

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No. 55 of 1961

Between:

BRIJNAND MAHARAJ

Appellant

v.

REGINAM

Respondent

Penal Code s. 20—one act giving rise to two offences charged in two counts—sentence upon first count precludes further penalty upon second count.

The appellant was convicted in the Magistrate's Court upon two counts of two offences contrary to section 411 Penal Code, and fined upon each count. Upon appeal it was contended that since the appellant's one act had given rise to the two offences he had been punished twice.

Held.—Section 20 of the Penal Code precluded the infliction of any further penalty upon the second count for the same "act". The sentence imposed on the second count must be set aside and the fine refunded.

Cases cited:

Santokh Singh Kehar v. Reginam 22 E.A.C.A. p. 430.

Kapunga, s/o Magingi v. Reginam 22 E.A.C.A. 387.

Kamau, s/o Kamuyu v. Reginam 22 E.A.C.A. 440.

Cosma, s/o Nyadago v. Reginam 22 E.A.C.A. 450.

Mbithi, s/o Kiso'i & Ors. v. Reginam 22 E.A.C.A. 484.

Wachira, s/o Njenga v. Reginam 21 E.A.C.A. 398.

Myano, s/o Ileine v. Rex 17 E.A.C.A. 317.

Seifu, s/o Bakari v. R. (1960) E.A. 338.

R. I. Kapadia for the Appellant.

Justin Lewis, Solicitor-General for the Respondent.

KNOX-MAWER, Ag. J. (8th December, 1961).

The appellant was convicted before the Magistrate's Court of the First Class, Suva, upon two counts of offences contrary to section 411 Penal Code. The particulars of offence charged in the two counts are as follows:—

*First Count—**Statement of Offence*

Incitement to commit an offence: Contrary to section 411 of the Penal Code, Cap. 8.

Particulars of Offence

Brij Nand Maharaj, s/o Ram Samujh Maharaj on 21st day of July, 1961 at Suva in the Central Division incited Kitione Kautoga, alias Kitione Atu, a person then employed as Junior Station Officer in the Crash Fire Service, Nadi Airport to commit an offence contrary to section 13 (2) of the Essential Services (Arbitration) Ordinance by taking part in the strike, in that he sent the said Kitione Kautoga alias Kitione Atu a telegram which stated "strike action 22/7/61 proceed, Brij Nand, Secretary", when the requirements of section 13 (1) of the Essential Services (Arbitration) Ordinance had not been complied with.

*Second Count—**Statement of Offence*

Attempting to procure the Commission of an offence: Contrary to section 411 of the Penal Code, Cap. 8.

Particulars of Offence

Brij Nand Maharaj, s/o Ram Samujh Maharaj on 21st day of July, 1961 at Suva in the Central Division attempted to procure members of the Crash Fire Service, Nadi Airport to commit an offence contrary to section 13 (2) of the Essential Services (Arbitration) Ordinance by taking part in a strike in that he sent to Kitione Kautoga alias Kitione Atu, a Junior Station Officer in the said Crash Fire Service, a telegram which stated "strike action 22/7/61 proceed, Brij Nand, Secretary", when the requirements of section (1) of the Essential Services (Arbitration) Ordinance had not been complied with.

The appellant was fined £20, or three months' imprisonment in default, upon the first count, and £5, or one month imprisonment in default, upon the second count. He was also ordered to pay £25 costs.

As regards the convictions, the learned trial Magistrate's decision rested entirely upon his findings of fact. Having found that the prosecution had established certain facts beyond all reasonable doubt, the lower court was bound, upon those facts, to convict the appellant as charged. A court of first instance is far better enabled to assess the evidence than is the Appellate Court. No grounds have been shown for any interference by this Court with the learned Magistrate's appraisal of the evidence adduced before him. The appeal against the convictions must therefore be dismissed.

Ground (d) of grounds of appeal reads as follow:—

"(d) That the learned Magistrate erred in law in convicting your petitioner both on the First and the Second Count for the same alleged act and punishing him twice for the same."

Section 20 of the Penal Code provides:—

"20. A person cannot be punished twice either under the provisions of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof he causes the death of another person, in which case he may be convicted of the offence of which he is guilty by reason of causing such death, notwithstanding that he has already been convicted of some other offence constituted by the act or omission."

Clearly the appellant's one act (in sending the telegram) gave rise to the two offences under section 411 Penal Code. In so far therefore as he has been punished for his act, by a fine of £20 upon count 1, section 20 of the Penal Code precludes the infliction of any further penalty upon the other count for the same "act". The provisions of section 20 of the Fiji Penal Code are contained in the Kenya and Tanganyika Penal Codes. I am obliged to the learned Solicitor-General for referring me to a number of decisions of the Court of Appeal for Eastern Africa in this regard. In *Santokh Singh Kehar v. Reginam* 22 E.A.C.A. p. 430 the Court of Appeal in similar circumstances, set aside the sentence imposed by the lower Court on the other count. This, I think, is the correct order to be made here. The other decisions to which reference may be made are *Kapunga, s/o Magingi v. Reginam* 22 E.A.C.A. 387, *Kamau, s/o Kamuyu v. Reginam* 22 E.A.C.A. 440, *Cosma s/o Nyadago v. Reginam* 22 E.A.C.A. 450, *Mbithi, s/o Kisoi and others v. Reginam* 22 E.A.C.A. 484, *Wachira, s/o Njenga v. Reginam* 21 E.A.C.A. 398 *Myano, s/o Ileine v. Rex* 17 E.A.C.A. 317, and *Seifu, s/o Bakari v. R.* (1960) E.A. 338.

The last ground of appeal is concerned with the order for costs. Since this prosecution involved the Crown in costs of £57 12s. 0d. it cannot be said that costs of less than half this sum are other than "reasonable", within the meaning of section 157 (1) Criminal Procedure Code. The fact that the appellant has been granted a dispensation of Court fees on the grounds of poverty cannot affect this issue. The appellants' financial status may, of course, become relevant if a distress is levied to recover these costs.

The appellant was fined £20, or three months' imprisonment in default upon the first count, and £3, or one month imprisonment in default upon the second count. He was also ordered to pay £25 costs. He was also ordered to pay £25 costs.

As regards the conviction, the learned trial Magistrate's decision rested entirely upon his findings of fact. Having found that the prosecution had established certain facts beyond all reasonable doubt, the lower court was bound upon those facts to convict the appellant as charged. A court of first instance is far better equipped to assess the evidence than is the appellate court. No grounds have been shown for any interference by this Court with the learned Magistrate's appraisal of the evidence adduced before him. The appeal against the conviction must therefore be dismissed.

Ground (b) of grounds of appeal reads as follows:— "The learned Magistrate erred in law in convicting you petitioner both on the first and the second count for the same alleged act and punishing him twice for the same." The learned Magistrate erred in law in convicting you petitioner both on the first and the second count for the same alleged act and punishing him twice for the same.

Section 20 of the Penal Code provides:— "A person cannot be punished twice either under the provisions of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof he causes the death of another person, or where he may be convicted of the offence of which he is guilty by reason of causing the death of another person, or where he has already been convicted of some other offence constituted by the act or omission."

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