JOHN MAETIA KALIUAE v. REGINAM

High Court of Solomon Islands
(Ward C.J.)
Criminal Case No. 5 of 1990
Hearing: 9 March 1990
Judgment: 16 March 1990

A. Nori for the Appellant
F. Mwanesalua for the Respondent

WARD CJ: This is an appeal against a conviction by the learned Chief Magistrate for unlawful assembly on the following grounds -

"1. That the conviction was against the weight of evidence.

2. The Chief Magistrate erred in convicting the appellant by failing to consider "mens rea" as an element in the charge which has to be proved by the Prosecution."

A further appeal against sentence has been abandoned.

At the trial in the Magistrates Court, the appellant was charged with riot as well as unlawful assembly but was acquitted of the lesser charge. The Director of Public Prosecutions cross appeals against that acquittal on the following grounds -

1. That the learned Chief Magistrate erred in finding that there was no evidence to prove that the Respondent took part in the riot.

2. That there was evidence to convict the respondent in taking part in the riot as charged.

The case arose from events in November last year. A notice was placed in the Central Market at Honiara purportedly written by a man from Bellona which was deeply offensive to Malaitans as a whole. Despite considerable doubt as to the true authorship or intention of this document, it resulted in serious civil

disorder with bands of largely Malaitan youths going on a rampage through the town on November 9th and 10th causing substantial damage to property and apprehension in the public.

A meeting was then held at Lawson Tama when the National Government handed over $200,000 to the Premier of Malaita in order to settle the matter. Whilst this remarkable gesture appeared to placate the majority of people present, a small group demanded, in addition, the release of those people who had already been arrested for criminal offences during the disturbances.

A number of leaders had been present at the meeting including the appellant who, as an ex-Member of Parliament and Minister, had been asked to act as a spokesman by the Premier of Malaita and was "appointed" as a Malaita Leader by the Prime Minister. The Chief Magistrate found that it was "clear from the evidence before the court that a major section of the demonstrators saw him as someone with authority and someone to listen to."

After speeches by various of the leaders present, the leaders left except for the defendant. He was asked by the section of the crowd which remained to negotiate for the release of the arrested men. After the appellant had asked "Do you want us to march to the Police Station?" the crowd moved off with him in that direction. At the Mataniko Bridge they were told to disperse but they responded violently and had to be dispersed with tear gas.

The Chief Magistrate in his judgment described his findings thereafter in the following way:

> "I am satisfied beyond reasonable doubt that after the handing over ceremony and the departure of the leaders a group assembled around the Defendant, that group had the intention of moving out of Lawson Tama and proceeding down towards the Mataniko Bridge and towards the Central Police Station and that they conducted themselves in such a manner to cause reasonable fear in people in the area that they would commit a breach of peace and

that by their assembly needlessly provoked others to commit a breach of the peace. I am also satisfied beyond reasonable doubt that Unlawful Assembly began to execute its purpose, to proceed westwards towards the bridge towards Central Police Station, by a breach of the peace and to the terror of the public.

The only question to be answered is did the Defendant "take part" The defendant maintains that once he had addressed the crowd at Lawson Tama his intention was to walk down to the Prime Minister's Office. That in itself is not evidence of participation, but the defendants actions cannot be taken in isolation. If the defendant had left with the other leaders he would not be facing these charges. He chose to remain and speak to a smaller section within the gathering. The words spoken were inflammatory when spoken to a large group of excited people. The defendant cannot be said to have been merely one in attendance out of curiosity. In walking down towards the bridge with a large group which was clearly out of control merely to go to the Prime Minister's Office is really incredible. There was a line of police blocking the road, people obviously saw the defendant as a focus. He could have easily phoned through to explain he would come down later. By the defendants words and actions he actively encouraged or promoted an unlawful assembly. The moment when the smaller crowd, after his address, commenced to move off towards the Mataniko with the common purpose of somehow obtaining the release of those in lawful custody and started to behave in such a way that reasonable citizens feared a breach of the peace, the assembly became unlawful. The defendant did not disassociate himself with the assembly, he participated. It is clear, from his statement to the reformed crowd after the first dispersed, he knew what would happen, yet he remained. I am satisfied that his actions were such that he knew that they would endanger the public peace."

The first ground of appeal is that the conviction is against the weight of evidence. I do not intend to recite that evidence. I have read it and the learned magistrate's conclusions on it. He is in a better position than I to assess the witnesses and their evidence and I will not lightly interfere with his conclusions. Despite the variations in the witness' accounts, there is ample evidence on which to base those conclusions and that ground fails.

