MANU TAUNOLO

v.

THE STATE

[HIGH COURT, 1993 (Fatiaki J) 16 September]

Appellate Jurisdiction

Crime-procedure- plea of guilty- whether equivocal- whether conviction entered- Criminal Procedure Code (Cap 21) Sections 155(2), 206(2), 309.

The appellant had pleaded guilty in the Magistrates Court and been sentenced. Upon appeal the High Court HELD: (i) where a guilty plea was equivocal an appeal against conviction lay and (ii) it appeared that the appellant had not been formally convicted.

Cases cited:

DPP v. Jolame Pita 20 F.L.R. 5
David Kio v. R. 13 F.L.R. 21
Ram Sami Naidu v. R (Cr. App. 34/1984)

Appeal against conviction and sentence from the Magistrates Court.

V. Maharaj for the Appellant
Ms. S.Kaimacuata for the State

Fatiaki J:

On the 9th of September 1993 this Court quashed the conviction of the appellant and entered a not guilty plea to the charge, The case was also remitted to the Magistrates Court for trial before a different magistrate. On that occasion I said that I would give my reasons later and this I now proceed to do.

The appellant was charged before the Suva Magistrate Court with an offence of Rape. The Magistrate's Court record reveals that on the 30th of June 1993 the charge was read and explained to the accused and he signified he understood it. Then after he elected trial in the Magistrates Court his plea to the charge is recorded as follows :

"Plea : Guilty"

The appellant now seeks to appeal against his conviction on the ground that his guilty plea was equivocal because be was wrongly advised by a police officer and did not understand the elements of the offence with which he was charged.

Section 309 of the Criminal Procedure Code (Cap.21) provides :

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> "(1) No appeal shell be allowed in the case of an accused person who has pleaded guilty and has been convicted on such plea by a Magistrates' Court, except as to the extent or legality of the sentence."

In considering the meaning and effect of that section the Fiji Court of Appeal said in Ram Sami Naidu v. R. Cr. App. 34 of 1984 (unreported) at p.2 :

B

> "... each case must be dealt with on its own particular facts and there must be an intentional and unequivocal admission of guilt by an accused adequately informed of the substance of the charge or complaint. We take these closing words from Section 206(1) of the Code under the heading 'Accused to be called upon to plead' ..."

C

and at p.4 of the judgment can be found the following passage :

> "What an accused person says in explanation or mitigation after he has pleaded may qualify his plea in a way that persuades the Court that it cannot be treated as unequivocal."

D

Clearly then despite the provisions of Section 309 of the CPC if after considering the facts and circumstances of a case this Court should hold or entertain a reasonable doubt that a plea of guilty was not an intentional and unequivocal admission of guilt or that the accused was not fully informed or was misinformed as to the substance of the charge, then it would be open to the Court to quash the conviction based on such a finding.

E

It is therefore necessary to carefully consider the particular facts and circumstances of this case as revealed in the record of the proceedings in the Magistrate Court in order to ascertain whether or not the appellant's guilty plea was unequivocal.

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To continue then with the record of the proceedings after setting out the prosecution's account of the facts the typed record reads :

> "Accused : Admit facts.
>
> Previous convictions : first offender."

G

On the face of that admission and having regard to the facts outlined there can be no doubting the correctness of the appellant's plea of guilty.

The original handwritten record of the trial Magistrate however contains some additional words immediately following the above admission, namely:

> "I just pulled her but did not punch her. "

This latter sentence was subsequently crossed out which explains its absence

from the typed record.

State Counsel was unable to offer any explanation for why the trial Magistrate would have crossed out the sentence other than to suggest that he may have considered it not relevant. A

But if that were so then there would have been in my view no need to cross out the sentence at all. He could have let it remain undeleted on the record with the observation that he did not consider it a material dispute as to the facts (as did State Counsel in opposing the appeal) and proceeded to conviction and sentence. B

The fact that the trial Magistrate saw fit to cross it out is capable of supporting the contrary adverse view that the sentence raised a doubt in his mind as to the equivocality of the accused's earlier recorded plea of guilty and rather than deal with that doubt he deleted it.

C

In an affidavit sworn and filed in Court, the appellant deposed in relation to this matter :

> "2. THAT when the Magistrate asked me if I admitted the facts as outlined by the prosecutor. I recall telling the learned Magistrate words to the effect that I did not punch the girl - nor dragged her but merely pulled her by her hand. I said this to the Magistrate because I knew the girl agreed to have sex with me." D

Counsel for the appellant also submits that the deleted words go to the issue of whether or not the complainant had consented to have sex and amounted to a qualified admission of the facts sufficient to render his guilty plea equivocal. E

In D.P.P. v. Jolame Pita 20 F.L.R. Grant Ag.C.J. (as he then was) described what should happen in such a situation when he said p.6 :

> "On a plea of guilty to any offence, the question of what is admitted by an accused should be ascertained with certainty ; (as) if ... facts are put before a Court or explanation given which derogate from the plea of guilty or which appear to render equivocal what would otherwise have been an unequivocal plea, then the plea must be changed to one of not guilty and the case set down for hearing." F

I further note that nowhere in the Magistrates' Court record has it been recorded that the accused was formally convicted on his guilty plea or indeed found guilty of any offence contrary to the mandatory requirements of Sections 206(2) and 155(2) of the Criminal Procedure Code (Cap.21). G

In David Kio v. R. 13 F.L.R. 21 an appeal from the Solomon Islands, the Fiji Court of Appeal considered an identically worded provision to Section 155(2)

of our C.P.C. in a case very similar to the present case where there was no formal finding of guilty and no formal conviction and where the trial judge
A merely heard the appellant in mitigation and then passed sentence.

In allowing the appeal in David Kio's case in which there was a trial and a written judgment delivered, the Court said at p.22 :

> "Although no particular form of words is required it would appear that the judgment must make it clear that the accused
B is convicted, must specify the offence of which he is convicted and state the punishment to which he is sentenced."

> and at p.23 :

> "In our view ... an inferential conviction is not a sufficient compliance with the law. The judgment must state
C unequivocally that the accused person is convicted, or at least that he is found guilty of the offences concerned."

> and finally at p.24 :

> "We find the absence of a conviction is a basic defect and one
D which is not curable by this Court."

In the light of the above and after having carefully considered the circumstances of this case I was firmly of the view that the appellant's plea of guilty was at the very least equivocal and that it would be unsafe to let it stand. The appeal was accordingly allowed.

E *(Reasons for allowing appeal delivered)*

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