PAROKE AND KUPER -v- REGINAM

High Court of Solomon Islands
(Muria ACJ)
Criminal Case No. 21 of 1992
Hearing: 30 July 1992
Judgment: 4 August 1992

A. Radclyffe for Appellants
R. Talasasa for the Respondent

MURIA ACJ: The appellants had each pleaded Guilty to a charge of Housebreaking contrary to section 293 (a) of the Penal Code and were each sentenced to 7 months imprisonment. Each of the appellants filed a notice of appeal personally. At the hearing of the appeal Mr Radclyffe represented both prisoners.

At the commencement of the hearing, Mr Radclyffe applied to amend his clients' grounds of appeal to include a ground that the charges upon which the appellants were convicted were bad for duplicity. Mr Talasasa representing the Crown did not oppose the application. The Court allowed the amendment and the appeal was heard as an appeal against both conviction and sentence.

The offence under section 293 of the Penal Code is committed where a person breaks and enters any of the buildings specified under that section and commits a felony therein. The offence involving the breaking and entering of another's dwelling house with intent to commit a felony therein is an offence created by section 292(a) of the Penal Code. In this case each of the appellants was charged under section 293(a) of the Penal Code and the particulars were that:

"..... on the 16th April 1992, did break and enter the dwelling house of Mrs Vikky Nagasima, with intent to

steal therein and did steal therein one National Panasonic Tape Recorder, valued at $400.00, the property of Mrs Vikky Nagasima."

The appellants were not legally represented and each pleaded guilty to the charge. The learned Magistrate proceeded and accepted the guilty pleas. With respect, the learned Magistrate should not have accepted the appellants' guilty pleas. The particular of the charges alleged against the appellants appear to include the elements of both the offences under sections 292(a) and 293(a) of the Penal Code. This is very unsatisfactory and puts an accused person at a disadvantage position of defending himself especially where he is not represented by a lawyer. The principle of fair hearing embodies the requirement that an accused person must know with certainty what has been alleged against him. Unfortunately the offences with which the appellants were charged in this case were fraught with uncertainties as they purported to charge each of the appellants with two separate offences in the one charge. I refer to all concerned to the Review Judgements of this Court in ***Criminal Case No. 1245 of 1991, CMC*** *(Review Judgement given on 10 January 1992),* ***Criminal Case No. 1167 of 1991, CMC*** *(Review Judgement given on 13 January 1992);* ***Criminal Case No. 1293 of 1991, CMC:*** *and* ***Criminal Case No. 147 of 1991, CMC*** *(Review Judgement given on 13 April 1992).* Those cases clearly pointed out the positions regarding offences created under sections 292 and 293 of the Penal Code. Those cases also pointed out that if the charge alleges two offences in the one charge, then the charge is bad for duplicity.

In the present case the charges brought against the appellants were bad for duplicity.

The powers of the High Court on appeals in criminal cases are provided under section 292 of the Criminal Procedure Code. The proviso to section 292(1) gives the Court power to dismiss an appeal if no substantial miscarriage of justice has actually occurred.

In this case the appellants admitted breaking and entering the victim's house. They admitted taking the tape recorder without the permission of the victim. The property was recovered by the police

from the appellants. The facts as found by the learned Magistrate and accepted by the appellants clearly justify a conviction of the offence of Housebreaking.

In the exercise of my powers under section 292(1) of the Criminal Procedure Code I vary the learned Magistrate's decision and convict the appellants of Housebreaking and committing a felony, the particulars of which are that each of the appellants *"on 16 April broke and entered the dwelling house of Mrs Vikky Nagasima and stole therein one National Panasonic Tape Recorder valued at $400.00, the property of Mrs Vikky Nagasima"*.

On the question of sentence, Mr Radclyffe submitted that the appellants are young first offenders and as such imprisonment sentence is inappropriate. I do not accept the suggestion that because an offender is young and a first offender, he should not be sent to prison. In cases of serious crimes, and housebreaking is such a crime, the courts must reflect the seriousness of crimes in the sentences they pass even upon a young first offender. I said in *R - v- Maritino Suilamo, Tome Akwasu'u and Molousafi Criminal Case No. 3 of 1992 (Judgment given on 5 May 1992)* that the plea of youth is no longer satisfactory answer to serious crimes.

The learned Magistrate in this case imposed 7 months imprisonment on each of the appellants after taking into account their guilty pleas, previous good records, their youth and their apology for what they had done. I can see no reason to differ from the stand taken by the learned Magistrate.

Mr Radclyffe however urged the Court to consider the fact that because of their youth and their first brush with the law, the period which the appellants had already spent in prison is sufficient to bring home to them the consequences of their crimes. I think there is force in counsel's suggestion. I am sure both appellants have had a taste of what prison is and they have no doubt learnt what is in store for them should they offend again.

In those circumstances I propose therefore to order that the appellants need not serve the remainder of their sentences and that they be released forthwith. The appellants will realise that should they offend again, there can be no question of any sympathy from the Court.

To that extent I allow the appeal and vary the sentences in the manner proposed.

(G.J.B. Muria)
ACTING CHIEF JUSTICE