morning on occasions in May 1980 and rattled an iron bar or pipe, over the hurricane shutters;

(c) a letter from complainant to appellant on 9th June, 1980 forbidding the appellant to come into the compound, and saying he would be treated as a trespasser if he did;

(d) a letter of 23rd August, 1980 from appellant to complainant that he and his family were disturbed by the persistent barking of the dogs and if this continued he would be obliged to notify complainant of the effect at the time of disturbance;

(e) injuries of the dog could have been caused by the iron bar admittedly owned by appellant.

It is to be noted that the learned trial Magistrate did not believe the evidence of appellant and his wife that the appellant did not leave his home on the night in question.

In the course of his judgment in the Supreme Court the learned Chief Justice said:

> "The question for this Court sitting as an appellate tribunal is not whether this Court thinks that the only rational hypothesis open upon the evidence was that the appellant was the perpetrator of the offences in question. It is rather whether this Court thinks that upon the evidence it was open to the learned Magistrate as the tribunal of fact in this case to be satisfied beyond reasonable doubt that it was the appellant who during the night of the 23rd August trespassed on Scott's compound and attacked Tiki (see Peacock v. The King [1911] 13 C.L.R. 619 at 670/671)."

In our respectful opinion that would apply equally to the proceedings before this Court.

This Court is appreciative of the lengthy written submissions put in by both counsel, and has given full consideration to the arguments put forward and the authorities cited. We conclude that it has not been shown that the judgment of the Courts below were in any way, as a matter of law, erroneous. Accordingly the appeal is dismissed.

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Judge of Appeal

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Judge of Appeal

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Judge of Appeal