R v Sikuea

Supreme Court, Nuku'alofa
Hampton CJ
Cr 562/96

10

17 & 18 February 1997

Criminal law - sedition - elements

The accused was charged with sedition (3 counts) arising from his answers to questions after he spoke at an election campaign meeting in early 1996, the accused being a candidate.

20

Held:

1. The counts were all dismissed for various reasons.
2. First, all 3 counts related to the one exchange or answer, and were not alternatives. It was unsatisfactory for the Crown to say, in effect, that it was up to the court to choose which count the evidence should be fitted within . That was wrong as a matter of principle and of fairness.
3. The accused was entitled to the protection of cl.11 of the Constitution but here he faced a virtual lottery. Some strictness should be applied to pleading such an offence and the indictment must specify the acts by which the seditious intent was evidenced or if an indictment for seditious words, the words alleged to be seditious must be specified. 30
4. A person in jeopardy on such a serious charge is entitled to know, and must know clearly, what he is to face.
5. Over and above the elements of sedition contained in ss.47 and 48 of the Criminal Offences Act, which reflect the reality of what the common law as to sedition is, there is an additional element namely that the acts or words in question have a tendency to provoke disorder and violence.
6. A court should look at all the circumstances, including the nature of the audience addressed. 40
7. Courts in recent times have taken a strict and somewhat restrictive view of provisions for allegations of sedition, having regard to the fact that such provisions have the potential to be abused at the expense of the freedom of the press and of the liberty of expression particularly having regard to cl.7 of the Constitution.
8. Under cl.7 a balancing exercise of some delicacy may well be required. A court should be vigilant but should in no way prevent what might be seen as lawful criticism, even robust harsh criticism.

50

9. The court could not be sure, on the evidence, of the actual words allegedly used

by the accused. Nor did any account come to the words alleged in the counts.

10. Whatever the words, they were not sufficient to say they were expressive of a seditious intention.
11. And again, the words used were given on a conditional and contingent basis as answers to a series of hypothetical questions, and were not sufficient evidence of proof of seditious intention.
12. What constitutes the offence is the expression of a real intention to effect the seditious purpose and that purpose must be a reality. That was lacking here.
13. As well there was no evidence to found proof of the element of a tendency to provoke public disorder and violence and that the words were spoken with intent to incite the violence or create public disorder.

60

Cases considered:

R v Sullivan, R v Pigot (1868) 11 Cox cc 44
Boucher v R [1951] 2 DLR 369
R v Chief. Met. Magistrate exp. Choudhury [1991] 1 All ER 306
R v Caunt (1947) 64 L QR 203
Burns v Ransley (1949) 79 CLR 101

70

Statutes considered:

Criminal Offences Act ss 47, 48
Constitution cls 11, 7

Counsel for prosecution : Mr Cauchi & Ms Tapueluelu
Counsel for accused : Mr Tu'utafaiva

Judgment

I have listened carefully to, and thought carefully about, the submissions made to me by Mr Tu'utafaiva for the accused who has in effect submitted that the case against the accused should go no further, it should be dismissed at this stage, that is at the end of the Crown case.

Prior to making that submission, I had raised some matters, which had occurred to me and which were of concern to me, with the Crown at the end of the case. I have now heard the Crown, Mr Tu'utafaiva and then Mr Cauchi for the Crown in reply.

80 I say at the outset that I intend to dismiss all of the counts in the indictment at this stage. And I will do so for a number, manifold, reasons, I think possibly 4 or 5 in number.

The indictment charges the accused with 3 counts of sedition under, or contrary to, sections 47 and 48 of the Criminal Offences Act. The first count in the particulars, as amended, says this: the accused did on or about the month of January 1996 at Mu'a, commit sedition by speaking words to the effect "if the campaign to bring reform would turn out to be unsuccessful, he would do what happened at Tungi Arcade, just walk right in and bang" with the seditious intention to excite disaffection against the King of Tonga or against the Parliament or Government of Tonga, or to excite such hostility or ill will between different classes of the inhabitants of the Kingdom as may be injurious to the
90 public welfare, or to incite, encourage or procure violence, disorder or resistance to law or lawlessness in the Kingdom, or to procure otherwise than by lawful means the alteration of any matter affecting the Constitution, Laws or Government of the Kingdom."

