IN THE HIGH COURT OF FIJI
APPELLATE JURISDICTION
CRIMINAL APPEAL NO. HAA0032J.96S

Between:

THE STATE Appellant

and

ROHIT RAM LATCHAN Respondent
s/o K.R. Latchan

Director of Public Prosecutions for Appellant
Mr. G.P. Shankar for Respondent

JUDGMENT

This is an appeal by the Director of Public Prosecutions against the decision by the Suva Magistrate's Court on a submission of "no case to answer" at the conclusion of the prosecution evidence and in which the Court held there was no case for respondent to answer and acquitted him. The acquittal was in respect of offences in the following criminal cases which were tried together, namely in Suva Criminal case No. 5960 of 1992:

"FIRST COUNT

Statement of Offence

DRIVING UNLICENSED MOTOR VEHICLE: Contrary to Sections 9(1) and 85 of the Traffic Act, Cap. 176.

Particulars of Offence

ROHIT RAM LATCHAN s/o K.R. Latchan on the 6th day of March, 1992 at Suva in the Central Division, drove a private motor vehicle on Fletcher Road when the said motor vehicle was not duly licensed.

SECOND COUNT

Statement of Offence

DRIVING UNINSURED MOTOR VEHICLE: Contrary to Section 4(1) and (2) of the Motor Vehicle (Third Party Insurance) Act, Cap. 177.

Particulars of Offence

ROHIT RAM LATCHAN s/o K.R. Latchan on the 6th day of March, 1992 at Suva in the Central Division, drove a private motor vehicle on Fletcher Road when there was not in force in relation to the use of the said motor vehicle by the said ROHIT RAM LATCHAN, a policy of insurance in respect of third party policy risks as complied under the provisions of this Act."

And in Suva Criminal Case No. 825 of 1992:

"Statement of Offence

CAUSING DEATH BY DANGEROUS DRIVING: Contrary to Section 238(1) of the Penal Code, Cap. 17.

Particulars of Offence

ROHIT RAM LATCHAN s/o K.R. Latchan, on the 6th day of March, 1992 at Suva in the Central Division, drove a private motor vehicle on Fletcher Road, Vatuwaqa in a manner which was dangerous to the public having regards to all the circumstances of the case and thereby caused the death of KIRAT NAIDU s/o Yenketaiya Naidu."

The grounds relied upon in this appeal are:

"(i) *that the learned Magistrate erred in law in applying the incorrect onus of proof in respect of counts 1 and 2 of Criminal Case No. 5960 of 1992.*

(ii) *that the learned trial Magistrate erred in law and fact in acquitting the Respondent of Causing Death by Dangerous Driving in Case No. 825/92."*

Section 210 is the relevant provision in the Magistrate's Court relating to a submission of no case to answer. The section reads:

"If at the close of the evidence in support of the charge it appears to the Court that a case is not made out against the accused person sufficiently to require him to make a defence the court shall dismiss the case and shall forthwith acquit the accused."

The law relating to a submission of no case to answer has been conveniently summarised as follows:

> *"A submission that there is no case to answer may properly be made and upheld:*
>
> *(a) when there has been no evidence to prove an essential element in the alleged offence;*
>
> *(b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.*
>
> *Apart from these two situations a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit, but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer; Practice Note [1962] 1 All E.R. 448."*
>
> (Excerpted from "The Criminal Jurisdiction of Magistrates" (7th Edition) by Brian Harris).

Commenting on the Practice Note [1962] 1 All. ER 448 Grant J. (as he then was) in R. v. Jai Chand [1972] 18 FLR 101 said:

> *".....it seems clear that the decision as to whether or not there is a case to answer should depend not so much on whether the adjudicating tribunal would at that stage convict or acquit but on*

whether the evidence is such that a reasonable tribunal properly directing its mind to the law and the evidence could or might convict on the evidence so far laid before it. In other words, at the close of the prosecution case the Court should adopt an objective test as distinct from the ultimate subjective test to be adopted at the close of the trial. But the question does not depen solely on whether there is some evidence irrespective of its credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence."

