IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Appellate Jurisdiction

Criminal Appeal No. 80 of 1978

Between:

R E G I N A Appellant

- and -

SUBRAIL s/o Polga Respondent

Mr. M. Jennings, Counsel for the Appellant

JUDGMENT

Subrail Polga was charged with disorderly conduct in a police station and he pleaded guilty.

The facts outlined by the prosecution were very brief. They indicate that the accused had gone there to make a complaint and that he had raised his voice and banged the desk, but had used no abusive words.

It was held by the magistrate that the conduct of the accused could not amount to disorderly conduct and he acquitted the accused.

The Crown appealed on the ground that the magistrate erred in holding that the

accused's conduct did not amount to disorderly conduct. However, that ground of appeal was abandoned at the hearing and the Crown proceeded on the following ground.

> "3(b). That the magistrate erred in purporting to make a finding of fact and thereupon dismissing the charge when no evidence had been placed before the Court upon which any finding of fact could be made, whereas the learned magistrate should have caused a not guilty plea to be entered on behalf of the respondent and proceeded to hear the evidence."

Whether the evidence tendered provides a case to answer is a question of law. Whether the whole of the evidence, if believed, justifies a finding of guilt is a question of law. Whether the evidence does prove guilt is a question of fact.

On a plea of Not Guilty it is not difficult to separate those questions. On an unambiguous plea of guilty supported by facts which demonstrate the offence no question of fact arises on any evidence; the plea of guilty removes the need to make a factual finding of guilt. However, it is still necessary to consider whether the facts as outlined by the prosecution and agreed to by the accused justify the charge.

What steps should a magistrate take when he thinks that the facts admitted by the accused and relied upon by the prosecution do not support the charge ?

The answer appears in R v. Garmonydd Vincent 1948-49 Cr.App.Rep.11, where the accused pleaded guilty to charges of fraudulent conversion and Not Guilty to charges of larceny. It appears that the counts were in the alternative because there was no trial or finding on the counts of larceny. He received 18 months on the fraudulent conversion charges. It transpired that the facts presented did not justify pleas of guilty to fraudulent conversion but would have supported the charges of larceny. The Court of appeal which included the Lord Chief Justice, Lord Goddard, quashed the convictions; they did not order to retrial on the charges of larceny nor direct that the appellant be allowed to change his plea to one of Not Guilty. The Court of Appeal showed that he should not have been convicted by the court below. The only alternative to convicting G. Vincent on the fraudulent conversion charges would have been to acquit him.

The above case shows that where an accused pleads guilty and the facts relied upon if proved in the course of a trial would not provide a case to answer the court should record a finding of Not Guilty notwithstanding the plea of Guilty.

The situation is not the same as where an accused pleads guilty and then disputes some of the facts led by the prosecution. Such a plea would be patently ambiguous.

In the instant case it was not apparent whether the facts would or would not support the plea of guilty. A person may raise his voice to emphasise a point or in protest without reaching the stage of yelling. He may rap the desk loudly and this may not amount to banging the desk. Unless it was put to him very carefully there could be room for doubt as to whether he realised the difference between being emphatic or boisterous and noticeably disorderly.

I am of the view that the magistrate was a little hasty. He should have made some inquiry as to the degree of noise, whether he was requested to desist, how long it went on for etc. and obtained the appellants agreement thereto or his disagreement. He has indicated in the record that he was somewhat hasty in making a finding of not guilty on the facts presented.

I set aside the magistrate's finding of Not Guilty but make no further order. In my opinion it would be somewhat oppressive for the prosecution to follow up the result of this appeal with a further appearance in the magistrate's court. But that remains a matter for the D.P.P.

(Sgd.) J.T. Williams
Judge

Lautoka,
7th November, 1978.