Count 2, in its particulars says the accused did on or about the month of January 1996 at Mu'a commit sedition by speaking words to the effect "if the King won't accept the petition, he will resort to what happened at Tungi Arcade, he will do the obvious and go to the extreme" with seditious intention as spelled out, and I will not repeat now, as spelled out in count 1's particulars.

Count 3, says the accused did on or about the month of January 1996 at Mu'a commit
100 sedition by speaking words to the effect "that if the Parliament would not accept the proposals he would do the other thing, just shoot the gun" with seditious intention etc. as per the previous two counts.

My first concern, and the first ground on which I would dismiss the counts, is this:

I did know, did not realise, when this case started, nor indeed from the opening, that, as I have now heard from the evidence and as Mr Cauchi has said to me, these counts relate to just one exchange. I thought that there must have been 3 separate exchanges or events. But that is not the position as disclosed in the evidence and I will come to the evidence in some detail a little later on.

110 Mr Cauchi in the course of his submissions to me this afternoon, said that the counts were not in the alternative but were in relation to the same offence. That I find an extraordinary tactic or piece of pleading by the Crown, and in my view quite wrong. I note that even when submissions as to no case were made, the Crown still did not elect, or try to elect, or indeed suggest it would elect, to proceed on a particular one rather than the other two counts, but in effect said well it is a matter for the Court.

To put matters, on this aspect, in a proper context I should say that I have heard the evidence of 7 civilian witnesses who were present at the time the alleged words were spoken by the accused. Each of those witnesses, as I have listened to them and gone back
120 through my notes, gave different versions (and indeed one of them gave 4 versions when

I looked at it), of the particular answer allegedly made by the accused and relied on by the Crown. An answer to a question directed to him at the meeting which I will come to shortly.

As I have said, it seems to me to be totally unsatisfactory that arising from only the one exchange, only the one occasion in effect, there should be 3 charges. And for the Crown to say, in effect, well its up to the Court to choose which count the evidence should be fitted within. I took some care to note that submission by the Crown on this aspect. The Crown said that the counts did not reflect, or were not put forward as reflecting, 3 different conversations, but were to reflect the state of the evidence as high, and only as high, as the Crown could put that evidence. And the Crown said, well we leave it to the Court to decide which evidence is the most reliable and which count that might then fit within. A 3 way bet as Mr Cauchi referred to it.

It is wrong, as a matter of principle, to plead one event in 3 separate counts in this way. It is certainly wrong as a matter of fairness. How is an accused supposed to defend these sort of counts in an indictment? How is he supposed to know which interpretation is going to come forth? Which interpretation the Court might accept, if any? Which count might be relied upon?

I remind myself that sedition is a serious offence, and I remind myself, also, that the accused is entitled to the protection of clause 11 of the Constitution, which says that the "written indictment shall clearly state the offence charged against him and the grounds for the charge."

Here we have an accused facing a virtual lottery and that can never be a fair and proper basis for proceeding in a criminal trial, particularly a criminal trial for alleged offending of this seriousness. It would seem that, historically, sedition has been the subject of comment as to how it should be pleaded, and it is evident from those authorities that there should be some strictness applied to pleading such an offence.

I refer briefly to the case of R v Sullivan, & R v Pigot (1868) 11 Cox C.C. 44 at page 46, Fitzgerald J where it was said "the indictment for sedition must specify the acts, the overt or open acts, by which the seditious intent was evidenced ...."

I refer also to what it said in Halsbury 4th Edition Vol.11(1) paragraph 91. "In an indictment for seditious words ... the words alleged to be seditious must be specified."

In my view the way the matter has been pleaded here, is not good enough and I would dismiss all counts in the indictment on that basis alone. In my view it breaches basic notions of fairness and of pleading.

As I will come to it I would reject, and do reject, the case for the Crown on the basis the evidence, in any event, does not support any one of the 3 counts.

A person in jeopardy on such a serious matter is entitled to know and must know clearly what he is to face.

I turn then from the pleading matter to the alleged offences themselves. I look first at the statutory provisions in the Criminal Offences Act (Cap.18). Section 47(1) provides that every person who speaks any seditious words shall be liable to be imprisoned. Sub-section 2 goes on - "seditious words are words expressive of a seditious intention." That is the only relevant part of sub-section 2.

Section 48 then set out in detail the definition of seditious intention. "A seditious intention is an intention to do any of the following matters:

(a) To excite disaffection against the King of Tonga or against the

Parliament or Government of Tonga;

(b) To excite such hostility or ill-will between different classes of the inhabitants of the Kingdom as may be injurious to the public welfare;

(c) To incite, encourage or procure violence, disorder or resistance to law or lawlessness in the Kingdom;

(d) To procure otherwise than by lawful means the alteration of any matter affecting the Constitution, Laws or Government of the Kingdom."

