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REGINA

v.

MIKELI VUETI

B [SUPREME COURT, 1964 (Knox-Mawer Ag. P.J.), 31st January, 26th March]

Appellate Jurisdiction

Criminal law—evidence—unsworn statement by accused under section 201(1) of the Criminal Procedure Code (Cap. 9)—probative value.

C *Criminal law—practice and procedure—submission of no case to answer—duty of court—burden of proof—Penal Code (Cap. 8) ss.238, 250(a), 253.*

In considering a submission of "no case to answer" in a criminal case a court must bear in mind the burden of proof and the court must ask itself, before putting the accused upon his defence, whether the prosecution evidence as it then stands (that is to say, being un-
D contradicted, unexplained and with no doubt cast upon it by the accused or his witnesses) would suffice to establish the guilt of the accused beyond reasonable doubt.

Where an unsworn statement is made by the accused under section 201 (1) of the Criminal Procedure Code, it is technically incorrect
E to refer to it as evidence, but it is material to which the court is entitled to give such weight as the court thinks it deserves, and regard must be paid to it in deciding whether, upon the whole of the evidence, the prosecution has established the guilt of the accused beyond reasonable doubt.

Appeal by case stated against an acquittal by a Magistrate's Court.

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G. N. Mishra for the Crown.

H. M. Scott and *A. H. Sahu Khan* for the respondent.

KNOX-MAWER Ag. P.J.: [26th March, 1964]—

G This is a case stated by the Magistrate's Court of the First Class, Tavua. The Respondent was charged before the lower Court as follows:

FIRST COUNT

H *Statement of Offence*

ACTS INTENDED TO CAUSE GRIEVOUS HARM: Contrary to section 250 (a) of the Penal Code.

Particulars of Offence

MAIKELI VUETI, on the 15th day of June, 1963, at Matacawa, Tagi Tagi, Tavua, in the Western Division, with intent to do some grievous harm to Waisake Ratoto, unlawfully did grievious harm to the said Waisake Ratoto by means of discharging a 12 bore shot-gun.

ALTERNATIVE CHARGE

Statement of Offence

GRIEVOUS HARM : Contrary to section 253 of the Penal Code.

Particulars of Offence

MAIKELI VUETI, on the 15th day of June, 1963, at Matacawa, Tagi Tagi, Tavua, in the Western District, unlawfully did grievous harm to Waisake Ratoto.

At the close of the prosecution case a submission was made on behalf of the Respondent of no case to answer. The learned trial Magistrate overruled this submission holding that the following facts had been established by the prosecution :

(a) Early on the morning of 15th June, 1963 at Tagi Tagi, Tavua, Waisake Ratoto received a shot-gun wound on his right thigh;

(b) the gun belonged to the Respondent who was holding it at the time the shot was discharged;

(c) Ratoto had abused and struck the Respondent as a result of which the Respondent was under considerable provocation when the incident occurred;

(d) the Respondent had drunk alcoholic liquor earlier in the evening but was not drunk and knew exactly what he was doing.

The Respondent then elected to make an unsworn statement under section 201 (1) of the Criminal Procedure Code. This concluded the hearing.

Upon considering this unsworn statement, along with the whole of the evidence, the learned trial Magistrate concluded that he was not satisfied beyond all reasonable doubt that the accused was guilty of either offence; the learned trial Magistrate felt that the shooting might have been accidental. The Respondent was, therefore, acquitted.

Before proceeding to answer the questions stated for my opinion I should refer to three particular sources of authority which I have studied. These are, firstly, *The Law Quarterly Review*, Vol. 77 (1961) pp. 491 to 500, secondly *"The Australian Lawyer"*, Vol. 4 (1963) Parts 9 and 10, pp. 132 to 139, and thirdly, *Essays on the Law of Evidence, Cowen and Carter*, Chapter 7. I have consulted all the available cases referred to in these treatises.

Question (1) (a) reads :

"Was I correct in law in ruling whether or not there was a case to answer, that the prosecution had discharged the onus of proof placed upon it?"

In my view the learned Magistrate was correct in overruling the submission of "no case to answer".

Question (1) (b) reads :

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"Should I have directed myself what the burden of proof was?"

In considering a submission of "no case to answer" the learned Magistrate must always bear in mind the burden of proof in criminal cases.

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Question (1) (c) reads :

"What is the burden of proof to be discharged by the prosecution at the conclusion of the case therefor?"

The question which the Court must ask itself before putting the accused upon his defence is "whether the prosecution evidence *as*
C *it then stands* (that is to say, being uncontradicted, unexplained, and with no doubt cast upon it, by the accused or any of his witnesses)— would such 'prima facie' evidence suffice to establish the guilt of the accused beyond all reasonable doubt?"

Question (2) (a) reads :

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"Was the unsworn statement of the Respondent admissible in law to rebut the case for the prosecution?"

The survival of the accused's right to make an unsworn statement is an anachronism, and has given rise to conflicting judicial opinion. Be that as it may, it is my view that where an accused elects to give an unsworn statement the Court is entitled to give such weight
E to it as it thinks it deserves. It is therefore both admissible in law and can have probative value in so far as it may, for example, explain or serve to cast some doubt on the prosecution case. Certainly the Court must, at the conclusion of the case, consider the unsworn statement, along with the whole of the evidence, and *then* decide whether or not the guilt of the accused is finally established beyond all reasonable doubt.

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Question (2) (b) reads:

"Was the statement evidence?"

Although the authorities indicate that it is technically incorrect to refer to an unsworn statement as "evidence", it can have probative
G value.

Question (2) (c) reads:

"Could such a statement establish a defence?"

An unsworn statement is material to which the Court is entitled
H to give such weight as it thinks it deserves and regard must be paid to it in deciding whether upon the whole of the evidence the prosecution has established the guilt of the accused beyond all reasonable doubt.

Question (3) reads:

"Did I fail to properly direct myself in law since I did not consider the provisions of section 238 of the Penal Code in relation to either count?" A

In my view section 238 of the Penal Code is not relevant in this case. Accordingly the learned trial Magistrate did not err in failing to direct himself upon this section.

This appeal is accordingly dismissed.

Appeal dismissed.