

116

IN THE FIJI COURT OF APPEAL

Appellate Jurisdiction

Criminal Appeal No. 34 of 1984

Between:

THE DIRECTOR OF PUBLIC PROSECUTIONS Appellant

- and -

RAM SAMI NAIDU s/o  
Yankatsami Naidu Respondent

V.J. Sabharwal for the Appellant  
Anil Singh for the Respondent

Date of Hearing : 31st October, 1984  
Date of Judgment : 31st October, 1984

JUDGMENT OF THE COURT

Casey, J.A. (Orally)

On the 15th February, 1984 the respondent Ram Sami Naidu is recorded as having pleaded guilty in the Magistrate's Court at Nadi to two counts - one of burglary and larceny, and one of office breaking and larceny. After an outline of the facts had been presented by the prosecutor, which he acknowledged as correct, the accused was convicted and sentenced to concurrent terms of 3 years' and 18 months' imprisonment respectively. Notwithstanding his pleas of guilty he appealed to the Supreme Court against both convictions listing a number of grounds, but the Judge dealt solely with the fundamental question of whether in the circumstances a right of appeal

existed. He referred to Section 309(1) of the Criminal Procedure Code stating :

"309.--(1) No appeal shall 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."

He considered that the words "who has pleaded guilty" must be interpreted to mean an unequivocal plea and cited a number of authorities and we see no need to repeat them. We can summarise their effect by saying that 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" and cite subsections (1) and (2) :-

"206.--(1) The substance of the charge or complaint shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.

(2) If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there shall appear to it sufficient cause to the contrary."

After considering the record in the Magistrate's Court the learned Judge concluded that there had not been an unequivocal plea of guilty and allowed the appeal, directing that the convictions and sentences be set aside.

The prosecutor has appealed to this Court against that decision, alleging that the Judge was wrong in law by holding that the pleas were equivocal.

The record signed by the Magistrate is, as one would expect, in the abbreviated form which is usually encountered in that busy jurisdiction. It notes that the accused appeared in person and the charges were read and explained. He is reported as saying -

"I choose Magistrate's Court both counts.  
(1) It is true.  
(2) It is true."

After reciting that guilty pleas were entered, the record sets out the prosecution account of the facts at the end of which is a note that the accused acknowledged them as correct. He was then convicted and sentenced. It also states that in mitigation he admitted he had done wrong and promised to reform. There is nothing in this record to raise any suggestion that the pleas of guilty were equivocal. Mr. Singh, who appeared for the respondent, submitted that the words "It is true" were ambiguous and might be taken as a further acknowledgment that the accused accepted the magistrate's jurisdiction. We think this is an unjustified and artificial interpretation of well understood procedures in the Magistrates Court.

We are, however, concerned with the Judge's view on the explanation of the charges which he appeared to think was necessary in this situation. On page 5 of his judgment he said "in order to comply with the provisions

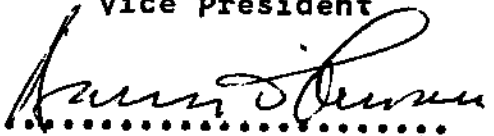
of section 206 the accused's understanding of each and every essential ingredient of the offence should be elicited by way of question and answer, recording such in narrative form." He went on to give an illustration of the enquiry necessary to produce an unequivocal plea to a charge of burglary and larceny. It is evident that in his view there should be nothing less than a full traversing of all the ingredients of the offence. But section 206(1) requires only that the substance of the charge be stated to the accused by the court. If the learned Judge intended by his remarks to set up a more stringent standard as a matter of law or binding practice, then we must hold, with respect, that he is mistaken. One can, of course, envisage cases of a technical nature in which it may be necessary to embark on such a detailed explanation. But we are satisfied that there was no need on the Magistrate to go that far in the present circumstances, where the very words of the charge were in such well understood terms as "enter" and "steal".


Mr. Singh also submitted that the accused's acknowledgment of the statement of facts had been taken into account in some way as part of the plea of guilty already entered. We agree that this acknowledgment cannot form part of the plea, but we do not think it was treated in that fashion. 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. Such a consideration prompted Mishra J. to set aside the conviction in Navitalai Gukisuva v. R. Cr.App. 4/78. He said that where an illiterate unrepresented person pleads guilty, the Court should treat it as provisional

only and defer the final acceptance until the facts have been fully outlined by the prosecution and admitted by the accused. We respectfully agree with this approach and it is evident from the record that this is precisely what happened here. The accused's acknowledgment of the facts supports the view that he had an adequate appreciation of the charge to know the significance of what he was pleading to.

The record states that the charges were explained and we think it can be properly assumed that section 206(1) of the Code was complied with and that the plea was unequivocal, in the absence of any indication to the contrary on the record, or of any evidence of its equivocal nature, of the kind discussed in R. v. Rochdale Justices (1981) 3 All E.R. 434. In particular it is noted that the plea was accepted and recorded by an experienced professional magistrate. As a result of our view of Section 206(1) we have reached a different conclusion from that of the learned Judge. We are satisfied the accused made an unequivocal admission of guilt, his recorded answers "It is true" following exactly the provisions of subsection (2). The appeal is allowed; the orders made in the court below are quashed and the convictions and sentences imposed in the Magistrate's Court are reinstated.

  
 .....  
 Vice President

  
 .....  
 Judge of Appeal

  
 .....  
 Judge of Appeal