Those sections in my view reflect the reality of what the common law as to sedition is. That common law definition is set out in Archbold 1992 Edition Vol.2 at para. 25 - 198, where amongst other things, a lengthy quotation is set out from Stephen; and there is reference then, amongst other cases, to the 2 cases specifically referred to by Mr Cauchi, the Canadian Case of Boucher v R [1951] 2 D.L.R. 369 and then, more recently, the case of R v Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury [1991] 1 All E.R. 306.

In particular in the commentary in Archbold there is reference to this summary, and it is a summary which in my view correctly reflects and sets out the development of the common law, through the cases, including the Canadian Boucher case and on to the Choudhury case in this way:-

"There is authority to the effect that there is a further ingredient to the offence of sedition, namely that the acts or words in question have a tendency to provoke disorder and violence", (and some older authorities are referred to). "This was certainly the view of Birkett J in R v Caunt (1947) (64 L.Q.R. 203). In his charge to the jury he said: "Sedition has always had implicit in the word, public disorder, tumult, insurrections or matters of that kind". Should the point arise for decision it is submitted that the better view is that such a tendency should now be taken to be (and sensibly) "an essential ingredient of the offence. See also Boucher v R (approved on this point also by Choudhury) where the Supreme Court of Canada concluded that the offence of sedition required proof of an intention to incite to violence or to create public disorder." That is the effect of what was said by Watkins L.J., and agreed with, in the Choudhury case at 323 para. (d) and (e) on that page.

One or two other general matters, as to matters of tendency to excite or incite the various matters referred to in section 48 - I take the view that the Court should look at all the circumstances, including the nature of the audience addressed; and as to the questions of proof of intent or seditious intent, I direct myself that the natural tendency of words is no more than evidence of the intention of the person speaking the words.

The next general thing that I refer to is (and it would seem to me quite appropriately) that Courts, particularly in recent times have taken a strict and, what might be seen as, somewhat restrictive view of provisions for allegations of sedition, having regard to the fact that such provisions have the potential to be abused at the expense of the freedom of the press and of the liberty of expression by the individual.

I remind myself of that because of the provision in the Constitution, clause 7. That provides that "it shall be lawful for all people to speak, write and print their opinions and no law shall ever be enacted to restrict this liberty. There shall be freedom of speech and of the press forever but nothing in this clause shall be held to outweigh the law of defamation, official secrets or the laws for the protection of the King and the Royal family."

Under a provision such as clause 7, a balancing exercise may well be required, an exercise of some delicacy. But I bear in mind that provision. The Court should be vigilant but should in no way prevent what might be seen as lawful criticism even robust harsh criticism.

Those are the back ground matters before I turn to some matters of evidence that I have heard. I have the distinct, and uncomfortable, impression that the prosecution here is trying to make much out of little, and that is reinforced, that impression, by what I have said as to the matters of pleading and the way the indictment was framed.

230 This indictment arises from a meeting held in the village of Fatumu sometime in January 1996, leading up to the general election of that year. On a particular night - (and it is interesting and it is a ommentary really on the state of the evidence of the prosecution, as much as anything in a way, that nobody can tell me the night of the week this was, let alone the date this was in January, if indeed it was in January - none of those details as to when this faikava was held are in evidence) - there were two pro-democracy candidates present to address a faikava, including the accused as one of the candidates. Both candidates spoke it would seem (although there was even some divergence about that), and then there was a question and answer session, and I will come to what has been alleged to have been said shortly.

240 But I note this. That apparently there was no complaint to the police by any of the 7 witnesses. It would seem the police approached people who were at this faikava, perhaps even some weeks later, and perhaps it is that which leads to this position of my not being told the date of the meeting, somewhat extraordinary in itself, when there were some 30 or 40 persons present there.

I do not intend to deal with the evidence which I have heard in any great detail. There were 8 prosecution witnesses, 7 of them present at the meeting, and the 8th a police sergeant, who had the task of interviewing the accused. I will deal with the police sergeant first. This interview (or attempted interview because nothing of any sort was said by the 250 accused apparently on advice from his lawyer), did not take place until 4 March 1996, although, apparently, the accused had been in police custody on the 28 February. Yet nothing was done then in relation to speaking to him about these alleged events. That may reflects something about the seriousness of the position, or the lack of seriousness of the position, in itself.

