

ORISI CABENATABUA

v.

THE COMMISSIONER OF INLAND REVENUE

[HIGH COURT, 1994 (Tuivaga J), 9 December]

Appellate Jurisdiction

A

B

Crime-procedure- need for adequate particulars of the prosecution case to ensure a fair trial.

C

On appeal against conviction entered and sentence imposed in the Magistrates Court the High Court HELD: the relevant facts and matters pertaining to the offences charged were so insufficiently and inadequately placed before the Magistrate that the appellant did not have a fair trial. Accordingly the conviction and sentence were set aside (in the revisional jurisdiction of the Court).

No cases were cited.

Appeal against conviction and sentence from the Magistrates Court.

D

A. Ram for the Appellant
I. Blakeley for the Respondent

Tuivaga CJ:

On 4 July, 1994 appellant was on his own plea convicted before the Labasa Magistrate's Court of the following offences:

E

"FIRST COUNT
STATEMENT OF OFFENCE

F

FAILING TO FURNISH A TAX RETURN AS REQUIRED BY
SECTION 33 OF THE VALUE ADDED TAX DECREE 1991:
Contrary to Section 71(c) of the Value Added Tax Decree 1991.

PARTICULARS OF OFFENCE

G

ORISI CABENATABUA on the 1st day of July 1993 and thereafter at Labasa in the Northern Division, failed to furnish a Value Added Tax Return to the Commissioner of Inland Revenue for the taxable period 1st March 1993 to 31st May 1993 as required by Section 33 of the Value Added Tax Decree 1991.

SECOND COUNT
STATEMENT OF OFFENCE

FAILING TO FURNISH A TAX RETURN AS REQUIRED BY

HIGH COURT

SECTION 33 OF THE VALUE ADDED TAX DECREE 1991:
 Contrary to Section 71(c) of the Value Added Tax Decree 1991.

PARTICULARS OF OFFENCE

A

ORISI CABENATABUA on the 1st day of October 1993 and thereafter at Labasa in the Northern Division, failed to furnish a Value Added Tax Return to the Commissioner of Inland Revenue for the taxable period 1st June 1993 to 31st August 1993 as required by Section 33 of the Value Added Tax Decree 1991.

B

THIRD COUNT
 STATEMENT OF OFFENCE

FAILING TO FURNISH A TAX RETURN AS REQUIRED BY
 SECTION 33 OF THE VALUE ADDED TAX DECREE 1991:
 Contrary to Section 71(c) of the Value Added Tax Decree 1991.

C

PARTICULARS OF OFFENCE

ORISI CABENATABUA on the 1st day of January 1994 and thereafter at Labasa in the Northern Division, failed to furnish a Value Added Tax Return to the Commissioner of Inland Revenue for the taxable period 1st September 1993 to 30th November 1993 as required by Section 33 of the Value Added Tax Decree 1991.

D

FOURTH COUNT
 STATEMENT OF OFFENCE

FAILING TO FURNISH A TAX RETURN AS REQUIRED BY
 SECTION 33 OF THE VALUE ADDED TAX DECREE 1991:
 Contrary to Section 71(c) of the Value Added Tax Decree 1991.

E

PARTICULARS OF OFFENCE

ORISI CABENATABUA on the 1st day of April 1994 and thereafter at Labasa in the Northern Division, failed to furnish a Value Added Tax Return to the Commissioner of Inland Revenue for the taxable period 1st December 1993 to 28th February 1994 as required by Section 33 of the Value Added Tax Decree 1991. “

F

and sentenced to a series of fines as follows:

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“COUNT ONE \$50.00 per period of default i.e. \$600.00 in default nine months imprisonment

COUNT TWO \$50.00 per period of default i.e. \$450.00 in default nine months imprisonment

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COUNT THREE \$50.00 per period of default i.e. \$300.00 in default six months imprisonment

A COUNT FOUR \$50.00 per period of default i.e. \$150.00 in default four months imprisonment”

Appellant is appealing against both his conviction and sentence.

B As to the appeal against conviction, it is clear that this cannot succeed in view of the clear provisions of section 309(1) of the Criminal Procedure Code precluding such an appeal following an unequivocal plea of guilty. However, the decision I have reached regarding the outcome of this case, somewhat unexpected perhaps, is based on a more fundamental ground namely, the unsatisfactory way the case was handled in the trial Court in that the facts of the case were not properly traversed as to be of assistance to the trial process.

C As regards the appeal against sentence, a fundamental difficulty in dealing with the matter has been that as already noted the essential facts about the case have not been properly canvassed to allow for fair adjudication of the case. The Value Added Tax Decree 1991 is a new concept in taxation law in this country. For that reason all those concerned in prosecuting offences under the Decree should exercise utmost care to bring forth to the trial Court all necessary facts so that a clear and helpful picture about the case can be formed.

D

The Court record merely states:

“Facts as charged. Convicted as charged.

First offender.

Mitigation: Accused’s business is making loss.”

E

The record is quite unsatisfactory and unhelpful. Attempts to do justice in this case are stymied by the poor presentation of the facts.

F

Background information about the appellant who has been alleged to be a defaulting taxpayer under the Value Added Tax Decree was woefully lacking nor was the Court informed about appellant’s line of business or about the circumstances that rendered him liable to be charged for failure to furnish his tax returns.

G

Without such information being made available to the trial Court, the Court itself was seriously handicapped in its function of assessing the proper fines to be imposed in such a case. There was no way the Court could satisfy itself that the fines imposed were in the circumstances fair and reasonable. Justice must be seen to be done.

Counsel for respondent has prepared a useful list of items that should be taken into account in considering the level of fines to be imposed in such cases as the present. The items are:

- “(a) The length of the delay.
- (b) Whether the accused had been let down by professional advisors such as accountants. A
- (c) The accused’s ability to pay.
- (d) Exceptional circumstances such as illness which might call for a merciful approach.
- (e) The considerable flow on effect across the business community of failure to furnish GST (VAT) returns. It is viewed more seriously than failure to provide general income tax returns. B
- (f) Whether the breaches arose through ignorance or mistake. C
- (g) The clear responsibility of all traders to report on GST/VAT matters because collection of revenue through GST/VAT is dependent upon transactional recording and reporting.
- (h) There is a distinction between individuals and commercial organisations. D
- (i) Whether reminder letters had been sent. “

The best way to marshal the facts relevant to this case and similar cases would be for the prosecution at the trial to provide the Court with a pre-prepared statement of facts about the case. If this had been done the learned trial Magistrate would have been able to assess what the proper fines in the case ought to be. It is therefore difficult to say whether the fines were fair or reasonable. But on their face value they do appear too much on the high side. In my view the paucity of basic facts in this case was unsatisfactory to such an extent that I do not think it could properly be said that the appellant has had a fair trial. E

For the reasons I have given I would set aside the conviction and sentence entered against appellant and order that the case be remitted to the Court below for a new trial to be held before the same Magistrate. F

(Conviction quashed; retrial ordered.) G