

IN THE FIJI COURT OF APPEAL

Criminal Appeal No. 28 of 1985

Between:

THE DIRECTOR OR PUBLIC
PROSECUTIONS

Appellant

and

SHIU NARAYAN alias GIDDI
s/o Sampat

Respondent

Mr. G. Leung for the Appellant

Mr. N. Dean for the Respondent

Date of Hearing: 22nd October, 1985

Delivery of Judgment: 8.11.85

JUDGMENT OF THE COURT

Mishra, J.A.

This is an appeal by the Director of Public Prosecutions against a decision of the Supreme Court, Lautoka, setting aside the conviction of the respondent on a charge of Disorderly Behaviour contrary to section 4 of the Minor Offences Act.

The particulars of offence alleged that the respondent had on 21st October, 1983 "behaved in a disorderly manner in a public place namely Saunaka Road."

The trial Magistrate in his judgment said :-

" The prosecution led no evidence on the fact that Saunaka Road is a public road; significant is that Learned Defence Counsel did not dispute or cross-examine on this point.

Where a place is notorious or ostensibly a public place the court sees no necessity for the prosecution to emphasise this, unless of course issue is taken. "

He held that Saunaka Road was, to the knowledge of the court, a public place and convicted the respondent.

The learned Supreme Court Judge on appeal, held that the trial Magistrate erred in substituting his own personal knowledge for direct evidence which ought to have been produced by the prosecution. He said :-

"Saunaka Road might be a rather grand name given by local people for a track that is not open to the general public. "

Unfortunately attention of neither court would appear to have been drawn to evidence having a direct bearing upon the issue.

Prosecution witness Jagat Singh said :-

" On 21.10.83, 1.30 p.m. I was at Saunaka Road on duty in uniform. I had been sent to check dog licences, road offences. I returned to Saunaka Road to take a bus. "

And again :-

"A PT bus came, I stopped it and took it to Police Station. "

This evidence, unchallenged at the trial, clearly shows that Saunaka Road is a road on which public transport buses run picking up and dropping off travelling members of the general public. Learned Counsel for the respondent concedes that such a road must necessarily be a public place and that the case did not call for the application of any principle relating to judicial notice.

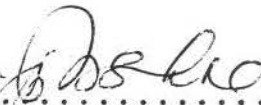
The appeal is allowed and the conviction of the respondent restored. The sentence of \$25 fine was not the subject of the respondent's appeal to the Supreme Court and we, therefore, leave it undisturbed.



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VICE PRESIDENT



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JUDGE OF APPEAL



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JUDGE OF APPEAL