As I have said, in the question and answer interview, and then when charged and asked to make a statement, the accused said nothing, so nothing can be gained from those aspects.

But he was charged with 3 charges and they are before me as Exhibit A pages 2 & 260 3. The charges put to him, as framed by the detective sergeant, alleged that he, the accused, had given answers to 3 separate questions from 3 separate questioners. And the questioners were named in the charges as well as, the alleged questions. Now that is very different to the evidence which I have heard in the last 2 days, where all (and it seemed to be one of the few things that the 7 witnesses were consistent about) 7 of the witnesses said that the questions were only asked by the first witness before me Mr Moala. He was the only interlocutor and it would seem that he asked a series of questions (and it is hard to know the number because of the variety of accounts given but perhaps some 4, or even up to 6, questions) of the variety of "but what if". Certain hypothetical facts were laid out 270 and an answer given to that and then, building from that, "but what if" and so it went on.

Each building on the other, it seems to me. But what if you are unsuccessful with that step, what would you do next, is the effect of what was being asked.

As I listened to them, and as I have gone back through my record, starting out as hypothetical and growing even more hypothetical, progressively more highly hypothetical, and more conditional, and more contingent as the questioning went on.

I will return to that point; but the real point here (and I am moving towards the second basis on which I would, and do, dismiss this indictment) is this. That on the evidence as I have heard it, I could not be satisfied, I could not be sure, as to the actual words used, allegedly, by the accused. There was no contemporaneous record made at the time, whether written or recorded in some other way. None seems to have made. None of the witnesses seems to have made a note at the time, or indeed within a short time thereafter. Indeed the witnesses (or at least the 2 or 3 that were questioned about it in evidence) seemed only to have had the matter brought back to them when the police made enquiries some little time later.

280

All 7 of these witnesses gave different accounts or versions. Both as to the questions and as to the answers. Indeed one of them, Mr Tu'itupou, as I have reviewed his evidence in chief and then his cross-examination, gave 3 possibly 4 different versions of his own. And when I am referring to that, I am referring in particular to different versions of what the accused is alleged to have answered to the last of those series of hypothetical and contingent questions.

290

The last of those 7 witnesses in a curious piece of evidence (and it really came in re-examination) said that in fact he had heard the full answer that had been put to every witness by Mr Tu'utafaiva in cross-examination (Mr Tu'utafaiva was putting, as his duty, what he said the accused himself claimed he had answered). This was a curious reversal in re-examination as that witness seemed to accept that he heard those words said.

The condition of the evidence as I see it and it is in conjunction with the pleading point I have mentioned already, is this. The Crown, in effect says: well something was said. But the question is what? That is the very point. It is not for the Court to guess as to what was said; nor is it for the Court to guess what "Tungi Arcade" means. And from the accounts I heard in evidence it means different things, slightly different things, to different people.

300

But the important point here is that there are variations and conflicts between each of these 7 witnesses and there was variations within accounts as well so far as some of them, if not all, are concerned. As I have said none were immediately interviewed, none complained, none made a record, and their recollections were after some time.

In my view the evidence generally, in relation to proof, is totally unsatisfactory. On the basis of this evidence, I cannot be satisfied, I cannot be sure what was said, and indeed it is so unsatisfactory that, in my view, it would be wrong to allow such serious charges to go further. As I have said, I have linked it back to what I have already said about the unsatisfactory position in relation to 3 counts. I also note that not one witness, in any event, exactly said what is alleged in any of those 3 options in the 3 counts.

310

There are conflicts and variations not just between them as to what the accused allegedly said but also as to whether the accused answered all the questions himself or whether the other candidate present answered some. There is conflict between whether the other candidate tried to cover for the accused and stop him on one hand; or whether the other candidate supported him. There was conflict between the witnesses as to the

320

number of questions asked, ranging from 1 up to something like 4 or 5 or indeed more. Some witnesses acknowledged that they did not hear all that was said. All were trying to give what they could from their memories, as they now recalled.

I have reached the view therefore that I should dismiss these counts, all 3 of them on that basis as well. The evidence is so unsatisfactory I cannot find what language was, what words were, in fact used; and as I have said, in any event, none of them, whatever version, come to the words used in those counts. Not only were there different versions of what was allegedly said by the accused, but each witness had his own, and sometimes quite different, view as to what he thought the accused meant.