The second ground deals with the mens rea. Mr Nori for the appellant urges that the Court must decide if, when he stayed with the crowd and moved off with them, the appellant's presence was the result of a criminal intention to participate with that crowd. He says that the lower court was trying to find his mens rea was that of an active participant who by his presence was trying to incite the crowd. That, Mr Nori says, was not proven to the required standard.

In dealing with this, the Chief Magistrate stated -

"Whilst it is clear from the authorities that where the evidence shows mere continued voluntary presence at the scene of a crime, even though it was not accidental, this of itself does not necessarily amount to participation in the crime. But if some positive act of assistance or involvement in the commission of a crime is voluntarily done, with knowledge of the circumstances, then this must be sufficient to support a conviction. This court comes to the inescapable conclusion that the actions of the defendant amounted to participation and involvement and I am satisfied beyond reasonable doubt that the defendant took part in an unlawful assembly."

In the passage I have previously quoted he had found that, by his words and actions, the appellant actively encouraged or promoted an unlawful assembly.

Many English authorities deal with the mental element in the common law offence of unlawful assembly. Section 68 of the Penal Code does not follow precisely the common law definition but the authorities give clear guidance on this aspect. In Russell on Crime 11th Ed. p. 285 two authorities (neither of which is available here) are cited in support of the following passage -

"And 'any meeting assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighbourhood, is an unlawful assembly'. In viewing this question, the jury should take into consideration the way in which the meetings were held, the hour at which they met, and the language used by the persons assembled, and by those who addressed them: and then consider whether firm and rational men, having their families and property there, would have reasonable ground to fear a breach of the peace, as the alarm must not be merely such as would frighten any foolish or timid person, but must be such as would alarm persons of reasonable firmness and courage." (**R. v. Vincent** (1839) 9 C & P 91). "All persons who join an assembly of this kind, disregarding its probable effect and the alarm and consternation which are likely to ensue, and all who give countenance and support to it, are criminally responsible as parties to the assembly." (**Redford v. Birley** (1822) 3 Stark (N.P.) 76.)

Lord Alverstone CJ in **Wise v. Dunny** (1901) 1 KB 167 @ 175 referred to the "essential condition" that "there must be an act of the defendant, the natural consequence of which, if his act be not unlawful in itself, would be to produce an unlawful act by other persons". James LJ in **R v. Jones & Others** (1974) 59

CAR 120 @ 127 described the mens rea as "the intention of fulfilling a common purpose in such a manner as to endanger the public peace". The Chief Magistrate's findings of fact clearly fall within these authorities.

Mr Nori further points to the fact that the evidence could equally suggest the appellant's intention was, as stated by him, simply to walk to the Prime Minister's Office and call into the Central Police Station on the way. I am satisfied the reference by the magistrate to the appellant's failure to dissociate himself and that he knew what would happen sufficiently establishes intention.

In **Beatty v. Gillbanks** (1882) 9 QBD 308, Field J pointed out that "every one must be taken to intend the natural consequences of his own acts and it is clear to me that, if this disturbance of the peace was the natural consequence of acts of the appellants, they would be liable".

The appeal against conviction is dismissed.

The learned Director of Public Prosecutions appeals against the acquittal by the learned Chief Magistrate of the associated charge of riot. By section 68 of the Penal Code,

> "When an unlawful assembly has began to execute the purpose for which it is assembled by a breach of the peace and to the terror of the public, the assembly is called a riot."

The Director of Public Prosecutions points out there was evidence to support such a charge and a perusal of the record clearly demonstrates that fact. In deciding the guilt of any defendant charged with this offence, the magistrate has to be satisfied to the required standard that the offence is made out against him. It is, in such a case, a matter of assessing the evidence and deciding where the line must be drawn and whether the defendant has crossed it.

Having convicted the appellant of unlawful assembly, the Chief Magistrate correctly stated the definition of riot and continued -

> "The evidence adduced has proved the defendant's participation in unlawful assembly. There is no direct evidence against this defendant of actual violence. There is evidence that, closer to the confrontation with the authorities at the bridge, he turned towards the crowd and attempted to calm them; he also spoke to the crowd once it reassembled to disperse. I am not satisfied beyond reasonable doubt that this defendant took part in the riot ...."

As I have already said, where there was sufficient evidence to support the magistrate's finding of fact, this Court will not lightly interfere. The fact that evidence could also suggest his guilt, does not mean the magistrate must accept it as such. The evidence, as evaluated by him, must satisfy him to the degree of certainty necessary on a criminal charge. If it fails to do so, as clearly happened here, the defendant must be acquitted.

The appeal against his acquittal of riot is dismissed.

No order for costs.

(F.G.R. Ward)
CHIEF JUSTICE