

POLICE v. SITARAM VAMANRAV.

(Criminal Appeal : Hunter J. Nuku'alofa, 6th July, 1954)

Criminal appeal Practice — Magistrate's decision on a question of fact — English Principles — Charge against an Indian — Magistrate's jurisdiction — The Criminal Procedure Act 1927 (Cap. 5) Section 3.

The accused was charged before the Magistrate under Section 102 of the Criminal Offences Act 1926. (Cap. 10) with indecent assault. The Magistrate acquitted the accused. The Police appealed.

HELD. On appeal the Magistrate's decision on a question of fact should not be disturbed, if there is evidence to support it.

Hama appeared for the appellant (The Police).

Finau (with him Tu'akoi and Tupou) appeared for the Respondent (The accused).

C. A. V.

HUNTER J.. The Respondent to this appeal was charged under Section 102 of Cap. 10 with having indecently assaulted one 'Ana Pauli on the 3rd October, 1953. The charge was heard before a Magistrate, who on the 19th November, 1953 found the Accused not guilty. The police have appealed against the acquittal in accordance with the provisions of Section 67 of Cap. 6.

In my view it was proper for this charge to have been heard by a Magistrate and not the Chief Police Magistrate as the Proviso to Section 3 of Cap. 5 dealing with trials by the Chief Police Magistrate applies only when the person charged is a European, and in this case the Accused is an Indian, and therefore not a European.

Section 72 of Cap. 6 provides as follows : "The decision of the Supreme Court on the hearing of appeals (from Magistrates) shall be given on the written evidence forwarded by the clerk but the Supreme Court may in its discretion examine all or any of the witnesses produced before the Magistrate and on good cause shown by either party may in its discretion admit fresh evidence and if necessary may adjourn the hearing for that purpose."

I understand that the practice in this Court in the past has been to deal with these appeals on the written evidence and not to call the witnesses, though of course the Court always has power to call the witnesses. Neither party to this appeal asked me to hear the evidence afresh and I adopted what I considered to be the usual practice.

In these circumstances this appeal is somewhat similar in nature to an appeal from the verdict of a jury in a civil or criminal case to the Court of Appeal in England and I think it advisable so far as I am able, to adopt the principles which have been established in the English Courts for the guidance of Judges sitting on appeal in such cases.

The ground of appeal, and the only ground, is that the verdict of the Magistrate was against the evidence and the weight of evidence.

A very strong case was made out against the Accused and in my view it was very proper for the police to institute this appeal.

'Ana Pauli's evidence according to the transcrip was clear, connected, and detailed, and there was ample corroboration of her story : (See the medical evidence and 'Isitolo Hafoka's evidence).

The Accused, who is a man of excellent character, gave evidence on oath and while admitting that he was with the girl at the time and place in question stoutly denied that he interfered with her in any way.

I find great difficulty in accepting his story particularly in view of the medical evidence, 'Isitolo Hafoka's evidence and the fact (admitted by the Accused) that after having driven out to 'Tukutonga the girl insisted on being driven straight home although the arrangement had been that they should go to the pictures together.

I have given careful consideration to all the facts and also to the able address by the defending counsel who submitted that unless the Magistrate was wrong in law his decision should not be disturbed.

The Court of Appeal in England has held that if a decision of justices is based on evidence which would justify a reasonable man in coming to the same conclusion the Superior Court should not interfere with that decision even if they entertain a different view of the evidence. (*Holborn Guardians v Chertsey Guardians* 15 Q.B.D. 76). And in Criminal Appeals the Court will not upset the verdict of the jury if there is any evidence to support it. I feel I should adopt these principles when sitting in this Court.

The present case was tried by an experienced Magistrate who had the advantage of seeing and hearing the witnesses. This Court cannot say that his decision was such as no reasonable man could come to. I therefore dismiss the appeal and confirm the decision of the Magistrate.