That, in my view, creates further problems and difficulties for the prosecution in a case such as this, because not only must there be evidence as to what was said, but also as to whether the words were indeed expressive of a seditious intent.

I turn to other bases for dismissal as well. The first put shortly is as to the reality or otherwise of what was claimed to have been said, whatever the words (and I am viewing them in the widest frame work at the moment because of the difficulty, as I have already expressed, for the Crown). Were those words sufficient to say that they were expressive of a seditious intention (as in section 47 subsection 2)? I say that, given the evidence I have heard, they are not so.

And secondly, as to the contingency basis, the hypothetical and contingency basis on which the answers were given. The words (again viewing them in the widest frame work given the difficulties as I have already outlined) were directed to a contingency merely and in order to give an answer to a questioner. And therefore, in my view, not sufficient evidence on the important question of proof of seditious intention.

As to both those before I go further, I do note that the Crown (again reflecting the shot gun approach, the covering all bases approach, that I have already mentioned in relation to the counts) in opening relied on each of the 4 matters (of seditious intention) set out in detail in section 48. The Crown says, well, if any of them fit the Court should apply them.

I refer to, and when it comes to it adopt, statements which were made in the High Court of Australia, in the case of Burns v Ransley (1949) 79 CLR 101 and in particular two passages at this stage, from the judgment of Mr Justice Dixon (as he then was) at pp.115-118. I start towards the bottom of page 115:

> "To be seditious, the words uttered must, under so much of paragraph (b) & (d) of section 24 (A) (i) as is relevant be expressive of an intention to effect the purpose of exciting this state of feeling against the Sovereign or the Government or Constitution of the United Kingdom or the Government or Constitution of the Commonwealth.
> I take the words "expressive of an intention" in the case of an utterance, to mean that what is said conveys in fact an intention on the part of the speaker to excite or produce such an actual state of feeling. What constitutes the offence is the expression of a real intention," (the stress I put on real is mine) "to effect the seditious purpose and that purpose itself must be a reality" (and again I stress that word). "It is not sufficient that words have been used upon which a seditious construction can be placed, unless on the occasion when

they were used they really conveyed an intention on the part of the speaker to effect an actual seditious purpose" (again my emphasis).

I close that quote there, and then resume at page 117 about 2/3rds of the way down. He is then dealing with the factual situation in that particular case. He refers to a question and answer previously given, and then goes on in this way:

"When the question was repeated and a more categorical reply was insisted upon, his answer and the manner in which it was delivered seem to have exhibited a resolve to state his own sentiments without reserve. But there is no indication of any desire to persuade his audience of anything but his own conviction about the course his party would take if a war with Russia occurred. His answer is a disclosure of his own views actuated by the persistence of his questioner; not an active attempt to effect a purpose of causing his listeners to adopt an attitude of mind. But supposing that by his answer he did wish to influence opinion as to the side that should be taken in the contingency of a war with Russia. The attitude towards the Crown or the Government of persons whose opinion might be so influenced would be only indirectly and consequentially involved and would not be within the immediate and substantial purpose which the supposition would ascribe to the appellant. His mind and his words were devoted to a contigency. It was spoken of as an hypothesis, an hypothesis involving a dilemma ...".

Then a little further on page 118 this:

"In my opinion, he did not in fact commit the crime with which he was charged for the simple reason that he did not answer the question for the purpose of exciting disaffection and his words, as they would be understood in the circumstances in which he uttered them, were not expressive of an intention to effect that purpose."

As I say, I adopt what was said by Dixon J there and turn to two aspects, the two aspects I have mentioned already, under the heading of Reality and Contingency.

Reality. It would seem from what I have heard that the meeting or the faikava was good humoured. There was a series of hypothetical questions culminating in a particular question which the accused is alleged to have answered, on the evidence, in a variety of shapes and forms, but referring in some way to the Tungi Arcade. Laughter ensued. That may have started, on some accounts, whilst the answer was being given. It certainly was present at the end of, or following, the answer and the laughter seems to have come, on the evidence before me, from the majority of those present.

Two of the witnesses before me have said that they, in effect, heard it as a joke and treated it as a joke (whatever it was that was said), and as I have said it provoked, it would seem, a considerable body of laughter at the time. The various witnesses have expressed their own views (different as I have said) as to what was meant by what was said. In my view, on the accounts given me in evidence, the significant and important aspect of a real intention to effect a seditious purpose, that purpose in itself a reality, is lacking with respect to this matter here.

