

130

IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
Criminal Appeal No. 14 of 1980

000130

Between:

ARJUN s/o MUNA LAL

Appellant

and

REGINAM

Respondent

Mr. A. Singh for the Appellant

Mr. M.I. Khan for the Respondent

JUDGMENT

On 12th December 1979 the appellant was convicted after trial in the Navua Magistrate's Court on a charge of using obscene language in a public place at Navua contrary to section 7 of the Minor Offences Act 1971 and was fined \$40 and in default one month's imprisonment.

The appeal is against both conviction and sentence.

The appeal against conviction is mainly on two grounds namely:

- (i) That there was no evidence that the offence occurred in a public place.
- (ii) That the evidence adduced could not support the charge against the appellant having regard to the standard of proof required in a criminal case.


With regard to the first ground of appeal it is contended for the appellant that the Navua bus stand is not a public place. Like the learned Magistrate who tried the case I find the proposition somewhat startling. In the Minor Offences Act 1971 a "public place" is defined as meaning, inter alia, "a public road ... or place of public resort ...

to which for the time being the public have or are permitted to have access whether on payment or otherwise." A bus stand is necessarily located on or near a public road and in any case it would have to be a place to which the public must have access in order to sustain the transport system. For that reason I find no merit in this ground of appeal.

On the second ground of appeal there was in my view ample evidence which if believed as it was believed to prove that the accused had used obscene language in a public place as alleged. This ground also fails.

With regard to the appeal against sentence I would agree that the sentence was rather on the heavy side having regard not only to the appellant's hitherto clean record but also the minor nature of the case.

The appeal against sentence will therefore be allowed. The sentence passed on the appellant is set aside and in substitution therefor I impose a fine of \$10 or 7 days' imprisonment.


(T.U. Tuivaga)
Chief Justice

Suva,
20th June 1980.