In R. v. Galbraith 73 Cr. App. R.124 further guidance was given in these terms:

"(1) If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty - the judge will stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge concludes that the prosecution evidence, taken as its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

It is clear from the authorities cited that the test to be adopted by the adjudicating tribunal is an objective one and that is whether at that stage of the trial a reasonable tribunal properly directing its mind to the law and the

evidence could or might convict on the evidence so far laid before it. This is distinct from the ultimate subjective test to be adopted at the close of the trial.

With respect I do not think in the present case the learned trial Magistrate directed his mind appropriately to the test to be applied in the situation before him. This is clear from the manner he approached his task as evidenced by the assertions appearing in his judgment.

Thus at page 21 he averred:

> *"I am of the opinion based on facts and evidence before me, that the accident was caused by the irresponsible conduct of the accused.*
>
> *In my view, the circumstances and evidence do not at all point to the accused being responsible for the child's death.*
>
> *I am not satisfied that the prosecution has made out a case against the accused sufficient to require him to make a defence."*

At page 23:

> *"I am not satisfied that the prosecution has proved its case beyond reasonable doubt in respect of counts 2 and 3.*
>
> *In my view, the prosecution has failed to make out a case against the accused person sufficiently to require him to make a defence pertaining to counts 2 and 3."*

There appeared to be no attempt by the learned Magistrate in this case to examine the evidence objectively from the point of view of a reasonable tribunal as distinct from a subjective assessment which in my view can only start to operate or come into play after all the evidence (both for the prosecution and defence) is in. This is important in the interest of a fair trial. Prosecution evidence was entitled to be assessed on an objective standard since the question at that stage was whether a reasonable tribunal could or might convict upon the evidence so far adduced. It is of the essence of impartiality or appearance of impartiality of a trial that the judicial process should be seen to be correct and fair. I appreciate that the objective approach may be

regarded as artificial where as here a trial Court is both the judge of law and fact. However, it seems absolutely essential if a fair trial is to be achieved in a case such as this which evokes strong human emotions that the proper judicial approach to a submission of no case to answer should be adhered to. In my view it is a necessary safeguard against what may be taken to be hasty or ill-judged adjudication in a serious criminal charge. In these circumstances I find the decision to terminate these proceedings at the conclusion of prosecution evidence without the trial Court directing its mind to the proper test to be applied leaves the adjudication in this trial less than satisfactory.

In view of the course of action I propose to adopt in this case, I will not make observations about the relative strength or weakness as the case may be, of the evidence adduced by the prosecution although at the hearing of the appeal the DPP was severe in her criticisms of the way in which the trial Court had assessed the evidence resulting in the acquittal of the respondent. According to the DPP there was sufficient evidence for the case to be allowed

to go forward and at any rate this is not a case which by any evidentiary measure should have been stopped on grounds:

(a) that there has been no evidence to prove an essential element of the offence; or

(b) that the prosecution evidence has been wholly discredited in cross-examination as to become worthless.

As to these latter matters, it may be thought somewhat unusual that it should take twenty-three pages of type-written material to explain a finding of no case to answer after the prosecution evidence closed. For that reason one may well argue if the matter was so obvious and clear-cut as such a finding would seem to suggest, why was it necessary in a court of summary jurisdiction one should be treated to an overly long exposition into the law and evidence in this case. The essence of trial in a court of summary jurisdiction is expedition and conciseness in the treatment of each case. This will ensure a good turn-over of cases within a reasonable period. It is a point worth remembering by

courts exercising summary jurisdiction. Observance of this rule will work to the benefit of the justice system as a whole.

For the reasons I have given the appeal must be allowed. The order of the Court below acquitting the respondent is set aside and a new trial is to be held before another Magistrate.

Chief Justice

Suva

23 August, 1996