Mr Cauchi, in the course of submissions and in referring to the some of the decisions in the Canadian and then the English cases which I have referred to, said that the test was

that there must have been a threat and if what was threatened did happen would that be treason. That is where this question, and a point rightly made in my view by Dixon J is relevant - this question of reality. And on the evidence, there was simply no foundation for that; not in the way the evidence has been revealed to me.

As to the second aspect, contingency. It would seem Mr Moala led the accused on. He was the sole interlocutor. Deeper and deeper. "If he was fortunate enough to be elected what would he do if nothing happened? If fortunate enough to be elected again, what would he do (that is to further the pro-democracy position)? If the petition to the King did not succeed, what would he do? If the second petition to the King and the march did not succeed, what would he do? If the third petition to the King did not succeed? What would he do? Any other way?" It is this series of questions, as revealed in the evidence, that leads finally to this answer that provokes the laughter I have already referred to.

I will not refer back to the passages of Mr Justice Dixon. I go on to refer to a passage from Mr Justice McTiernan in the same case Burns v Ransley, p.119 about 3 parts of the way down starting with the words.

> "The words in themselves are evidence that the appellant spoke with the criminal intention found by the Magistrate. But it is obvious that all the circumstances in which the words were uttered must be taken into consideration in order to arrive at a correct conclusion on the question whether the appellant uttered the words with the necessary criminal intention."

And he goes on about the tendency and the purpose of the words and then at page 120,

> "The criminal standard of proof must be applied. I think that there is room for a reasonable doubt that the appellant uttered the words with the intention of effecting any criminal purpose which would render them seditious. It is entirely consistent with the evidence to find the appellant spoke the words charged in order to give an answer to the question put to him and that he had no intention other than to give the information sought by the person who asked the question. That is not a seditious intention."

I have already referred to section 48 and the four paragraphs set out, any one of which the Crown say they rely on. Again that demonstrates the difficulties the Crown has as to what was said, let alone the differences between witnesses as to what was meant or could be meant, each as it were placing their own interpretation on it. In my view, this gives the greatest difficulties for the Crown in this area as well.

I go back, finally to the passage I referred to earlier in Archbold and which I read summarising the Boucher and Choudhury cases at paragraph 25 - 198, page 2726, and to that additional element rightly introduced into this charge in the common law, and accepted by the Crown here as being applicable, as additional. That is the proof that the words had a tendency to provoke public disorder and violence and that the words were spoken with intent to incite the violence or create public disorder.

In my view, given all the matters I have already referred to, there was simply no evidence before me on which to found proof of those matters of tendency and intent. It is also on these bases that I dismiss all 3 counts in this indictment against the accused.

I add this. Mr Tu'utafaiva further made submissions to the effect that each count

referred to the alleged offence having taken place at Mu'a, whereas, as the evidence shows, this faikava, and whatever was said took place at Fatumu. If that was his only point I would have allowed the Crown an amendment. It is not an essential ingredient. The accused would not have been disadvantaged by such an amendment. But it is, in my view, irrelevant in view of the judgment and the reasons I have already expressed.

So, also is the fact that no one in evidence seems to have formally identified the accused as being the person spoken of, whether at the meeting or at the interview with the police. But again what that was a matter that might well have been subject to correction (and properly so).

480

The accused should stand. Mr Sikuea, on the 3 counts in the indictment, formally I now enter verdicts of not guilty on each. And in accordance with section 14 subsection 7 of the Supreme Court Act, I direct that you be set at liberty forthwith.

Practice Direction No.1/1997

10

Re: Committals to Supreme Court from Preliminary Inquiries in Magistrates' Courts

1. When a Magistrate commits an accused person to the Supreme Court (whether under s.38 or s.42(5)(c) of the Magistrates' Court Act) such committal will be made by remanding the accused person (whether in custody, or on bail) to appear in the Supreme Court at 9.30 am on the date six weeks from the date of committal.

2. An exception is made for committals from the Magistrates Courts in Vava'u, Ha'apai and 'Eua. There, a committal should be to the date of the first day of the next known circuit session of the Supreme Court in that particular area.

20

3. Before the nominated date for appearance in the Supreme Court the Crown will lodge in the Supreme Court and serve on the accused (or counsel) the indictment. On the nominated date the accused person, and counsel for all parties must attend.

30

NUKU'ALOFA, February 25, 1997.

(Nigel Hampton)
CHIEF JUSTICE